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Federal Register

2–5–02 Tuesday
Vol. 67 No. 24 Feb. 5, 2002
Pages 5195–5430

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Contents

Federal Register

Vol. 67, No. 24

Tuesday, February 5, 2002

Agriculture Department
See Food Safety and Inspection Service
See Forest Service

Alcohol, Tobacco and Firearms Bureau
RULES
Alcohol, tobacco, and other excise taxes:
Firearms disabilities for nonimmigrant aliens and import permit requirements for nonimmigrant aliens bringing firearms and ammunition into U.S., 5421–5427
PROPOSED RULES
Alcohol, tobacco, and other excise taxes:
Firearms disabilities for nonimmigrant aliens and import permit requirements for nonimmigrant aliens bringing firearms and ammunition into U.S., 5427–5429

Antitrust Division
NOTICES
National cooperative research notifications:
Management Service Providers Association, Inc., 5292

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5288
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panels, 5288–5289

Commerce Department
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 5258

Copyright Office, Library of Congress
RULES
Copyright Arbitration Royalty Panel rules and procedures:
Digital audio recording technology royalty funds; claims filing requirements; waiver, 5213–5215

Corporation for National and Community Service
NOTICES
Reports and guidance documents; availability, etc.:
National origin discrimination as it affects limited English proficient persons; prohibition; policy guidance to Federal financial assistance recipients, 5258–5265

Defense Department
NOTICES
Arms sales notification; transmittal letter, etc., 5265–5270

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
Developing Hispanic-Serving Institutions Program, 5270–5272
Strengthening Institutions, and Alaska Native and Native Hawaiian-Serving Institutions Programs, 5272–5274
Meetings
Excellence in Special Education, President's Commission, 5274–5275
Meetings:
Student Financial Assistance Advisory Committee, 5275

Employment and Training Administration
NOTICES
Adjustment assistance:
AP Green Industries, 5295
Arnold Engineering Co., 5295
Bon L Campo L.P., 5295
Dyna-Craft Industries, Inc., 5295
DyStar L.P., 5295–5296
Imerys Pigments and Additives Group, 5296
Keokuk Ferro-Sil, Inc., 5296–5297
Paper Converting Machine Co., 5297
Rohm & Haas, 5297
Royce Hoisery, Inc., 5297
Tex Tech Industires, 5297–5298
Tri-State Plastics, Inc., 5298
Adjustment assistance and NAFTA transitional adjustment assistance:
Greenwood Mills, 5293
Iomega Corp. et al., 5293–5295
NAFTA transitional adjustment assistance:
Micro Motion, Inc., 5298
Seagate Technology, Inc., 5298
Sequa Corp., 5298–5299
Tyco Electronics, 5299

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Preferred Upstream Management Practices III (PUMP III) for Oil Industry; Identification and Demonstration, 5275–5277
Snowmass 2002 Fusion Energy Sciences Summer Study, 5277

Environmental Protection Agency
RULES
Air pollution control:
State operating permits programs—
New York, 5216–5218
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 5218–5221
PROPOSED RULES
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 5246
NOTICES
Agency information collection activities:

Proposed collection; comment request, 5281–5282

Executive Office of the President
See Management and Budget Office
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness standards:
Special conditions—
GROB-WERKE Model G120A airplane, 5196–5198
Class D airspace; correction, 5198–5199
PROPOSED RULES
Air carrier certification and operations:
Light-sport aircraft, 5367–5415
NOTICES
Passenger facility charges; applications, etc.:
Metropolitan Oakland International Airport, CA, 5354
Reno/Tahoe International Airport, NV, 5354–5355
Reports and guidance documents; availability, etc.:
Normal, utility, acrobatic, and commuter category airplanes—
Turbine-powered airplanes; dive test; policy statement; comment request, 5355–5356
Transport category airplanes—
System wiring policy, 5357–5360
Transport category airships; airworthiness criteria, 5356–5357

Federal Communications Commission
RULES
Radio stations; table of assignments:
California, 5241
NOTICES
Reports and guidance documents; availability, etc.:
Wireless and broadcast facilities collacations on existing towers and structures; nationwide programmatic agreement, 5282–5287

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 5287

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Kansas, 5232–5234
Various States, 5222–5232, 5234–5240
Flood insurance; communities eligible for sale:
Various States, 5221–5222
PROPOSED RULES
Flood elevation determinations:
Illinois and Virginia, 5249–5251
Kansas, 5254–5255
Various States, 5246–5249, 5251–5254

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Portland General Electric Co. et al., 5277–5279
Environmental statements; availability, etc.:
PacifiCorp, 5280
Ridgewood Maine Hydro Partners, L.P., 5280
Rochester Gas & Electric Corp., 5280
Hydroelectric applications, 5280–5281

Food and Drug Administration
NOTICES
Biological products:
Patent extention; regulatory review period determinations—
REFACTO, 5289–5290

Food Safety and Inspection Service
NOTICES
Meetings:
Codex Alimentarius Commission—
Foods Derived From Biotechnology Ad Hoc Intergovernmental Task Force; correction, 5256

Forest Service
NOTICES
Environmental statements; notice of intent:
Allegheny National Forest, PA, 5256
Meetings:
Resource Advisory Committees—
Grays Harbor, 5256

General Services Administration
NOTICES
Public buildings space:
Federal buildings; redesignation, 5287–5288

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration

Housing and Urban Development Department
NOTICES
Mortgage and loan insurance programs:
FHA Accelerated Claim Disposition Demonstration, 5417–5420

Immigration and Naturalization Service
NOTICES
Meetings:
Data Management Improvement Act Task Force, 5292

Interior Department
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Farm income averaging
Correction, 5203
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5361–5362

International Trade Commission
NOTICES
Import investigations:
Generalized System of Preferences; modifications—
Products imported from African Growth and Opportunity Act countries, 5290–5291
Set-top boxes and components, 5291

Justice Department
See Antitrust Division
See Immigration and Naturalization Service

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration

NOTICES
Committees; establishment, renewal, termination, etc.:
21st Century Workforce, President's Council, 5293

Library of Congress
See Copyright Office, Library of Congress

Management and Budget Office
NOTICES
Reports and guidance documents; availability, etc.:
Information disseminated by Federal agencies; quality, objectivity, utility, and integrity guidelines; correction, 5365

National Foundation on the Arts and the Humanities
NOTICES
Grants and cooperative agreements; availability, etc.:
Coming Up Taller Awards; management and administration, 5319

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—Northeast multispecies, 5241–5244
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—Washington State; California sea lions; pinniped removal authority, 5256–5258

National Park Service
NOTICES
Meetings:
Concessions Management Advisory Board, 5290

National Science Foundation
NOTICES
Committees; establishment, renewal, termination, etc.:
National Science Board, 5319

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5319–5320
Environmental statements; availability, etc.:
Core Laboratories, Inc., 5320–5321
PPL Susquehanna, LLC, et al., 5322–5323
Meetings; Sunshine Act, 5323
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 5323–5347
Reports and guidance documents; availability, etc.:
Uranium in situ leach facilities; development and operation; standard review plan, 5347–5348
Uranium mill tailings sites; reclamation plans; standard review plan, 5348

Occupational Safety and Health Administration
NOTICES
Nationally recognized testing laboratories, etc.:
Fee schedule, 5299–5305

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Peace Corps
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5348–5349

Pension and Welfare Benefits Administration
PROPOSED RULES
Employee Retirement Income Security Act:
Section 3(40) Collective Bargaining Agreements Negotiated Rulemaking Advisory Committee; meetings, 5245
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Connecticut Plumbers and Pipefitters et al., 5305–5316
Prudential Insurance Co. of America et al., 5316–5319

Personnel Management Office
RULES
Employment:
Placement assistance and reduction in force, 5195
Reduction in force retreat rights, 5196
Surplus and displaced Federal employees; career transition assistance, 5195–5196
NOTICES
Excepted service:
Schedules A, B, and C; positions placed or revoked—Update, 5349–5351

Postal Service
RULES
Postal programs:
Semipostal stamp program, 5215–5216

Public Debt Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5362

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration

Securities and Exchange Commission
RULES
Securites:
Options and futures; transaction exemptions, 5199–5202
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 5351–5353

Small Business Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5353

Surface Mining Reclamation and Enforcement Office
RULES
Organization, functions, and authority delegations:
Hearings and Appeals Office, Interior Department; address change for appeals of individual civil penalties, 5203–5204
Permanent program and abandoned mine land reclamation plan submissions:
Alabama, 5204–5207
Kentucky, 5207–5213

Surface Transportation Board
NOTICES
Railroad services abandonment:
Illinois Central Railroad Co., 5361

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
Canned pears and manganese metal from African Growth and Opportunity Act beneficiary countries; eligibility consideration; correction, 5365

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5353–5354

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Internal Revenue Service
See Public Debt Bureau

Veterans Affairs Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5362–5363
Real property; enhanced-use leases:
Honolulu, HI; Spark M. Matsunaga VA Medical and Regional Office Center, 5363–5364

Separate Parts In This Issue

Part II
Transportation Department, Federal Aviation Administration, 5367–5415

Part III
Housing and Urban Development Department, 5417–5420

Part IV
Treasury Department, Alcohol, Tobacco and Firearms Bureau, 5421–5429

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.
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CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
330 (2 documents) 5195
332.....5195
351 (3 documents) 5195, 5196
353.....5195

14 CFR
23.....5196
71.....5198

Proposed Rules:
1.....5368
21.....5368
43.....5368
45.....5368
61.....5368
65.....5368
91.....5368

17 CFR
240.....5199

26 CFR
1.....5203
602.....5203

27 CFR
178.....5422

Proposed Rules:
178.....5428

29 CFR

Proposed Rules:
2510.....5245

30 CFR
724.....5203
846.....5203
901.....5204
917.....5207

37 CFR
259.....5213

39 CFR
551.....5215

40 CFR
70.....5216
300.....5218

Proposed Rules:
300.....5246

44 CFR
64.....5221
65 (4 documents) ...5222, 5224, 5227, 5230
67 (2 documents) 5232, 5234

Proposed Rules:
67 (4 documents) ...5246, 5249, 5251, 5254

47 CFR
73.....5241

50 CFR
648.....5241

Rules and Regulations

Federal Register

Vol. 67, No. 24

Tuesday, February 5, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 330 and 351

RIN 3206–AJ18

Placement Assistance and Reduction in Force Notices

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final placement assistance and reduction in force regulations to replace references to the repealed Job Training Partnership Act with references to the Workforce Investment Act of 1998.

DATES: These regulations are effective February 5, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Galemore, 202–606–0960, FAX 202–606–2329, TDD (202) 606–0023, or e-mail at *pjgalemo@opm.gov.*

SUPPLEMENTARY INFORMATION: On October 26, 2000, OPM published interim regulations at 65 FR 64133 to replace references to the repealed Job Training Partnership Act (JTPA) with references to its successor statute, the Workforce Investment Act (WIA) of 1998. OPM is making the interim regulations final without further revision.

Background

The JTPA, Public Law 97–300, October 12, 1982, as amended, required the States to provide employment assistance programs to dislocated workers and others as defined in the Act. Since 1995, through OPM regulations published in §§ 330.405, 351.803, and 351.807 of title 5, Code of Federal Regulations (CFR), agencies have been required to give JTPA program information to employees in their specific reduction in force notices.

The JTPA was repealed effective July 1, 2000. States now provide placement assistance programs under the WIA, Public Law 105–220, August 7, 1998. The Omnibus Consolidated and Emergency Supplemental Appropriations Act, Public Law 105–277, section 405, October 21, 1998, amended the reduction in force statute at 5 U.S.C. 3502(d) to reflect this change in the controlling statute.

The interim regulations were issued solely to replace references to the repealed JTPA with references to its successor statute, the WIA. No other wording was changed.

The interim regulations were effective November 27, 2000. Interested parties could submit written comments to OPM concerning the regulations during the 60-day period following publication.

Comments

OPM did not receive any comments on the interim regulations.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 330 and 351

Administrative practice and procedure, Armed forces reserves, Government Employees, Individuals with disabilities.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the interim regulations revising 5 CFR parts 330 and 351 which were published at 65 FR 64133 on October 26, 2000, are adopted as final regulations without change.

[FR Doc. 02–2672 Filed 2–4–02; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 330, 332, 351, 353

RIN 3206–AJ32

Career Transition Assistance for Surplus and Displaced Federal Employees

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations making the current career transition assistance programs permanent to help Federal employees displaced from their jobs by downsizing. These regulations adopt interim regulations published June 4, 2001, as final.

EFFECTIVE DATE: March 7, 2002.

FOR FURTHER INFORMATION CONTACT: Jacqueline Yeatman, (202) 606–0960, FAX (202) 606–2329, or by email at: *jryeatma@opm.gov.*

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2001, OPM published interim regulations removing the sunset date from the Career Transition Assistance Plan (CTAP) and Interagency Career Transition Assistance Plan (ICTAP). These regulations also permanently eliminated the Interagency Placement Program (IPP), deleting references to the IPP in parts 332, 351 and 353 and replacing them with ICTAP where appropriate.

Comments

Four Federal agencies commented on these regulations. All four agreed with the regulations as published, supporting OPM's decision to permanently replace the IPP with CTAP and ICTAP and to eliminate the agency reporting requirements. One agency suggested that we consider redesignating CTAP as ACTAP (Agency Career Transition Assistance Plan) to reduce confusion between this agency placement program and the ICTAP, the interagency program. We believe the best way to implement such a change would be in conjunction with future proposed regulations.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Part 330

Armed forces reserves, Government employees.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the interim rule amending 5 CFR parts 330, 332, 351 and 353 which was published at 66 FR 29895 on June 4, 2001, as adopted as a final rule without change.

[FR Doc. 02–2674 Filed 2–4–02; 8:45 am]

BILLING CODE 6325–38–M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

RIN 3206–AJ14

Reduction in Force Retreat Rights

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation that clarifies a released employee's potential right to ''Retreat'' to another position in a reduction in force. This regulation states that an agency determines the potential grade range of a released employee's retreat right solely upon the position held by the employee on the effective date of the reduction in force rather than the grade range of the position to which the employee may have a right to retreat.

DATES: This regulation is effective on February 5, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon, FAX 202–606–2329.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 2000, OPM published an interim regulation at 65 FR 62991 that clarifies OPM's longstanding policy on the procedure that an agency uses to determine a released employee's potential right to ''Retreat'' to another position in a reduction in force.

The interim regulation stated that an agency determines the grade or grade-interval range of a released employee's retreat rights solely on the basis of the official position of record held by the employee on the effective date of the reduction in force. The regulation also stated that an agency does not consider the grade or grade-interval range of the position to which the employee may have a retreat right.

The interim regulation was effective upon publication in the **Federal Register**. Interested parties could submit written comments to OPM concerning the regulation in the 60 day period following publication.

Comments

OPM did not receive any comments on the regulation.

Final Regulation

The interim regulation OPM published at 65 FR 62991 is published as a final regulation without further revision.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This regulation has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 351

Administrative practice and procedure, Government employees.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the interim regulation published at 65 FR 62991 on October 20, 2000, is adopted as final without change.

[FR Doc. 02–2673 Filed 2–4–02; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE172; Special Conditions No. 23–110–SC]

Special Conditions: GROB–WERKE, Burkhurt Grob e.k., Unternehmensbereich Luft-und Raumfahrt, Model G120A Airplane, Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions, request for comments.

SUMMARY: These special conditions are issued to GROB–WERKE, Burkhurt Grob e.k., Unternehmensbereich Luft-und Raumfahrt (GROB–WERKE), for a type certificate for the G120A airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of an electronic attitude direction indicator for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is January 29, 2002. The Federal Aviation Administration (FAA) must receive any comments on this rule on or before March 7, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. CE172, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone 816–329–4146; facsimile 816–329–4149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these

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

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE172.'' The postcard will be date stamped and returned to the commenter.

Background

On February 6, 2001, GROB–WERKE, Burkhurt Grob e.k., Unternehmensbereich Luft-und Raumfahrt, Lettenbachstrasse 9, 86874, Tussenhausen-Mattsies, Germany, made an application to the FAA for a type certificate for the G120A airplane. The proposed modification incorporates a novel or unusual design feature, such as electronic attitude direction indicator that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, GROB–WERKE must show that the G120A airplane meets the following provisions, or the applicable regulations in effect on the date of application, 14 CFR part 23 at Amendment 23–54.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions are normally issued in accordance with § 11.19 as required by and become a part of the type certification basis in accordance with § 21.17 (a)(2).

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

Novel or Unusual Design Features

GROB–WERKE plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include an electronic attitude direction indicator, which is susceptible to the HIRF environment, which was not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. In addition, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows: The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

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

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

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts rms per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF

requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the G120A airplane. Should GROB–WERKE apply at a later date for a design approval to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the specified airplane model(s). It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, §§ 21.16 and 21.101; and 14 CFR part 11, 11.19.

The Special Conditions

Accordingly, by the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the G120A airplane manufactured by GROB–WERKE, which includes an electronic attitude direction indicator.

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF). Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

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

Issued in Kansas City, Missouri, on January 29, 2002.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2719 Filed 2–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–3]

Amendment to Class D Airspace; Eglin AFB, FL; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final rule (99–ASO–19), which was published in the **Federal Register** on December 14, 1999, (64 FR 69631), amending Class D airspace at Eglin AFB, FL. This action corrects errors in the legal description for the Class D airspace at Eglin AFB, FL.

EFFECTIVE DATE: 0901 UTC, April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Background

Federal Register Document 99–32347, Airspace Docket No. 99–ASO–19, published on December 14, 1999, (64 FR 69631), amends Class D airspace at Eglin AFB, FL. Errors were discovered in the legal description, describing the Class D airspace area. One word, ''of'' has been changed to ''to'', and the word ''east'' has been inserted to more clearly describe the airspace boundaries. These actions correct the errors.

Designations for Class D airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

Need for Correction

As published, the final rule contains errors which incorrectly describe the geographical boundaries of the Class D airspace area. Accordingly, pursuant to the authority delegated to me, the legal description for the Class D airspace area at Eglin AFB, FL, incorporated by reference at § 71.1, 14 CFR 71.1, and published in the **Federal Register** on December 14, 1999, (64 FR 69631), is corrected by making the following correcting amendment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

In consideration of the foregoing, the Federal Aviation Administration corrects the adopted amendment, 14 CFR part 71, by making the following correcting amendment:

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

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

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

§ 71.1 [Corrected]

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

Paragraph 5000 Class D Airspace

ASO FL D Eglin AFB, FL [CORRECTED]

Eglin AFB, FL
(Lat. 30°29′00″N, long. 86°31′34″W)
Destin—Fort Walton Beach
(Lat. 30°24′00″N, long. 86°28′17″W)
Destin NDB
(Lat. 30°24′18″N, long. 86°28′26″W)
Duke Field
(Lat. 30°39′07″N, long. 86°31′23″W)
Hurlburt Field
(Lat. 30°25′44″N, long. 86°41′20″W)

That airspace extending upward from the surface, to and including 2,600 feet MSL within a 5.5-mile radius of Eglin AFB and within a 4-mile radius of Destin—Fort Walton Beach Airport and within 2.5 miles each side of the 147° bearing from the Destin NDB, extending 7 miles southeast of the NDB, excluding the portion north of a line connecting the 2 points of intersection within a 5.2-mile radius circle centered on Duke Field; excluding the portion southwest of a line connecting the 2 points of intersection within a 5.3-mile radius of Hurlburt Field; excluding a portion east of a line beginning at lat. 30°30′43″N., long 86°26′21″W., extending north to the 5.5-mile radius and north of a line beginning at lat. 30°30′43″N., long. 86°26′21″W. extending east to the 5.5-mile radius.

* * * * *

Issued in College Park, Georgia, on January 29, 2002.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–2721 Filed 2–4–02; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–45371]

Exemption of Transactions in Certain Options and Futures on Security Indexes From Section 31 of the Exchange Act

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is, by rule, exempting two classes of securities from the fee and assessment requirements of Section 31 of the Securities Exchange Act of 1934 (''Exchange Act''): options on narrow-based security indexes and futures on narrow-based security indexes. In light of the very low amount of Section 31 fees currently collected on options on narrow-based security indexes, the Commission is granting the exemption for options on such indexes to relieve certain national securities exchanges of the burden of having to calculate whether an index is narrow-based or broad-based. The Commission is granting the exemption for futures on narrow-based security indexes to promote a level playing field between options and futures.

EFFECTIVE DATE: February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Gaw, Special Counsel, 202–942–0158, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background and Summary

Section 31 of the Exchange Act [1] requires national securities exchanges and national securities associations to pay fees and assessments to the Commission based on sales of or transactions in certain securities. Specifically, a national securities exchange is required to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted on that exchange,[2] and a national securities association is required to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted by or through any member of the association otherwise than on a national securities exchange.[3] In addition, an exchange or association is required to pay to the Commission an assessment for each round turn transaction on a security future.[4] Section 31(f) of the Exchange Act [5] provides that ''[t]he Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee or assessment imposed by [Section 31], if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system.''

On January 16, 2002, President Bush signed into law the Investor and Capital Markets Fee Relief Act (''Fee Relief Act'') [6] which, among other things, amends Section 31 to provide that ''options on securities indexes (excluding a narrow-based security index)'' are exempt from the fee requirements of Section 31. Thus, as provided by statute, national securities exchanges and national securities associations are not required to pay to the Commission fees on sales of options on security indexes that are not narrow-based security indexes [7] (*i.e.,* are ''broad-based security indexes''). The exclusion of sales of options on broad-based indexes from Section 31 fees is consistent with the treatment of futures on broad-based indexes, which compete with options on broad-based indexes and are not subject to assessments under Section 31.

The Commission today is amending Rule 31–1 under the Exchange Act [8] by adding new paragraphs (f) and (g) to exempt options and futures, respectively, on narrow-based security indexes from Section 31. The Commission also is adopting conforming amendments to the preliminary note in Rule 31–1.

II. Discussion

A. Exemption for Options on Narrow-Based Security Indexes

The Exchange Act defines a narrow-based security index to be an index that has any one of the following four characteristics: (1) It has nine or fewer component securities; (2) any one of its component securities comprises more than 30 percent of its weighting; (3) any group of five of its component securities together comprise more than 60 percent of its weighting; or (4) the lowest weighted component securities

[1] 15 U.S.C. 78ee.

[2] *See* 15 U.S.C. 78ee(b).

[3] *See* 15 U.S.C. 78ee(c).

[4] *See* 15 U.S.C. 78ee(d).

[5] 15 U.S.C. 78ee(f).

[6] Pub. L. No. 107–123, 115 Stat. 2390 (2002).

[7] The term ''narrow-based security index'' is defined in Section 3(a)(55)(B) of the Exchange Act, 15 U.S.C. 78c(a)(55)(B).

[8] 17 CFR 240.31–1.

comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50 million (or in the case of an index with 15 or more component securities, $30 million).[9] This definition was added to the Exchange Act by the Commodity Futures Modernization Act of 2000 which, among other things, authorized the trading of futures on single securities and on narrow-based security indexes.

Trading of futures on narrow-based security indexes is subject to joint regulation by the Commission and the Commodity Futures Trading Commission (''CFTC''), whereas trading of futures on broad-based security indexes is subject to the sole jurisdiction of the CFTC. To ensure that trading of an index future is not subject to one regulatory framework one instant and another regulatory framework the next instant, an index is excluded from the definition of ''narrow-based security index'' if: (1) a future on such index traded on a CFTC-regulated market for at least 30 days as a future on a broad-based security index; and (2) such index has not had the above characteristics of a narrow-based security index for more than 45 business days over three calendar months.[10] This exclusion, in effect, creates a tolerance period that permits trading in futures on broad-based security indexes to continue to be regulated exclusively by the CFTC if the index becomes narrow-based for 45 or fewer business days in a three-month period.[11]

This statutory tolerance period applies only when a future is trading on an index. When a future is not trading on an index, the index can switch continuously between a broad-based security index and a narrow-based security index. Thus, when a future is not trading on an index, an option on that index could be an option on a narrow-based security index one instant—and thus be subject to Section 31 fees—and be an option on a broad-based security index—and thus be exempt from Section 31 fees—just an instant later. Exchanges and associations must, therefore, continuously monitor the status of an index underlying an option and pay Section 31 fees to the Commission only for sales executed when the underlying index was narrow-based.

Currently, the trading volume of options on narrow-based security indexes, and thus the amount of Section 31 fees levied on such trading, is insignificant. The fees paid by the exchanges to the Commission in 2001 for all sales of options on indexes that were, or in the near future might become, narrow-based security indexes was below $35,000.[12] In light of the currently low dollar volume of sales of options on narrow-based security indexes and the resources that exchanges and associations must devote to monitoring the narrow-based status of the underlying indexes, the Commission believes that it is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system to exempt options on narrow-based security indexes from the fee requirements of Section 31.

To the extent that the dollar volume of sales of options on narrow-based security indexes increases, the Commission may reevaluate its decision today to exempt such products from Section 31 fees.[13]

B. Exemption for Futures on Narrow-Based Security Indexes

In addition, the Commission is exempting futures on narrow-based security indexes from the fee assessment requirements of Section 31. The Commission believes that such an exemption is necessary and appropriate to maintain a level competitive playing field between futures on narrow-based security indexes and options on narrow-based security indexes that compete with one another. The Commission notes that one of the reasons that Congress relieved exchanges and associations from the requirement to pay Section 31 fees on options on security indexes (excluding narrow-based security indexes) is that futures on such indexes are not subject to Section 31 assessments. Similarly, the Commission believes that an exemption for futures on narrow-based security indexes is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system. As with the exemption for options on narrow-based security indexes, the Commission may reevaluate its decision today to exempt futures on narrow-based security indexes from Section 31 assessments after trading commences in these products.

III. Consideration of the Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act[14] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act[15] requires the Commission, when promulgating rules under the Exchange Act, to consider the impact any such rules would have on competition. Section 23(a)(2) further provides that the Commission may not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission has considered the effect of the amendments to Rule 31–1 on efficiency, competition, and capital formation. The Commission does not believe that these amendments will impose any burden on competition. To the contrary, the Commission believes that the amendments will promote a level playing field between options and futures on narrow-based security indexes.

The Commission also has considered whether exempting options and futures on narrow-based security indexes from Section 31 might divert trading activity from securities that are not exempt from Section 31 to these options and futures that are exempt. However, the Commission views this prospect as highly unlikely. Options and futures on single stocks and options and futures on narrow-based security indexes are, in practice, very imperfect substitutes for each other.[16] Given this imperfection, the very small per-transaction Section 31 fee on transactions in the single-stock options and futures would not likely be the controlling factor in a market participant's decision to purchase index

[9] *See* 15 U.S.C. 78c(a)(55)(B)(i)—(iv).

[10] *See* 15 U.S.C. 78c(a)(55)(C)(iii).

[11] If the index becomes narrow-based for *more* than 45 days over three consecutive calendar months, the Exchange Act then provides an additional grace period of three months during which the index is excluded from the definition of narrow-based security index. *See* 15 U.S.C. 78c(a)(55)(E).

[12] By contrast, the Commission collected a total of approximately $1.1 billion in Section 31 fees in the twelve months from September 2000 to August 2001.

[13] The Commission could consider, for example, adopting rules that establish a tolerance period for security indexes underlying options that is similar to the statutory tolerance period for futures on security indexes. *See supra* notes 10–11 and accompanying text.

[14] 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78w(a)(2).

[16] A market participant would view an option or future on a narrow-based security index as a close substitute for individual options or futures on the component securities only if the market participant desired to have an interest in all of the index's component securities, and in the proportion that such securities were weighted in the index.

options or futures rather than options or futures on the index's component securities.

IV. Administrative Procedure Act and Other Considerations

Section 553(b) of the Administrative Procedure Act (''APA'') [17] generally requires an agency to publish notice of a proposed rule making in the **Federal Register**. This requirement does not apply, however, if the agency ''for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [18]

Although President Bush signed the Fee Relief Act into law on January 16, 2002, it became effective retroactively to December 28, 2001.[19] Thus, in complying with the requirements of Section 31, national securities exchanges and national securities associations currently must continuously monitor whether an index underlying an index option is narrow-based or broad-based. The Commission finds that it is unnecessary and contrary to the public interest to continue to require exchanges and associations to incur this burden and assess the required fees during a notice and comment period when the amount of such fees would be an infinitesimal portion of the total fees collected and paid to the Commission under Section 31. Therefore, the Commission finds good cause to waive the APA's notice and comment provisions with respect to the amendments to Rule 31–1.

The APA also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[20] However, this requirement does not apply if the rule grants or recognizes an exemption or relieves a restriction [21] or if the agency finds good cause not to delay the effective date.[22] The Commission finds that the amendments to Rule 31–1 meet both criteria. The amendments exempt two classes of securities—options on narrow-based security indexes and futures on narrow-based security indexes—from the fee assessments of Section 31. Moreover, as discussed above, making the rule amendments effective immediately will spare exchanges and associations the burden and expense of monitoring indexes and assessing the required fees for the period during which the amendments are not effective. Therefore, the Commission finds good cause to issue the rule amendments without a delayed effective date.

The Regulatory Flexibility Act [23] is not applicable to the promulgation of the rule amendments. The flexibility analysis requirement of the Regulatory Flexibility Act applies only if the Commission would be required by the APA to publish general notice of the proposed rulemaking.[24] As discussed above, the Commission has determined that the APA does not require it to solicit public comment in this case.

The Paperwork Reduction Act [25] is not applicable to the promulgation of the amendments because they do not impose any collection of information requirements that would require the approval of the Office of Management and Budget.

V. Consideration of Costs and Benefits

A. Costs

Eliminating Section 31 fees for transactions in options or futures on narrow-based indexes theoretically could result in slightly higher fees on transactions in other securities that do not benefit from a Section 31 exemption. The Exchange Act, as amended by the Fee Relief Act, requires the Commission to set rates for Section 31 fees so that such rates are reasonably likely to produce aggregate fee collections that equal amounts prescribed by the Fee Relief Act.[26] Thus, although the Commission may exempt certain securities from Section 31, it cannot reduce the total amount of fees that it is required to collect under Section 31. An exemption granted to certain securities could, therefore, result in a higher rate paid on transactions in the remaining, non-exempted securities. However, because the fees collected on trades in options on narrow-based security indexes are very small relative to the overall fees collected on non-exempt securities transactions in the United States,[27] the Commission concludes that the amendments to Rule 31–1 adopted today will have a negligible effect, if any, on the fees paid on these other securities transactions.[28] Furthermore, the Commission believes that, although futures on narrow-based security indexes have not yet begun trading, the dollar volume of trading in these products will be very small for the foreseeable future. Therefore, the Commission also believes that an exemption for futures on narrow-based security indexes will have a negligible effect, if any, on the fees paid on other securities transactions.

B. Benefits

The benefits of the amendments to Rule 31–1 adopted today will equal the costs saved: (1) By certain national securities exchanges from not having to monitor the indexes underlying options for purposes of Section 31; (2) by certain national securities exchanges from no longer having to collect Section 31 fees from market participants for transactions in options on narrow-based security indexes; and (3) by market participants who effect transactions in options on narrow-based security indexes and who will no longer have to pay Section 31 fees on such transactions.

1. Benefits From Relieving Monitoring Burdens

With the adoption of the amendments to Rule 31–1, all index options and index futures—whether based on narrow-based or broad-based indexes—are now exempt from Section 31 fees. The Commission believes that three national securities exchanges will derive certain benefits from not having to monitor whether an index that underlies an option is narrow-based or broad-based for purposes of Section 31.

In August 2001, the Commission adopted a rule that established a methodology for calculating the market value of a narrow-based security index (''Index Calculation Rule'').[29] In adopting the Index Calculation Rule, the Commission estimated the costs that would be imposed on national securities exchanges, designated contract markets, derivatives transaction execution facilities, and foreign boards of trade to calculate the market value of security indexes in accordance with the rule. As noted above, the Fee Relief Act excluded from Section 31 options on broad-based security indexes but not options on narrow-based security indexes. Thus, when the Fee Relief Act

[17] 5 U.S.C. 553(b).

[18] 5 U.S.C. 553(b)(B).

[19] *See* Section 11 of the Fee Relief Act.

[20] *See* 5 U.S.C. 553(d).

[21] *See* 5 U.S.C. 553(d)(1).

[22] *See* 5 U.S.C. 553(d)(3).

[23] 5 U.S.C. 601–612.

[24] *See* 5 U.S.C. 603(a).

[25] 44 U.S.C. 3501 *et seq.*

[26] *See* 15 U.S.C. 78ee(j).

[27] *See supra* note 12 and accompanying text.

[28] Assuming, for the sake of argument, that the Commission would collect $35,000 in fees on trades in options on narrow-based security indexes in the absence of this exemption in fiscal year 2003, this amount would have represented only 0.0041% of the $849 million in Section 31 fees targeted for collection in fiscal year 2003 under Section 31, as amended by the Fee Relief Act. This amount is so small that it would not affect the fee rate that the Commission is required to publish for fiscal year 2003 pursuant to Section 31. *See* 15 U.S.C. 78ee.

[29] *See* Securities Exchange Act Release No. 44724 (August 20, 2001), 66 FR 44490 (August 23, 2001) (adopting Rules 3a55–1 to 3a55–3).

became effective retroactively to December 28, 2001, three additional national securities exchanges [30] were required adhere to the Index Calculation Rule to ascertain whether the indexes underlying their option products were narrow-based or broad-based, for purposes of paying Section 31 fees only on the correct index options. The Commission believes that one of the benefits of the rule amendments adopted today will be the elimination of the monitoring costs for these three exchanges.

In the adopting release for the Index Calculation Rule, the Commission—upon a suggestion made by one of the commenters—assumed that two full-time staff persons, one supervisory and the other clerical, would be required to apply the new rule. The Commission estimated the total annual cost of employing one clerical staff person would be approximately $57,600, and that the total annual cost of employing a supervisory staff person would be approximately $180,000. The Commission concluded, therefore, that the total cost to each affected exchange to engage the staff necessary to comply with the Index Calculation Rule would be $237,600 annually.[31] Further, the Commission anticipated that there would be systems implementation costs associated with the Index Calculation Rule. The Commission estimated that each affected exchange would incur a one-time system installation fee of $300 and additional systems costs of $25,800 annually.[32]

The Commission believes that a Section 31 exemption for transactions in options on narrow-based security indexes will relieve three national securities exchanges of the compliance costs associated with the Index Calculation Rule. These exchanges will no longer incur the costs of monitoring indexes in a manner consistent with that rule for purposes of paying Section 31 fees, which costs were estimated by the Commission in the adopting release. Thus, the Commission believes that each of the three exchanges will avoid a one-time system installation fee of $300; additional systems costs of $25,800 annually; and staffing costs of $237,600 annually.

A futures market would derive no corresponding benefit from a Section 31 exemption for futures on narrow-based security indexes because the futures market will still be required to monitor the indexes underlying its futures products, in a manner prescribed by the Index Calculation Rule, to ensure compliance with the appropriate regulatory framework.

2. Benefits of Relieving Collection Burdens

Furthermore, the Commission believes that three national securities exchanges will derive a small benefit from not having to collect and pay to the Commission Section 31 fees on options on narrow-based security indexes. However, the Commission believes that the collection and payment of Section 31 fees for options on narrow-based security indexes required only minor configurations to the existing systems of the exchanges, and that discontinuing such collection and payment will yield only very small cost savings to these exchanges.

The Commission does not believe that the futures markets will derive any corresponding benefit from a Section 31 exemption on transactions in futures on narrow-based security indexes. Currently, futures on narrow-based security indexes are not traded on any U.S. futures market. Furthermore, the Commission does not believe that these markets have current plans to trade such products in the near future. Therefore, because the futures markets would not in any case have had to devote resources to the collection and payment of Section 31 fees on transactions in futures on narrow-based security indexes, the Commission does not believe that the exemption granted today for such futures would create any benefits for the futures markets. The Commission believes, nevertheless, that such an exemption is necessary to establish a level playing field between options and futures on narrow-based security indexes at such time as these futures may be traded.

3. Benefits of Eliminating Section 31 Fees Payable By Market Participants Who Effect Transactions in Options or Futures on Narrow-based Security Indexes

One benefit of the amendments to Section 31 adopted today is that market participants who effect transactions in options or futures on narrow-based security indexes will not have to pay Section 31 fees on such transactions. However, as noted above, the Commission acknowledges that this benefit is offset by the increase in the rate of Section 31 fees that must be paid by market participants on transactions in other, non-exempted securities.

VI. Statutory Authority

The amendments to Rule 31–1 under the Exchange Act are being adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly Sections 23(a) and 31 of the Exchange Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Rule Amendment

For the reasons set forth above, the Commission amends Part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

* * * * *

2. Section 240.31–1 is amended by:

a. Removing the phrase ''other than narrow-based security indexes'' in the first sentence of the Preliminary Note;

b. Removing the period at the end of paragraph (a) and adding in its place a ''.'';

c. Removing the ''and'' at the end of paragraph (d);

d. Removing the period at the end of paragraph (e) and adding in its place a '';''; and

e. Adding paragraphs (f) and (g) to read as follows:

§ 240.31–1 Securities transactions exempt from transaction fees.

* * * * *

(f) Sales of options on narrow-based security indexes; and

(g) Round turn transactions in futures on narrow-based security indexes.

Dated: January 31, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2764 Filed 2–1–02; 10:26 am]

BILLING CODE 8010–01–P

[30] Currently, there are five registered national securities exchanges that trade options. Only three of them—the American Stock Exchange, the Chicago Board Options Exchange, and the Philadelphia Stock Exchange—trade options on security indexes, some of which are narrow-based. Thus, a Section 31 exemption for options on narrow-based security indexes will affect only these three exchanges.

[31] *See* 66 FR at 44510.

[32] *See id.*

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8972]

RIN 1545–AW05

Averaging of Farm Income; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations that were published in the **Federal Register** on Tuesday, January 8, 2002 (67 FR 817) relating to the election to average farm income in computing tax liability.

DATES: This correction is effective January 8, 2002.

FOR FURTHER INFORMATION CONTACT: John M. Moran (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 1301 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8972), that were the subject of FR Doc. 02–183, is corrected as follows:

§ 1–1301–1 [Corrected]

On page 821, column 1, § 1.1301–1, paragraph (d)(3)(ii), *Example* (ii), line 9, the language ''years 1990, 2000, and 2001. T's 2002 tax'' is corrected to read ''years 1999, 2000, and 2001. T's 2002 tax.''

LaNita Van Dyke,

Acting Chief, Regulations Unit, Office of Special Counsel, (Modernization and Strategic Planning).

[FR Doc. 02–2744 Filed 2–4–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 724 and 846

RIN 1029–AC02

Individual Civil Penalties—Change of Address for Appeals

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is revising its regulations governing individual civil penalties to reflect a change of address for the Department of the Interior's Office of Hearings and Appeals (OHA). OHA is moving to a new location in Arlington, Virginia, effective February 11, 2002.

DATES: This rule is effective February 11, 2002.

FOR FURTHER INFORMATION CONTACT: Andy DeVito, Office of Surface Mining Reclamation and Enforcement, Room 117, South Interior Building, 1951 Constitution Avenue NW, Washington, DC 20240; Telephone 202–208–2701.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Procedural Matters and Required Determinations.

I. Background

In 30 CFR parts 724 and 846, 0SM has established procedures for the assessment of individual civil penalties against a corporate director, officer, or agent of a corporate permittee who knowingly and willfully authorized, ordered, or carried out a violation or a failure or refusal to comply. Included in the procedures are provisions allowing the individual to appeal a proposed individual civil penalty assessment to OHA which is part of the Department of the Interior. OHA consists of a headquarters office, located in Arlington, Virginia, and nine field offices located throughout the country. Since 1970, the headquarters office has been located at 4015 Wilson Boulevard, and that address is included in one section each within 30 CFR parts 724 and 846.

Effective February 11, 2002, the OHA headquarters office is being relocated to 801 North Quincy Street, Arlington, Virginia. In anticipation of that move, OSM is revising its administrative appeals regulations to reflect OHA's new street address.

II. Procedural Matters and Required Determinations.

Administrative Procedure Act

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. OSM has determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule because the rule merely changes an address contained in the regulations and does not impose any new OSM regulatory requirements. These same reasons also provide OSM with good cause under 5 U.S.C. 553(d)(3) of the APA to have the regulation become effective on a date that is less than 30 days after the date of publication in the **Federal Register**.

Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

a. The change of address 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.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This rule does not raise novel legal or policy issues.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not considered a significant energy action under Executive Order 13211. The change of address will not have a significant affect on the supply, distribution, or use of energy.

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.*). As previously stated, the change of address will not have an adverse economic impact. Further, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

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 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 U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

Unfunded Mandates

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, Tribal, or local governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1534) is not required.

Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

Executive Order 12612—Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment for the reasons discussed above.

Executive Order 12988—Civil Justice Reform

In accordance with 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 Order.

Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act to the Office of Management and Budget is not required.

National Environmental Policy Act

OSM has reviewed this rule and determined that it is categorically excluded from the National Environmental Policy Act process in accordance with the Departmental Manual 516 DM 2, Appendix 1.10. (Categorical Exclusion for policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature).

List of Subjects

30 CFR Part 724

Administrative practice and procedure, Penalties, Surface mining, underground mining.

30 CFR Part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Dated: January 23, 2002.

J. Steven Griles,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, 30 CFR parts 724 and 846 are amended as set forth below:

PART 724—INDIVIDUAL CIVIL PENALTIES

1. The authority citation for part 724 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 724.17 [Amended]

2. In § 724.17(b)(l), remove ''4015 Wilson Boulevard'' and add ''801 North Quincy Street.''

PART 846—INDIVIDUAL CIVIL PENALTIES

3. The authority citation for part 846 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 846.17 [Amended]

4. In § 846.17(b)(1), remove ''4015 Wilson Boulevard'' and add ''801 North Quincy Street.''

[FR Doc. 02–2746 Filed 2–4–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[AL–071–FOR]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposed revisions to and additions of rules concerning valid existing rights. Alabama revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: February 5, 2002.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282. Internet: *aabbs@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Alabama 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 Alabama program on May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 20, 1982, **Federal Register** (47 FR 22062). You can find later actions on the

Alabama program at 30 CFR 901.15 and 901.16.

II. Submission of the Amendment

By letter dated August 28, 2001 (Administrative Record No. AL–0647), Alabama sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Alabama sent the amendment in response to our letter dated August 23, 2000 (Administrative Record No. AL–0644), that we sent to Alabama under 30 CFR 732.17(c).

We announced receipt of the proposed amendment in the October 18, 2001, **Federal Register** (66 FR 52879). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on November 19, 2001. Because no one requested a public hearing or meeting, we did not hold one. We did not receive any comments.

During our review of the amendment, we identified concerns about a number of editorial inconsistencies, cross-reference errors, and wording ambiguities. We notified Alabama of these concerns by letter dated December 4, 2001 (Administrative Record No. AL–0652). However, because none of these concerns were substantive in nature, we are proceeding with this final rule.

III. OSM's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment to the Alabama program.

Any revisions that we do not discuss below concern minor wording changes or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Alabama's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State rules listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State rules and the Federal regulations are minor.

Topic	State rule	Federal counterpart regulation
Definition of significant recreational, timber, economic, or other values incompatible with surface coal mining operations.	880–X–2A–.06	30 CFR 761.5
Definition of valid existing rights	880–X–2A–.06	30 CFR 761.5
Areas where surface coal mining operations are prohibited or limited.	880–X–7B–.06(a) through (g)	30 CFR 761.11(a) through (g)
Exception for existing operations	880–X–7B–.07	30 CFR 761.12
Procedures for relocating or closing a public road or waiving the prohibition on surface coal mining operations within the buffer zone of a public road.	880–X–7B–.09	30 CFR 761.14
Procedures for waiving the prohibition of surface coal mining operations within the buffer zone of an occupied dwelling.	880–X–7B–.10	30 CFR 761.15
Submission and processing of requests for valid existing rights	880–X–7B–.11	30 CFR 761.16
Regulatory authority obligations at time of permit application review.	880–X–7B–.12	30 CFR 761.17
General requirements for coal exploration on lands designated unsuitable for surface mining operations.	880–X–8C–.05(1)(g)	30 CFR 772.12(b)(14)
Approval or Disapproval of exploration applications	880–X–8C–.06(2)(e)	30 CFR 772.12(d)(2)(iv)
Relationship to areas designated unsuitable for mining	880–X–8D–.08(3)	30 CFR 778.16(c)
Protection of public parks and historic places	880–X–8F–.14(1)(2)	30 CFR 780.31(a)(2)

Because the above State rules have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

B. Revisions to Alabama's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

Alabama proposes to add a new Rule 880–X–7B–.08 to describe the procedures applicants for surface coal mining permits and the regulatory authority must follow when an applicant intends to claim the exception provided in Rule 880–X–7B–.06(b) to conduct surface coal mining operations on Federal lands within a national forest. Specifically, paragraph (a) provides that an applicant must request the Alabama Surface Mining Commission (ASMC) to obtain the Secretarial findings required by Rule 880–X–7B–.06. Paragraph (b) allows an applicant to submit this request to the ASMC before preparing and submitting an application for a permit or permit revision, and describes what the request must contain. Finally, paragraph (c) provides that when a proposed surface coal mining operation or proposed permit revision includes Federal lands within a national forest, the regulatory authority may not issue a permit or approve a permit revision until after the Secretary of the Interior makes the findings required in Rule 880–X–7B–.6(b).

We find that the provisions of this section are substantively identical to those in the counterpart Federal regulation at 30 CFR 761.13, with one exception. The Federal regulation at 30 CFR 761.13 requires applicants to submit their requests for the Secretarial findings required by 30 CFR 761.11(b) directly to OSM. Under Alabama's rule, applicants must submit their request to the ASMC. We interpret Alabama's provision to mean that the ASMC will forward such requests to OSM so that the necessary Secretarial findings can be obtained. Thus, Alabama's provision merely adds an additional responsibility for the regulatory authority. It does not affect the essential provisions of the rule. Therefore, we find that 880–X–7B–.08 is no less effective than the Federal regulation at 30 CFR 761.13, and we are approving it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On September 18, 2001, under section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL–0648). The Fish and Wildlife Service (FWS) responded on October 15, 2001

(Administrative Record No. AL–0650), and stated that it had no objection to the proposed revisions and additions. The Mine Safety and Health Administration (MSHA) also responded on October 18, 2001 (Administrative Record No. AL–0651), and stated that it did not have any comments.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence of the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA for its concurrence.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. AL–0648). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On September 18, 2001, we requested comments on Alabama's amendment (Administrative Record No. AL–0648), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment Alabama sent to us on August 28, 2001.

To implement this decision, we are amending the Federal regulations at 30 CFR part 901, which codify decisions concerning the Alabama program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that a State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The taking implications assessment for the Federal valid existing rights rule appears in Part XXIX.E. of the preamble to that rule. See 64 FR 70766, 70822–27, December 17, 1999.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget 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, and 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 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 22, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 901 is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for Part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 901.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* *	* * *
August 28, 2001	February 5, 2002	ASMC Rules 880–X–2A–.06; 7B-.06(a) through (g), .07 through .12; 8C–.05(1)(g), .06(2)(e); 8D–.08(3); and 8F–.14(1)(2).

[FR Doc. 02–2747 Filed 2–4–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–220–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving a proposed amendment to the Kentucky regulatory program (the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposed to revise its program at 405 KAR 7:097 pertaining to reclamation in lieu of cash payment of civil penalties. Kentucky intended to revise its program as required by Federal regulations.

EFFECTIVE DATE: February 5, 2002.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (859) 260–8402.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Kentucky 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 Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of the approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.12, 917.13, 917.15, 917.16 and 917.17.

II. Submission of the Amendment

By letter dated December 22, 1998 (Administrative Record No. KY–1449), the Kentucky Department of Surface Mining Reclamation Enforcement (Kentucky) sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky sent the amendment in response to a required program amendment at 30 CFR 732.17(b) and to include the changes made at its own initiative. The amendment, at 405 KAR 7:097, authorizes the Natural Resources and Environmental Protection Cabinet (Cabinet) to allow a permittee, person, or operator (hereinafter collectively called the in-kind permittee) to perform in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution—instead of making cash payment of a civil penalty assessed under KRS 350.990(11).

We announced receipt of the proposed amendment in the January 25, 1999, **Federal Register** (64 FR 3670). The public comment period ended on February 24, 1999. Kentucky made changes to the original submission. On April 9, 1999, a Statement of Consideration and amended regulations were filed with the Kentucky Legislative Research Committee (Administrative Record No. KY–1458). By letter dated June 10, 1999 (Administrative Record No. KY–1461), Kentucky submitted the final version of the proposed amendment to OSM. A new comment period was opened in the July 16, 1999, **Federal Register** (64 FR 38391) and closed on August 2, 1999. In both **Federal Register** notices, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. We received comments from an environmental group and a mining company.

During our review of this amendment, we identified several issues requiring

clarification. A list of questions to Kentucky and Kentucky's responses are provided in an OSM memorandum, dated November 20, 2000, (Administrative Record No. KY–1507). We requested further clarification on one of the issues by letter dated February 23, 2001, (Administrative Record No. KY–1504). Kentucky responded in a letter dated April 2, 2001 (Administrative Record No. KY–1510).

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

The submittal of this proposed amendment implements House Bill 839 passed by the Kentucky 1986 General Assembly. OSM's approval of the Kentucky statute required Kentucky, prior to implementation, to submit to OSM for its approval proposed regulations to implement House Bill 839. This was codified at 30 CFR 917.16(c)(3). Therefore, we are removing the required amendment at 30 CFR 917.16(c)(3).

Kentucky proposes to authorize the Cabinet to allow an in-kind permittee to perform in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution (hereinafter collectively called in-kind reclamation or in-kind work)—instead of making cash payment of a civil penalty assessed under KRS 350.990. This regulation also establishes criteria and procedures to implement KRS 350.990(11). A written request must be filed to perform in-kind work. If authorized, the performer of the work must enter into a binding Civil Penalty Reclamation Agreement (Agreement) with the Cabinet for work selected by the Cabinet. No fees are required for the written request or the Agreement. Those who enter into an Agreement: must obtain legal right of entry to the work site; must maintain liability insurance coverage; will, in some cases, be required to obtain a performance bond; and must perform the work activities specified in the Agreement. If the in-kind work is not completed according to the Agreement, the full amount of the assessed civil penalty must be paid. Certain proposed in-kind permittees, civil penalties, and sites are ineligible for in-kind activities. Certain kinds of activities and costs are not authorized.

There are no corresponding Federal regulations that establish specific requirements applicable to State regulatory programs that provide for in-kind reclamation. In a January 29, 1987, letter to Kentucky and other State regulatory authorities, OSM established minimum criteria for approval of State program amendments concerning in-kind reclamation (Administrative Record No. KY–1508). To be approved for in-kind reclamation, a State program amendment must:

1. Identify categories of sites that qualify for reclamation under the program amendment;
2. Specify the criteria and procedures for determining the dollar value of reclamation work to be performed;
3. Contain a plan for evaluating the performance of the reclamation work;
4. Contain timeframes for completion of the reclamation work; and
5. Specify the recourse available to the State regulatory authority should the reclamation work not meet established standards or not be completed.

Section 1 of the proposed amendment establishes the applicability and general provisions of in-kind reclamation. An in-kind permittee may perform in-kind reclamation in lieu of cash payment of one or more civil penalties if the aggregate amount of the penalties is $2,500 or more. The in-kind reclamation will be authorized under a legally binding Agreement. The in-kind permittee will be held responsible for obtaining a legal right of entry to the activity site and liability insurance coverage. The amendment requires that the liability-insurance policy remain in force during the course of the Agreement. Upon the incapacity of the insurer to continue coverage, the in-kind permittee is required to promptly notify the Cabinet. The Cabinet will give the in-kind permittee up to 90 days to replace the coverage, after which the in-kind reclamation must cease. The Cabinet may then terminate the Agreement. By a letter dated April 2, 2001, Kentucky stated it will exercise its discretion as to how rapidly to terminate the Agreement in view of all the facts at hand such as: the likelihood that the in-kind permittee will obtain replacement insurance in a short time and then expeditiously complete the in-kind reclamation; the amount of work uncompleted; and the severity of environmental problems at the site. The State noted that absent convincing evidence of a good faith effort to obtain replacement insurance and evidence of probable success in timely obtaining it, Kentucky will move quickly to terminate the Agreement, within two weeks and almost certainly 30 days of the cessation of the in-kind reclamation work (Administrative Record No. KY–1510).

Section 1 states that the in-kind permittee is required to provide a performance bond for in-kind reclamation of a mine site. In a memorandum dated November 20, 2001, Kentucky stated that the term ''mine site'' is used to differentiate between a site that was disturbed by mining (either coal or non-coal) and a site affected by some other type of environmental problem (trash dumps, straight pipes, brine from gas wells, etc.). The term is not meant to represent or replace any terms formally used in SMCRA (Administrative Record No. KY–1507).

For in-kind reclamation of lands other than mine sites (non-mine sites), the Cabinet may require a performance bond if it determines that the authorized activities could create a risk of environmental harm. This bond would be in addition to any bond required by another Federal, State, or local law. Kentucky stated that because the activities under this administrative regulation are not surface coal mining and reclamation operations, as defined by SMCRA, the bond does not have to meet the provisions of 405 KAR Chapter 10. However, it noted that bonds that do meet these provisions would be acceptable to the Cabinet.

Finally, Kentucky said that because the activities are not ''surface coal mining and reclamation operations,'' the in-kind reclamation would be subject to standards delineated in the Agreement, and would not be subject to Title V standards under SMCRA. We agree that in-kind reclamation of the sites described in the Kentucky amendment would not constitute surface coal mining and reclamation operations therefore, these sites would not be subject to the permitting or bonding requirements under Title V of SMCRA.

As we stated in the April 5, 1989, rulemaking (54 FR 13814), no permit is required ''when reclamation activities are conducted where no coal extraction or other activities described in the definition of 'surface coal mining operations' at section 701(28) of SMCRA are taking place.'' We further stated that section 506(a) of SMCRA only requires a permit for surface coal mining operations as ''defined in section 701(28), not the additional reclamation activities specified in the definition of surface coal mining and reclamation operations defined in section 701(27) [of SMCRA].'' *Id.* at 13816.

At 405 KAR 7:097, Section 1(9), the Kentucky amendment prohibits the removal of coal in connection with any in-kind reclamation. Section 1(10) of the amendment specifies that authorized activities include only ''on-ground activities that directly result in reclamation, environmental rehabilitation, or correction of

environmental pollution.'' Therefore, the amendment does not authorize coal extraction or any of the other activities described in the definition of ''surface coal mining operations'' at section 701(28) of SMCRA. The reclamation obligation cited in the definition of ''surface coal mining and reclamation operations'' is an integral part of the surface coal mining operations and applies to entities mining coal. ''The right to mine carries with it the obligation to restore the land after mining has ceased.'' *See* 54 FR 13814 (April 5, 1989). Even an operator mining without a permit ''incurs the obligation to reclaim.'' See 54 *Id.* at 13821. Hence, an in-kind permittee under the Kentucky amendment would not be subject to the permitting, bonding requirements or reclamation standards of Title V of SMCRA.

Section 1 lists certain limitations with respect to the in-kind reclamation program. Some of these include the following:

- As previously stated, coal removal in connection with the authorized reclamation activities is prohibited;
- Educational, promotional, training, and other activities that may indirectly affect the environment is prohibited;
- In-kind reclamation activities that do not exceed in estimated cost the assessed amount of the civil penalty will not be authorized; and
- Crediting of costs incurred under the Agreement in excess of the civil penalty amount to satisfy penalties not covered by the Agreement will not be permitted.

Subsection 1 (13) specifies that the Kentucky Division of Abandoned Mine Lands (AML) shall determine the estimate of the cost of the in-kind reclamation activities. To clarify this statement, OSM met with Kentucky on November 20th, 2000 to determine how the cost estimates would be calculated. Kentucky stated that the cost estimates will be based upon the type of work to be performed at a unit cost and is based upon AML staff's most current actual cost experience in the vicinity of the work site (Administrative Record No. KY–1507).

The Director finds that Subsection 1 (13) satisfies the second minimum criterion set forth in the January 29, 1987, letter (Administrative Record No. KY–1508).

Sections 2 through 4 identify circumstances under which certain proposed in-kind permittees, civil penalties, and sites will not be eligible for in-kind reclamation. A proposed in-kind permittee that is ineligible to receive a permit under KRS Chapter 350 and 405 KAR Chapters 7–24 for a reason other than nonpayment of a civil penalty will not be eligible for in-kind reclamation. In-kind reclamation in lieu of civil penalties will not be authorized if the violation that led to any of the civil penalties remains unabated; or if the proposed in-kind permittee entered into an agreed order with the Cabinet to pay the civil penalty and failed to comply with the agreed order. Section 4 defines an ineligible site as that which is:

- Under a valid permit under KRS Chapter 350 for which a bond has not been forfeited;
- Under another valid Federal, State, or local permit under which the permit holder has responsibility for environmental conditions at the site; or
- Is affected by an ongoing enforcement action for violation of Federal, State, or local environmental laws, unless the agency pursuing the enforcement action consents.

Kentucky further clarified that the only post-SMCRA sites that are eligible are those ''where the bond is forfeited, the bond is inadequate, alternative enforcement has failed and there is no other enforcement recourse under Title V'' of SMCRA. The Director finds that Section 4 of the proposed amendment and the delineation of mine sites and non-mine sites in Section 1 and the Kentucky's November 20, 2000, response (Administrative Record No. 1507) satisfy the first minimum criterion set forth in the January 29, 1987, letter (Administrative Record No. 1508).

Provisions and requirements for the selection of sites for in-kind reclamation are included in Section 5 of the amendment. The amendment authorizes the Cabinet to compile a prioritized list of candidate sites for consideration, and requires that the list be made available to the public. The section further requires the Cabinet to consult with the county fiscal court; and authorizes the Cabinet to consult with the in-kind permittee, other government agencies, and the general public in its selection of a site and in-kind reclamation activity for each application. The amendment permits the Cabinet to give preference to sites or activities that address environmental impacts from coal mining.

Section 6 describes the criteria concerning the types of in-kind reclamation activities and what costs can be authorized. Activities not authorized include: those that the in-kind permittee already has a duty to perform under KRS Chapter 350 or other Federal, State or local law; activities which the in-kind permittee already has a legal obligation to perform under a valid contract; and activities on lands or waters in which the in-kind permittee has a financial interest. The amendment prohibits certain costs such as: those which incurred prior to the Agreement; equipment or services donated by a party other than the in-kind permittee; payments for access to the site; transportation; and administrative costs and overhead. The amendment permits authorization of reclamation activities in conjunction with AML projects of the Cabinet under KRS 350.550 through 350.597. The amendment also permits the authorization of in-kind reclamation in conjunction with the reclamation of bond-forfeiture sites, provided the in-kind permittee: did not own or control the site under KRS Chapter 350; was not an operator or agent on the site under KRS Chapter 350; and has no direct or indirect ownership or other interest in the land.

Section 7 of the amendment specifies the procedures an in-kind permittee must follow to request performance of in-kind reclamation. Among other stipulations, the amendment clarifies that filing a request will not stay the collection of the civil penalty. The amendment also requires the Cabinet to notify the in-kind permittee in writing whether it intends to pursue an Agreement within 15 days of receipt of the request.

Section 8 lists the information required in the Agreement and other provisions and limitations relating to the Agreement. Subsection 8 (1)(g) requires that the Agreement specify the time span within which the authorized activities shall be completed. Subsection 8 (5) stipulates that the Cabinet may terminate the Agreement at any time if the in-kind permittee fails to satisfy its terms. Subsections 8 (7) and (8) state that the civil penalty shall remain due and payable until the Cabinet has determined in writing that the in-kind permittee has satisfactorily fulfilled the terms of the Agreement; and if the Agreement is breached, the full-assessed civil penalty will be due and payable. Subsection 8 (6) requires the Cabinet to conduct field inspections as necessary to monitor progress under the Agreement. In a November 20, 2000, memorandum (Administrative Record No. KY–1507), Kentucky stated that the in-kind reclamation site will be inspected during critical phases of the work and the number of inspections will depend in part on the size or duration of the project. Kentucky stated that at a minimum an in-kind reclamation site will be inspected once to ensure the work is satisfactorily completed under the terms of the Agreement (Administrative Record No. KY–1507).

The Director finds that Subsections 8 (1)(g) and (5) through (8), and the November 20, 2000, (Administrative Record No. KY–1507) memorandum satisfy the third, fourth and fifth minimum criteria, as set forth in the January 29, 1987, letter (Administrative Record No. KY–1508).

The civil penalty provisions at section 518 of SMCRA and the Federal rules at 30 CFR 845.20 do not specify the method of payment for assessed penalties. Since Kentucky is not changing how it assesses civil penalties, this amendment continues to uphold the purpose of civil penalties, which is to ''deter violations and to ensure maximum compliance with . . . [SMCRA] on the part of the coal mining industry.'' (30 CFR 845.2) Allowing an in-kind permittee to perform reclamation in lieu of paying a civil monetary penalty is still a penalty. Therefore, the Director finds that the June 10, 1999, revised amendment is consistent with the purpose and requirements for payment of penalties in section 518 of SMCRA. Additionally, the amendment satisfies the minimum criteria for approval set forth in the January 29, 1987, letter.

IV. Summary and Disposition of Comments

Public Comments

By letters dated, January 14, 1999 (Administrative Record No. KY–1453), February 8, 1999 (Administrative Record No. KY–1456), and July 21, 1999 (Administrative Record No. KY–1464), these three comment letters were submitted by an environmental group and a mining company.

One commenter posited that in-kind reclamation activities constitute a regulated ''surface coal mining operation'' and therefore must occur under a SMCRA Title V permit and bond. The commenter claimed that the proposal to substitute an Agreement for a permit is dubious unless the Agreement contains all of the safeguards and conditions of a permit, including public notice and the opportunity to comment on the proposed reclamation; bond coverage; and a specific reclamation plan setting enforceable and measurable benchmarks to assure that the site is left no worse and is in fact properly reclaimed. The commenter is concerned that in-kind reclamation will occur under circumstances that create a risk of inadequate reclamation from the surface landowner's standpoint. Third-party intervention on a site under an Agreement may extinguish the obligations of the party who initially disturbed and abandoned the site. If the reclamation work turns out to have been inadequate, the landowner will be left without recourse.

As stated in our findings, we do not agree that the definition of ''surface coal mining and reclamation operations'' includes the in-kind activities authorized under this amendment. Therefore, no Title V permitting or bonding requirements apply. Sections (1)(6)(b) and (1)(7) of the amendment safeguard the landowner's interests by requiring that the permittee performing the in-kind reclamation (1) have a public liability insurance policy in effect in an amount adequate to compensate for both personal injury and property damage that may result from the reclamation activities; and (2) provide a performance bond for all in-kind reclamation of mine sites. For in-kind reclamation of sites other than mine sites, the Cabinet may require a performance bond if the reclamation activities could create a risk of environmental harm. Perhaps the most important safeguard is the requirement that the in-kind permittee obtain right of entry from the landowner.

We do not share the commenter's concern that third-party intervention on a mine site under an Agreement may extinguish the obligations of the party who initially disturbed and abandoned the site. First, to the extent that the in-kind permittee corrects outstanding violations, we see no reason why the landowner would have any objection to the extinguishments of those obligations. Second, Section 4 of the amendment provides that sites under a valid SMCRA permit for which the bond has not been forfeited are not eligible. It also specifies that sites under another valid federal, state, or local permit are not eligible if the permit holder still has responsibility for environmental conditions at the site. Third, nothing in the amendment absolves the previous permittee or operator of any liability.

One commenter questioned the adequacy of Section 7(6) of the amendment, which requires the Cabinet to notify the in-kind permittee within 15 days whether it intends to pursue an Agreement in response to the in-kind permittee's request to perform in-kind reclamation. According to the commenter, 15 days is insufficient time to involve the surface landowner and adjoining landowners in Agreement negotiation and the decision on whether to allow the in-kind reclamation activity.

SMCRA and the implementing Federal regulations contain no provisions relating to landowner participation in in-kind reclamation. Therefore, we have no legal basis for requiring that Kentucky make the modifications sought by the commenter. In addition, we concur with Kentucky's Statement of Consideration that the landowner will automatically have a major role in the Agreement process because the in-kind permittee must first obtain right of entry from the landowner. Kentucky also stated that, as a practical matter, there will be discussions with the surface landowner, and possibly with adjoining surface owners, during the process of determining whether a specific site is an appropriate candidate for in-kind reclamation (Administration Record No. KY–1458). Section 5(4) of the amendment grants Kentucky the discretion to consult with private individuals regarding the selection of sites and the activities to be authorized. Additionally, Section 8 gives Kentucky the discretion to include other parties to the Agreement if they are necessary.

The commenter further stated that the amendment should specify a time by which negotiations will either be successfully completed or the penalty will be collected. In its Statement of Consideration, Kentucky stated that if the negotiation over the Agreement is unproductive, the Cabinet can end the discussion at any time and demand cash payment.

Finally, the commenter argued that any unpaid civil penalty interest should continue to accrue during negotiations. In response, Kentucky stated that any interest due and owing would not be tolled during discussions.

A commenter stated that the regulation should explicitly reference the process by which a third-party landowner can secure review and enforcement of the terms of a reclamation agreement. The commenter is concerned that, without explicit reference to such a process, an Agreement will fail to provide the required opportunity for public review that is mandated for permit-related actions by the Cabinet, and thus fail to provide a mechanism as effective as the permit in this regard. According to another comment, Section 8 of the amendment should clarify that when an Agreement falls within the ambit of the definition of ''surface coal mining and reclamation operations,'' the inspection and citizen participation procedures of 405 KAR Chapters 7–24 apply. The commenter further states that, for other reclamation activities, inspections should occur at all critical times in the reclamation plan, and termination of the Agreement should automatically trigger forfeiture of whatever bond has been posted.

As discussed in our findings, in-kind reclamation is not a surface coal mining and reclamation operation. Therefore, there is no legal basis to require that reclamation agreements include provisions for inspection, enforcement, and public participation consistent with those applicable to permits and permitting actions under Title V of SMCRA. However, Kentucky has stated that if a landowner observes actions or conditions that he believes are inconsistent with the Agreement, he can bring them to the attention of the Cabinet and the in-kind permittee. In addition, Section 8(6) of the amendment requires that the Cabinet conduct field inspections as necessary to monitor progress under the Agreement. In subsequent correspondence Kentucky stated that it intends to conduct inspections during critical phases of the work and would conduct at least one inspection upon completion of work. Kentucky anticipates that most in-kind reclamation projects will be small and take less than a week to complete.

A commenter states that—

> [I]t is not clear that the person performing in-lieu activity who fails to properly conduct such activity would be ''permit-blocked'' from future permit issuance if there remained outstanding violations of the law on an ''in-lieu'' site. While the regulation notes that the agreement must specify ''the consequences of failure to satisfy the terms of the Civil Penalty Reclamation Agreement,'' it must be clarified that the consequences of such failure include mandatory issuance of enforcement orders and permit blocking for outstanding unabated NOVs and COs.

If the comment refers to outstanding violations of environmental laws committed on the in-kind reclamation site by someone other than the in-kind permittee, we disagree that the in-kind permittee should be held liable for violations he, himself, did not commit, even if he fails to satisfy the terms of the Agreement. There is no legal basis under SMCRA for assigning responsibility for those violations to the in-kind permittee.

If, on the other hand, the commenter is referring to violations committed by the in-kind permittee on the in-kind reclamation site, we have no authority to require the State to take enforcement action under Title V of SMCRA because in-kind reclamation is not a surface coal mining operation under SMCRA and is outside the jurisdiction of SMCRA. However, under Section 8(7) of the amendment, if Kentucky terminates the Agreement for failure to comply with all of its terms, the in-kind permittee will be liable for the full amount of all existing civil penalties he previously owed. Consequently, the permittee would be subject to the prohibition on issuance of future surface coal mining permits under 405 KAR 8:010 Section 13 and section 510(c) of SMCRA.

One commenter expressed concerns over Subsections (3) through (5) of Section 2 in the December 22, 1998, version of the proposed amendment. In that version, an in-kind permittee was deemed ineligible for in-kind reclamation if: he had an outstanding violation under KRS Chapter 350 and had not corrected the violation; he owned or controlled a surface coal mining operation for which the permit had been revoked or the bond forfeited, or which was currently in violation of KRS Chapter 350, and the correction of the violation had not been completed; or he was in violation of other Federal, State, or local environmental laws. The commenter indicated that large companies with multiple operations are rarely, if ever, free from violations of any laws and regulations. The time required to avoid or correct violations of environmental laws can be extensive. The limitations imposed by the amendment would have afforded large companies very little opportunity to perform in-kind reclamation.

In response to a similar comment received during the state's rulemaking process, Kentucky has eliminated Subsections (1) through (5) in the June 10, 1999, version of the amendment. The amendment now defines an ineligible in-kind permittee as one who is ineligible to receive a permit under KRS Chapter 350 and 405 KAR Chapters 7–24 for a reason other than non-payment of a civil penalty. The Director finds that this change renders the above comment moot.

A commenter recommends that Section 8 of the proposed amendment should require that the Agreement include other permits needed for the State or Federal government, including water, floodplain, air, dredge-and-fill, transportation, etc. We believe that adding this requirement is repetitive since subsection 1(8) already requires that the in-kind permittee comply with all Federal, State, and local laws and regulations.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503 (b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Kentucky program (Administrative Record No. KY–1509). No comments were received.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written concurrence from EPA for those provisions of the proposed program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Kentucky proposed in this amendment pertain to air or water quality standards. Therefore we did not ask EPA to concur on the amendment. By letter dated February 1, 1999, we requested comments on the amendment from EPA (Administrative Record Number KY–1509). EPA did not respond to our request.

V. OSM's Decision

Based on the above findings we approve the amendment sent to us by Kentucky.

To implement this decision, we are amending the Federal regulations at 30 CFR part 917, which codify decisions concerning the Kentucky program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effectively immediately will expedite that process. This will not create a hardship for Kentucky but rather aid Kentucky's reclamation abilities. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications under Executive Order 12630 and, therefore, a takings implication assessment is not required. This determination is based on the fact that the rule would allow a person assessed a civil monetary penalty the option of performing in-kind reclamation, environmental rehabilitation, or similar action to correct environmental damage in lieu of making cash payment.

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 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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, and 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 the 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.*). This determination is based on the fact that the rule would allow a person assessed a civil monetary penalty the option, after certain requirements are met, of performing in-kind reclamation, environmental rehabilitation, or similar action to correct environmental damage in lieu of making a cash payment. The rule does not impose any new costs. It is assumed that the person choosing this option would do so because of a perceived benefit that would result.

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. For the reasons previously stated, 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.

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.

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 merely provides an alternative means of paying a penalty. The rule does not impose any new costs.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 19, 2001.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 917 is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 917.15 is amended in the table by adding a new entry in chronological order by *date of final publication* to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	*	* * *
December 22, 1998	February 5, 2002	405 KAR 7:097 approved (in-kind reclamation)

§ 917.16 [Amended]

3. Section 917.16 is amended by removing and reserving paragraph (c)(3).

[FR Doc. 02–2748 Filed 2–4–02; 8:45 am]

BILLING CODE 4310–05–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 259

[Docket No. 2002–3 CARP]

Filing of Claims for DART Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Waiver of regulation.

SUMMARY: Due to a serious disruption in the delivery of mail, the Copyright Office of the Library of Congress is announcing alternative methods for the filing of claims to the DART royalty funds for the year 2001. In order to ensure that their claims are timely received, claimants are encouraged to file their DART claims electronically or by fax, utilizing the special procedures described in this Notice.

EFFECTIVE DATE: February 5, 2002.

ADDRESSES: If hand delivered, an original and two copies of each claim should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE, Washington, DC 20540. Submissions by electronic mail should be made to ''dartclaims@loc.gov'; *see* **SUPPLEMENTARY INFORMATION** for other information about electronic filing. Submissions by facsimile should be sent to (202) 252–3423. If sent by mail, an original and two copies of each claim should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Gina Giuffreda, CARP Specialist, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Chapter 10 of the Copyright Act, 17 U.S.C., places a statutory obligation on manufacturers and importers of digital audio recording devices and media (''DART'') who distribute the products in the United States to submit royalty fees to the Copyright Office. 17 U.S.C. 1003. Distribution of these royalty fees may be made to any interested copyright owner who has filed a claim and (1) whose sound recording was distributed in the form of digital musical recordings or analog musical recordings and (2) whose musical work was distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions. 17 U.S.C. 1006.

Section 1007 provides that claims to these royalty fees must be filed ''[d]uring the first 2 months of each calendar year'' with the Librarian of Congress ''in such form and manner as the Librarian of Congress shall prescribe by regulation.'' 17 U.S.C. 1007. Part 259 of title 37 of the Code of Federal Regulations sets forth the procedures for the filing of claims to the DART royalty funds. Section 259.5 states that in order for a claim to be considered timely filed with the Copyright Office, the claims either have to be hand delivered to the Office by the last day in February [1] or if sent by mail, received by the Office by the last day in February or bear a January or February United States Postal Service postmark. 37 CFR 259.5(a). Claims received after the last day in February will be accepted as timely filed only upon proof that the claim was placed within the United States Postal Service during the months of January or February. 37 CFR 259.5(e). A January or February postmark of the United States Postal Service on the envelope containing the claim or, if sent by certified mail return receipt requested, on the certified mail receipt constitutes sufficient proof that the claim was timely filed.[2] 37 CFR 259.5(e). However, the regulations do not provide for the filing of DART claims by alternative methods such as electronic submission or facsimile transmission; and until now, the Office has perceived no need for alternative methods in filing these claims.

Unfortunately, recent events, namely the concerns about anthrax in the United States Postal Service facilities in the District of Columbia, have caused severe disruptions of postal service to the Office since October 17, 2001. See 66 FR 62942 (December 4, 2001) and 66 FR 63267 (December 5, 2001). Such disruptions continue and will most likely worsen in the coming weeks, since all incoming mail will be diverted to an off-site location for treatment. Consequently, in light of these disruptions, the Office is offering and recommending alternative methods for the filing of DART claims to the 2001 royalty funds. The alternative methods set forth in this document apply only to the filing of DART claims for the 2001 royalties which are due by February 28, 2002, and in no way apply to other filings with the Office.

This document covers only the means by which claims may be accepted as timely filed; all other filing requirements, such as the content of claims, remain unchanged, except as noted herein. See 37 CFR part 259.

Acceptable Methods of Filing DART Claims for the Year 2001

Claims to the 2001 DART royalty funds may be submitted as follows:

a. Hand Delivery

In order to best ensure the timely receipt by the Copyright Office of their DART claims, the Office strongly encourages claimants to personally deliver their claims by 5 p.m. E.S.T. on February 28, 2002, to the Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE, Washington, DC. Private carriers should not be used for such delivery, as packages brought in by private carriers are subject to treatment at the off-site facility before being delivered to the Office and will be deemed untimely and rejected unless the treated package is received by the Office of the Copyright General Counsel by 5 p.m. E.S.T. on February 28, 2002. Thus, claims should be hand delivered by the claimant or a representative of the claimant (i.e., the claimant's attorney or a member of the attorney's staff).

Claimants hand delivering their claims should note that they must follow all provisions set forth in 37 CFR part 259.

b. Electronic Submission

Claimants may submit their claims via electronic mail as file attachments, and such submissions should be sent to ''dartclaims@loc.gov.'' The Office has devised forms for both single and joint DART claims, which are posted on its website at *http://www.loc.gov/copyright/forms/dart.* Claimants filing their claims electronically must use these and only these forms, and the forms must be sent in a single file in either Adobe Portable Document (''PDF'') format, in Microsoft Word

[1] In those years where the last day of February falls on a Saturday, Sunday, a holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims must be received by the first business day in March. 37 CFR 259.5(b).

[2] Claims dated only with a business meter that are received after the last day in February will not be accepted as having been timely filed. 37 CFR 259.5(c).

Version 10.0 or earlier, or in WordPerfect 9 or earlier. Claims sent as attachments using formats other than those specified in this Notice will not be accepted by the Office. Likewise, claims sent as text messages, and not as attachments, will also be rejected by the Office.

When filing claims electronically, all provisions set forth in 37 CFR part 259 apply except § 259.3(b), which requires the original signature of the claimant or of the claimant's duly authorized representative on the claim. The Office is waiving this provision for this filing period because at this time the Office is not equipped to receive and process electronic signatures.

Claims filed by electronic mail must be received by the Office no later than 11:59 p.m. E.S.T. on February 28, 2002. Specifically, the electronic message must be received in the Office's server by that time. Any claim received after that time will be considered as untimely filed. Therefore, claimants submitting their claims via electronic mail are strongly encouraged to send their claim no later than February 27, 2002, in order to better ensure timely receipt by the Office.

c. Facsimile

Claims may be filed with the Office via facsimile transmission and such filings must be sent to (202) 252–3423. Claims filed in this manner must be received in the Office no later than 5 p.m. E.S.T. on February 28, 2002. The fax machine will be disconnected at that time. Claims sent to any other fax number will not be accepted by the Office.

When filing claims via facsimile transmission, claimants must follow all provisions set forth in 37 CFR part 259 apply with the exception of § 259.5(d), which prohibits the filing of claims by facsimile transmission. The Office is waiving this provision at this time in order to assist claimants in the timely filing of their claims.

d. By Mail

Section 259.5(a)(2) directs claimants filing their claims by mail to send the claims to the Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Claimants electing to send their claims by mail are encouraged to send their claims by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt in order to provide proof of timely filing, should the claim reach the Office after the last day in February. In the event there is a question as to whether the claim was deposited with the United States Postal Service during the months of January or February, the claimant must produce the certified mail receipt (PS Form 3800) which bears a United States Postal Service postmark, indicating an appropriate date.

However, concerns about possible anthrax contamination of the mail have resulted in the imminent treatment of all mail coming to the Copyright Office. In the near future, all Copyright Office mail will be sent to an off-site facility for treatment, including irradiation. Although it is not possible at this time to determine the length of time needed to complete this process, the delay could be significant. In addition, it is not known what, if any, damage will be caused to the mail as a result of treatment.

Given these uncertainties, claimants are strongly urged not to use the mail as a means of filing their claims to the 2001 DART royalties. While the Office is not prohibiting the filing of claims by mail, those who do so assume the risk that their claim will not reach the Office in a timely manner, or at all, and/or that the mail, when received by the Office, will be significantly damaged. Claims sent by mail should be addressed in accordance with § 259.5(a)(2), and the Office again strongly encourages the claimant to send the claim by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt, as it constitutes the only acceptable proof of timely filing of the claim. Claims dated only with a business meter that are received by the Office after February 28, 2002, will be rejected as being untimely filed.

When filing claims by this method, claimants must follow all provisions set forth in 37 CFR part 259.

If a claimant has deposited his or her claim in the mail prior to the publication of this Notice, the claimant is encouraged to also use one of the alternative methods of filing described herein in order to better ensure that their claim will be received by the Office in a timely fashion.

Waiver of Regulation

The regulations governing the filing of DART claims require ''the original signature of the claimant or of a duly authorized representative of the claimant,'' 37 CFR 259.3(b), and do not allow claims to be filed by ''facsimile transmission,'' 37 CFR 259.5(d). This document, however, waives these provisions as set forth herein solely for the purpose of filing claims to the 2001 DART royalties. The Office is not, and indeed cannot, waive the statutory deadline for the filing of DART claims. See, United States v. Locke, 471 U.S. 84, 101 (1985). Thus, claimants are still required to file their claims by February 28, 2002.

Waiver of an agency's rules is ''appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.'' Northeast Cellular Telephone Company v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also, Wait Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972). Under ordinary circumstances, the Office is reluctant to waive its regulations. However, the recent anthrax scare constitutes a special—indeed, an extraordinary—circumstance which has forced the Office to deviate from its usual mail processing procedures. Specifically, all incoming mail will be sent to an off-site location for treatment before being delivered to the Office. This process will delay the Office's receipt of its mail; however, the actual length of this delay is not known at this time. In addition, it is unknown at this time the degree to which the integrity of treated mail will be compromised. Thus, given such uncertainties, the Office believes that the public interest will best be served by waiving, for this filing period only, the requirement that DART claims bear the original signature of the claimant or of a duly authorized representative of the claimant, when, and only when, such claim is filed electronically.

Because the Office is discouraging claimants from filing their claims through the mail due to the uncertainties surrounding the mail treatment process, the public interest would not be served if the Office required DART claimants to provide original signatures on their claims for this filing period and disallowed filing by facsimile because claimants would then be limited to filing their claims by the two options currently available—hand delivery and U.S. mail. Thus, the only way claimants could ensure timely filing of their claims would be to hand deliver them to the Office. Those claimants for whom personal delivery of their claims is not feasible would be placed at an unfair disadvantage.

The Office cannot waive the statutory deadline set forth in 17 U.S.C. 1007 and accept claims filed after February 28, 2002. See Locke, supra. Therefore, in order to serve the public interest the Office is providing claimants with alternative methods of filing, in addition to those set forth in the regulations, in

order to assist them in timely filing their claims. By allowing claims to be filed by electronic mail and facsimile transmission, the Office is affording to all claimants an equal opportunity to meet the statutory deadline.

Again, this waiver applies only to the filing of DART claims to the 2001 royalties which must be filed by February 28, 2002. Once the mail treatment process is operational, the Office may need to reexamine its regulations governing any filing coming into the Office. However, such reexamination, if necessary, will take place at a future date.

Dated: February 1, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02–2875 Filed 2–4–02; 8:45 am]

BILLING CODE 1410–33–P

POSTAL SERVICE

39 CFR Part 551

Semipostal Stamp Program

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule implements legislative changes to the semipostal stamp program. The amendments to Postal Service regulations involve the duration of the program, pricing, and responsibility for tracking costs.

EFFECTIVE DATE: February 5, 2002.

FOR FURTHER INFORMATION CONTACT: Cindy Tackett, (202) 268–6555.

SUPPLEMENTARY INFORMATION:

The Semipostal Authorization Act, Public Law No. 106–253, 114 Stat. 634 (2000), authorizes the Postal Service to establish a 10-year program to sell semipostal stamps. The differential between the price of a semipostal stamp and the First-Class Mail® service rate, less an offset for the reasonable costs of the Postal Service, consists of an amount to fund causes that the ''Postal Service determines to be in the national public interest and appropriate.'' By law, revenue from sales (net of postage and the reasonable costs of the Postal Service) is to be transferred to selected executive agencies within the meaning of 5 U.S.C. § 105.

After soliciting public comment on proposed rules, on June 12, 2001, the Postal Service published a final rule establishing the regulations for the Semipostal Stamp Program. On November 12, 2001, Public Law No. 107–67, 115 Stat. 514 (2001), was enacted. Public Law No. 107–67 extends the sales period of the *Breast Cancer Research* stamp until December 31, 2003, and provides that the Postal Service must issue two additional semipostal stamps, to which selected provisions of 39 U.S.C. 416 apply. The first is a semipostal stamp to provide assistance to the families of the emergency relief personnel killed or permanently disabled in connection with the terrorist attacks of September 11, 2001. The *Heroes* semipostal stamp is to be issued as soon as practicable and may remain on sale through December 31, 2004. Funds raised in connection with this semipostal stamp are to be transferred to the Federal Emergency Management Agency.

The second is a semipostal stamp to fund domestic violence programs. The *Domestic Violence* semipostal stamp is to be issued as soon as practicable, but no later than the beginning of 2004, and may remain on sale through December 31, 2006. Funds raised in connection with this stamp are to be transferred to the U.S. Department of Health and Human Services.

To implement Public Law No. 107–67, the Postal Service is revising its regulations governing the Semipostal Stamp Program. In particular, 39 CFR 551.6 is revised to incorporate the new pricing formula for semipostal stamps issued under authority of 39 U.S.C. 416. This includes not only semipostal stamps issued by the Postal Service under its discretionary authority, but also the *Heroes* and *Domestic Violence* semipostal stamps. The new pricing formula provides that the differential, i.e., the difference between the purchase price and the postage value, must be at least 15 percent of the postage value of the semipostal stamp, and the price must be divisible by five. Section 551.6 is accordingly revised to reflect the change in the pricing formula.

Public Law No. 107–67 provides that both the *Heroes* and *Domestic Violence* semipostal stamps are not subject to any limitation prescribed by the Postal Service ''relating to whether more than one semipostal may be offered for sale at the same time.'' The Postal Service notes that 39 CFR 551.5(a) establishes a limit of one semipostal stamp issued at one time. In light of the specific exceptions listed in Public Law No. 107–67, the Postal Service interprets this limitation to extend only to semipostal stamps issued under the Postal Service's discretionary program. Hence, the Postal Service submits that it is unnecessary to promulgate a substantive change to 39 CFR 551.5, although the section is revised to refer to the enactment of Public Law No. 107–67.

Finally, several nonsubstantive changes are made to Part 551 to incorporate the enactment of Public Law No. 107–67 and to reflect organizational changes within the Postal Service. Specifically, in 39 CFR 551.1 reference is made to Public Law No. 107–67. Sections 551.1 and 551.8 are revised to reflect a new organizational unit name for the Office of Finance, with responsibilities related to semipostal stamps. In addition, § 551.8(b) is amended to include the sharing of responsibility for selecting comparable stamps between the Offices of Accounting, Finance, Controller and the Office of Stamp Services.

The Postal Service hereby adopts the following revisions to the *Code of Federal Regulations.*

List of Subjects in 39 CFR Part 551

Administrative practice and procedure, Postal Service.

For the reasons set out in this document, the Postal Service hereby amends 39 CFR Part 551 as follows:

PART 551—[AMENDED]

1. The authority citation for 39 CFR part 551 is revised to read as follows:

Authority: 39 U.S.C. 101, 201, 203, 401, 403, 404, 410, 416, and the Semipostal Authorization Act, Pub. L. 106–253, 114 Stat. 634 (2000), as amended by Pub. L. 107–67, section 652, 115 Stat. 514 (2001).

2. Revise § 551.1 to read as follows:

§ 551.1 Semipostal Stamp Program.

The Semipostal Stamp Program is established under the Semipostal Authorization Act, Public Law 106–253, 114 Stat. 634 (2000), as amended by Public Law 107–67, section 652, 115 Stat. 514 (2001). The Office of Stamp Services has primary responsibility for administering the Semipostal Stamp Program. The Office of Accounting, Finance, Controller has primary responsibility for the financial aspects of the Semipostal Stamp Program.

3. Amend § 551.5 by revising paragraph (a) to read as follows:

§ 551.5 Frequency and other limitations.

(a) The Postal Service is authorized to issue semipostal stamps for a 10-year period beginning on the date on which semipostal stamps are first sold to the public under 39 U.S.C. 416. The 10-year period will commence after the sales period of the *Breast Cancer Research* stamp is concluded in accordance with the Stamp Out Breast Cancer Act, and as amended by the Semipostal Authorization Act, the Breast Cancer Research Stamp Act of 2001, and Public Law 107–67, section 650, 115 Stat. 514.

The Office of Stamp Services will determine the date of commencement of the 10-year period.

* * * * *

4. Amend § 551.6 by revising paragraph (a) to read as follows:

§ 551.6 Pricing.

(a) The Semipostal Authorization Act, as amended by Public Law 107–67, section 652, 115 Stat. 514 (2001), prescribes that the price of a semipostal stamp is the rate of postage that would otherwise regularly apply, plus a differential of not less than 15 percent. The price of a semipostal stamp shall be an amount that is evenly divisible by five. For purposes of this provision, the First-Class Mail® single-piece first-ounce rate of postage will be considered the rate of postage that would otherwise regularly apply.

* * * * *

5. Amend § 551.8 by revising paragraphs (b), (c), and (d) introductory text to read as follows:

§ 551.8 Cost offset policy.

* * * * *

(b) Overall responsibility for tracking costs associated with semipostal stamps will rest with the Office of Accounting, Finance, Controller. Individual organizational units incurring costs will provide supporting documentation to the Office of Accounting, Finance, Controller.

(c) For each semipostal stamp, the Office of Stamp Services, in coordination with the Office of Accounting, Finance, Controller, shall, based on judgment and available information, identify the comparable commemorative stamp(s) and create a profile of the typical cost characteristics of the comparable stamp(s) (*i.e.*, manufacturing process, gum type), thereby establishing a baseline for cost comparison purposes. The determination of comparable commemorative stamps may change during or after the sales period, if the projections of stamp sales differ from actual experience.

(d) Except as specified, all costs associated with semipostal stamps will be tracked by the Office of Accounting, Finance, Controller. Costs that will not be tracked include:

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–2741 Filed 2–4–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NY002; FRL–7137–7]

Clean Air Act Final Full Approval of Operating Permit Program; State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating final full approval of the operating permit program submitted by the State of New York in accordance with Title V of the Clean Air Act (the Act) and its implementing regulations. This approved program allows New York to issue federally enforceable operating permits to all major stationary sources and to certain other sources within the State's jurisdiction. EPA is promulgating this final program approval to replace the approval granted in the December 5, 2001 **Federal Register** (66 FR 63180), effective on November 30, 2001, which was based on New York State emergency rules that will expire on February 1, 2002.

EFFECTIVE DATE: January 31, 2002.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing this final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Steven C. Riva, Chief, Permitting Section, Air Programs Branch, at the above EPA office in New York or at telephone number (212) 637–4074.

SUPPLEMENTARY INFORMATION: In the December 5, 2001 **Federal Register** (66 FR 63180), EPA issued a final approval of the operating permit program submitted by the State of New York, based, in part, on emergency rules that became effective on September 19, 2001, and that were scheduled to expire on December 18, 2001. Concurrent with EPA's proposed approval of the emergency rules, EPA proposed approval of the New York State operating permit program based on draft permanent rules that the State was expected to shortly submit in adopted form. The draft permanent rules were identical to the adopted emergency rules. On December 4, 2001, New York State filed a 60-day extension to its emergency rulemaking. Thus, the emergency rules are now scheduled to expire on February 1, 2002.

Subsequent to publication of the December 5, 2001 **Federal Register** Notice (66 FR 63180), New York submitted to EPA on January 2, 2002, copies of final permanent rules that became effective on January 18, 2002. These permanent rules are identical to those effective under the emergency rulemaking.

The final New York State operating permit program approval that was effective on November 30, 2001, and based in part on New York's emergency rules, was proposed by EPA in an October 25, 2001 **Federal Register** Notice (66 FR 53966). During the subsequent 30-day public comment period, EPA received one comment letter dated November 23, 2001 from the New York Public Interest Research Group (NYPIRG). NYPIRG challenged EPA's ability to proceed with full approval when, according to the comment, the program does not clearly conform to the requirements of 40 CFR part 70. NYPIRG also commented on the inadequacy of New York's definition of ''major source.'' The remaining issues raised in this comment letter were outside the scope of the subject action. As discussed in the December 5, 2001 **Federal Register**, EPA disagrees with these comments. 66 FR at 63181.

Therefore, based on the final, permanent rulemaking that became effective on January 18, 2002, EPA hereby grants final, full approval to the State of New York for an operating permit program in accordance with Title V of the Act and 40 CFR part 70. The specific program changes that are the subject of this Notice, which are the same changes that were the subject of EPA's approval under New York State's emergency rules, are delineated in the December 5, 2001 **Federal Register** Notice (66 FR 63180).

EPA is using the good cause exception under the Administrative Procedure Act (APA) to make the full approval of the State's program effective on January 31, 2002. In relevant part, section 553(d) provides that publication of ''a substantive rule shall be made not less than 30 days before its effective date, except—* * * (3) as otherwise provided by the agency for good cause found and published with the rule.'' Good cause may be supported by an agency determination that a delay in the effective date is ''impracticable, unnecessary, or contrary to the public interest.'' APA section 553(b)(3)(B). EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes

that it is in the public interest for the program to take effect before February 1, 2002. EPA's full final approval of New York State's program based on the State's emergency rulemaking expires on February 1, 2002. In the absence of this full approval taking effect on January 31, 2002, the federal part 71 program would automatically take effect in New York State and would remain in place until the effective date of the fully-approved state program. EPA believes it is in the public interest for sources, the public and the State to avoid any gap in coverage of the State program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because New York has been administering the title V permit program for more than five years, first under an interim approval and then under full approval. Finally, sources are already complying with many of the newly approved requirements as a matter of state law. Thus, there is little or no additional burden with complying with these requirements under the federally approved State program.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Act and 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective on January 31, 2002.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 8, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act).

List of Subjects in 40 CFR Part 70

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

Dated: January 28, 2002.

Jane M. Kenny,

Regional Administrator, Region 2.

For reasons set out in the preamble, Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by adding paragraph (d) in the entry for New York to read as follows:

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

* * * * *

New York

* * * * *

(d) The New York State Department of Environmental Conservation submitted program revisions on June 8, 1998 and January 2, 2002. The rule revisions contained in the June 8, 1998 and January 2, 2002 submittals adequately addressed the conditions of the interim approval effective on December 9, 1996. The State is hereby

granted final full approval effective on January 31, 2002.

* * * * *

[FR Doc. 02–2708 Filed 2–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7136–6]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Lake Linden parcel and Operable Unit 2 of Torch Lake Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region V is publishing a direct final notice of deletion of the Lake Linden parcel and Operable Unit 2 from the Torch Lake Superfund Site (Site), located in Houghton County, Michigan, from the National Priorities List (NPL). Operable Unit 2 consists of all the submerged tailings, sediments, surface water and groundwater portions of the Torch Lake Superfund Site.

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Michigan, through the Michigan Department of Environmental Quality, because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not necessary at this time.

DATES: This direct final notice of deletion will be effective April 8, 2002, unless EPA receives adverse comments by March 7, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final notice of deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Steven Padovani, Remedial Project Manager (RPM) at (312) 353–6755, *Padovani.Steven@EPA.Gov* or Gladys Beard, State NPL Deletion Process Manager at (312) 886–7253, *Beard.Gladys@EPA.Gov,* U.S. EPA Region V, 77 W. Jackson, Chicago, IL 60604, (mail code: SR–6J) or at 1–800–621–8431.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the site information repositories located at: EPA Region V Library, 77 W. Jackson, Chicago, Il 60604, (312) 353–5821, Monday through Friday 8 a.m. to 4 p.m.; Lake Linden Public Library, 601 Calumet Lake Linden, MI 49945 (906) 296–0698 Monday through Friday 8 a.m. to 4 p.m. and Tuesday and Thursday 6 a.m. to 8:30 p.m.; Portage Lake District Library, 105 Huron, Houghton, MI 49931, (906) 482–4570, Monday, Tuesday and Thursday 10 a.m. to 9 p.m, Wednesday and Friday 10 a.m to 5 p.m. and Saturday 12 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Steven Padovani, Remedial Project Manager at (312) 353–6755, *Padovani.Steven@EPA.Gov* or Gladys Beard, State NPL Deletion Process Manager at (312) 886–7253, *Beard.Gladys@EPA.Gov* or 1–800–621–8431, (SR–6J), U.S. EPA Region V, 77 W. Jackson, Chicago, IL 60604.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region V is publishing this direct final notice of deletion of the Lake Linden parcel and Operable Unit 2 of the Torch Lake Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in section 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective April 8, 2002, unless EPA receives adverse comments by March 7, 2002, on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Lake Linden parcel and Operable Unit 2 of the Torch Lake Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c), requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of this Site:

(1) The EPA consulted with Michigan on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) Michigan concurred with deleting these portions of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of intent to delete is published today in the ''Proposed Rules'' section of the **Federal Register**, as well as is being published in a major local newspaper of general circulation at or near the Site, and is being distributed to appropriate federal, state, and local government officials and other interested parties. The newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with a decision on the deletion based on the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for these Partial Site deletions from the NPL:

Site Description

The Torch Lake Superfund Site (the Site) is located on the Keweenaw Peninsula in Houghton County, Michigan. The Site includes Torch Lake, the west shore of Torch Lake, the northern portion of Portage Lake, the Portage Lake Canal, Keweenaw Waterway, the North Entry to Lake Superior, Boston Pond, Calumet Lake, and other areas associated with the Keweenaw Basin. Tailing piles and slag piles deposited along the western shore of Torch Lake, Northern Portage Lake, Keweenaw Waterway, Lake Superior, Boston Pond, and Calumet Lake are also included as part of the Site. Tailing piles are located at Lake Linden, Hubbell/Tamarack City, Mason, Calumet Lake, Boston Pond, Michigan Smelter, Isle-Royale, Dollar Bay, and Gross Point. Slag piles are located at Quincy Smelter and Hubbell City.

Site History

Torch Lake was the site of copper milling and smelting facilities and operations for over 100 years. The lake was a repository of milling wastes, and served as the waterway for transportation to support the mining industry. The first mill opened on Torch Lake in 1868. At the mills, copper was extracted by crushing or ''stamping'' the rock into smaller pieces and driving them through successively smaller meshes. The copper and crushed rock were separated by gravimetric sorting in a liquid medium. The copper was sent to a smelter. The crushed rock particles, called ''tailings,'' were discarded along with mill processing water, typically by pumping into the lakes.

Mining output, milling activity, and tailing production peaked in the Keweenaw Peninsula in the early 1900s to 1920. All of the mills at Torch Lake were located on the west shore of the lake and many other mining mills and smelters were located throughout the Keweenaw Peninsula. In about 1916, advances in technology allowed recovery of copper from tailings previously deposited in Torch Lake. Dredges were used to collect submerged tailings, which were then screened, recrushed, and gravity separated. An ammonia leaching process involving cupric ammonium carbonate was used to recover copper and other metals from conglomerate tailings. During the 1920s, chemical reagents were used to further increase the efficiency of reclamation. The chemical reagents included lime, pyridine oil, coal tar creosotes, wood creosote, pine oil, and xanthates. After reclamation activities were complete, chemically treated tailings were returned to the lakes. In the 1930s and 1940s, the Torch Lake mills operated mainly to recover tailings in Torch Lake. In the 1950s, copper mills were still active, but by the late 1960s, copper milling had ceased.

Over 5 million tons of native copper was produced from the Keweenaw Peninsula and more than half of this was processed along the shores of Torch Lake. Between 1868 and 1968, approximately 200 million tons of tailings were dumped into Torch Lake filling at least 20 percent of the lake's original volume.

In June 1972, a discharge of 27,000 gallons of cupric ammonium carbonate leaching liquor occurred into the north end of Torch Lake from the storage vats at the Lake Linden Leaching Plant. The Michigan Water Resources Commission (MWRC) investigated the spill. The 1973 MWRC report discerned no deleterious effects associated with the spill, but did observe that discoloration of several acres of lake bottom indicated previous discharges.

In the 1970s, environmental concern developed regarding the century-long deposition of tailings into Torch Lake. High concentrations of copper and other heavy metals in Torch Lake sediments, toxic discharges into the lakes, and fish abnormalities prompted many investigations into long- and short-term impacts attributed to mine waste disposal. The International Joint Commission's Water Quality Board designated the Torch Lake basin as a Great Lakes Area of Concern (AOC) in 1983. Also in 1983, the Michigan Department of Public Health announced an advisory against the consumption of Torch Lake sauger and walleye fish due to tumors of unknown origin. The Torch Lake Site was proposed for inclusion on the National Priorities List (NPL) in October of 1984. The Site was placed on the NPL in June 1986. The Torch Lake Site is also on the list of sites identified under Michigan's Natural Resources and Environmental Protection Act 451 Part 201.

A Draft Remedial Action Plan (RAP) for the Torch Lake AOC was developed by Michigan Department of Natural Resources (MDNR) in October 1987 to address the contamination problems and to recommend the remedial action for Torch Lake. Revegetation of lakeshore tailings to minimize air-borne particulate matter was one of the recommended remedial actions in the RAP.

Attempts to establish vegetation on the tailing piles in Hubbell/Tamarack City have been conducted since the 1960s to stabilize the shoreline and to reduce air particulate from tailings. It has been estimated that 40 to 50 percent of tailings in this area are vegetated. The Portage Lake Water and Sewage Authority have been spray-irrigating sewage sludge on tailings in Mason City to promote natural vegetation.

Remedial Investigation and Feasibility Study (RI/FS)

On May 9, 1988, Special Notice Letters were issued to Universal Oil Products (UOP) and Quincy Mining Co. to perform a Remedial Investigation/Feasibility Study (RI/FS). UOP is the successor corporation of Calumet Hecla Mining Company which operated its milling and smelting on the shore of Lake Linden and disposed the generated tailings in the area. Quincy Mining Co. conducted smelting operations in the

Hubbell area and disposed of tailings. On June 13, 1988, a Notice Letter was issued to Quincy Development Company, which was the current owner of a tailing pile located on the lake shore of Mason City. Negotiations for the RI/FS Consent Order with these Potentially Responsible Parties (PRPs) were not successful due to issues such as the extent of the Site, and the number of PRPs. Subsequently, U.S. EPA contracted with Donohue & Associates in November 1988 to perform the RI/FS at the Site.

On June 21, 1989, U.S. EPA collected a total of eight samples from drums located in the Old Calumet and Hecla Smelting Mill Site near Lake Linden, the Ahmeek Mill Site near Hubbell City, and the Quincy Site near Mason. On August 1, 1990, nine more samples were collected from drums located above the Tamarack Site near Tamarack City. Based on the results of these samples, U.S. EPA determined that some of these drums may have contained hazardous substances. During the week of May 8, 1989, the U.S. EPA also conducted ground penetrating radar and a subbottom profile (seismic) survey of the bottom of Torch Lake. The area in which this survey was conducted is immediately off-shore from the Old Calumet and Hecla Smelting Mill Site. The survey located several point targets (possibly drums) on the bottom of Torch Lake. Based on the drum sampling results and seismic survey, U.S. EPA executed an Administrative Order by Consent, dated July 30, 1991, which required six companies and individuals to sample and remove drums located on the shore and lake bottom. Pursuant to the Administrative Order, these entities removed 20 drums with unknown contents off-shore from the Peninsula Copper Inc., and the Old Calumet and Hecla Smelting Mill Site in September 1991. A total of 808 empty drums were found in the lake bottom. These empty drums were not removed from the lake bottom. A total of 82 drums and minor quantities of underlying soils were removed from the shore of Torch Lake. The removed drums and soils were sampled, over packed, and disposed off-site at a hazardous waste landfill.

Due to the size and complex nature of the Site, three OUs have been defined for the Site. OU I includes surface tailings, drums, and slag piles on the western shore of Torch Lake. Approximately 500 acres of tailings are exposed surficially in OU I. The Lake Linden parcel is included in OU I, as well as the Hubbell/Tamarack and Mason parcels.

OU II includes groundwater, surface water, submerged tailings and sediment in Torch Lake, Portage Lake, the Portage channel, and other water bodies at the site.

OU III includes tailing and slag deposits located in the north entry of Lake Superior, Michigan Smelter, Quincy Smelter, Calumet Lake, Isle-Royale, Boston Pond, and Grosse-Point(Point Mills).

Remedial Investigations (RIs) have been completed for all three operable units. The RI and Baseline Risk Assessment (BRA) reports for OU I was finalized in July 1991. The RI and BRA reports for OU III were finalized on February 7, 1992. The RI and BRA reports for OU II were finalized in April 1992. The Ecological Assessment for the entire Site was finalized in May 1992.

Record of Decision Findings

A Record of Decision (ROD) was completed to select remedial actions for OU I and III on September 30, 1992. A ROD was completed to select remedial actions for OU II on March 31, 1994.

The remedies primarily address ecological impacts. The most significant ecological impact is the severe degradation of the benthic communities in Torch Lake as a result of metal loadings from the mine tailings. The remedial action required that the contaminated stamp sands (tailings) and slag piles contributing to site-specific ecological risks at the Torch Lake Superfund Site (OUI & OUIII) be covered with a soil and vegetative cover as identified in the RODs for this Site and as documented in the Final Design Document dated September 10, 1998. No further response action was selected for OU II. OU II will be allowed to undergo natural recovery and detoxification.

In addition, the RODs for OU I and OU III required long-term monitoring of Torch Lake to assess the natural recovery and detoxification process after the remedy was implemented. Torch Lake was chosen as a worst-case scenario to study the recovery process. It was assumed that other affected water bodies would respond as well, or better, than Torch Lake to the implemented remedy.

Response Actions

A final design for OU I and OU III was completed in September 1998. Also in September 1998, U.S. EPA obligated $15.2 million for the implementation of the selected remedies for OU I and OU III. As of January 1, 2001, the remedial actions at the Lake Linden and Hubbell/Tamarack City portions of OU I have been completed.

Operation and Maintenance

As mention above, the RODs for OU I & OU III required long-term monitoring of Torch Lake to assess the natural recovery and detoxification process after the remedy was implemented. Other O & M activities include site inspections, repairs and fertilization of the vegetative cover, if necessary. Based on site inspections conducted during Summer 2001, repairs and fertilization of the soil and vegetative cover at the Lake Linden parcel are no longer necessary.

Five-Year Review

Because hazardous substance will remain at the Site above levels that allow for unrestricted use and unlimited exposure. The EPA will conduct periodic reviews at this Site. The review will be conducted pursuant to CERCLA section 121 (c) and as provided in the current guidance on Five Year Reviews; OSWER Directive 9355.7–03B-P, Comprehensive Five-Year Review Guidance, June 2001. The first five-year review for the Torch Lake Site is scheduled for September 2003.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence from the State of Michigan, has determined that all appropriate responses under CERCLA for the Lake Linden parcel and OU II have been completed, and that no further response actions under CERCLA are necessary. Therefore, EPA is deleting the Lake Linden parcel and Operable Unit 2 of the Torch Lake Superfund Site from the NPL.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication. This action will be effective April 8, 2002, unless EPA receives adverse comments by March 7, 2002. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. EPA will prepare a response to comments and as appropriate continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 18, 2002.

Gary V. Gulezian,

Acting Regional Administrator, Region V.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

2. Table 1 of appendix B to part 300 is amended under Michigan ''MI'' by revising the entry for ''Torch Lake'' and the city ''Houghton County, Michigan'' to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	(Notes) [A]
*	* * *	* * *	*
MI	Torch Lake	Houghton	P
*	* * *	* * *	*

[A] * * *
P=Sites with partial deletion(s).

* * * * *

[FR Doc. 02–2507 Filed 2–4–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7777]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance Administration and Mitigation Directorate, 500 C Street, SW.; Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II:				
New York: Davenport, Town of, Delaware County.	360192	July 7, 1975, Emerg.; May 15, 1985, Reg. February 2, 2002.	02/02/02	02/02/02
Evans, Town of, Erie County	360240	April 21, 1972, Emerg.; September 30, 1977, Reg. February 2, 2002.	02/02/02	02/02/02
Big Flats, Town of, Chemung County	360148	March 23, 1973, Emerg.; September 30, 1981, Reg. February 2, 2002.	02/02/02	02/02/02
Region VIII:				
Montana: Cascade County, Unincorporated Area.	300008	May 22, 1975, Emerg.; April 15, 1980, Reg. February 15, 2002.	02/15/02	02/15/02
North Dakota: McHenry County, Unincorporated Areas.	380307	March 23, 1976, Emerg.; September 18, 1987, Reg. February 15, 2002.	02/15/02	02/15/02
Karisruhe, City of, McHenry County	380048	September 22, 1999, Emerg.; February 15, 2002	02/15/02	02/15/02
Lebanon, Township of McHenry County	380309	March 29, 1996, Emerg.; September 18, 1987, Reg. February 15, 2002.	02/15/02	02/15/02
Newport, Township of, McHenry County	380308	March 24, 1976, Emerg.; September 18, 1987, Reg. February 15, 2002.	02/15/02	02/15/02
Villard, Township of, McHenry County	380317	March 31, 1977, Emerg.; September 18, 1987, Reg. February 15, 2002.	02/15/02	02/15/02
Ward County, Unincorporated Areas	380157	April 9, 1971, Emerg.; October 15, 1976, Reg. February 15, 2002.	02/15/02	02/15/02
Burlington, Township of, Ward County	380650	February 19, 1982, Emerg.; February 19, 1982, Reg. February 15, 2002.	02/15/02	02/15/02
Des Lacs, City of, Ward County	380712	November 24, 1999, Emerg.; February 15, 2002	02/15/02	02/15/02
Minot, City of, Ward County	385367	March 17, 1970, Emerg., March 17, 1970, Reg. February 15, 2002.	02/15/02	02/15/02

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: January 28, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance Administration and Mitigation Administration.

[FR Doc. 02–2670 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Acting Executive Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Duval (FEMA Docket No. D–7515).	City of Jacksonville.	August 8, 2001; August 15, 2001; *Financial News and Daily Record*.	The Honorable John A. Delaney, Mayor of the City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	August 1, 2001	120077D&E
Illinois:					
Cook (FEMA Docket No. D–7513.	Unincorporated Areas.	August 9, 2001; August 16, 2001; *Northbrook Star*.	Mr. John H. Stroger, Jr., President of the Cook County Board of Commissioners, 118 North Clark Street, Room 537, Chicago, Illinois 60602.	November 15, 2001 ..	170054 F
Williamson (FEMA Docket No. D–7513).	City of Marion	July 30, 2001; August 6, 2001; *The Marion Daily Republican*.	The Honorable Robert Butler, Mayor of the City of Marion, City Hall, 1102 Tower Square Plaza, Marion, Illinois 62959.	November 5, 2001	170719 B
Indiana:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Rush (FEMA Docket No. D–7513).	Unincorporated Areas.	July 31, 2001; August 7, 2001; *Rushville Republican*.	Mr. Kenneth Brashaber, President of the Rush County Board of Commissioners, County Courthouse, 101 East Second Street, Rushville, Indiana 46173.	July 20, 2001	180421 B
Rush (FEMA Docket No. D–7513).	City of Rushville ..	July 31, 2001; August 7, 2001; *Rushville Republican*.	The Honorable Robert M. Bridges, Mayor of the City of Rushville, Rushville City Hall, 133 West First Street, Rushville, Indiana 46173.	July 20, 2001	180223 B
New Jersey: Morris (FEMA Docket No. D–7511).	Borough of Madison.	March 22, 2001; March 29, 2001; *Madison Eagle*.	The Honorable John J. Dunne, Mayor of the Borough of Madison, Hartley Dodge Memorial, 50 Kings Road, Madison, New Jersey 07940.	June 12, 2001	340347 B
Pennsylvania: Dauphin (FEMA Docket No. D–7513).	Township of East Hanover.	August 3, 2001; August 10, 2001; *Patriot News*.	Mr. George Rish, Township of Hanover Board of Supervisors, 8848 Jonestown Road, Grantville, Pennsylvania 17028.	November 9, 2001	420377 B
Puerto Rico: (FEMA Docket No. D–7511).	Commonwealth ...	June 19, 2001; June 26, 2001; *San Juan Star*.	The Honorable Rafael Cordero Santiago, Mayor of the Municipality of Ponce, P.O. Box 1709, Ponce, Puerto Rico 00733–1709.	September 26, 2001 ..	720000 D
(FEMA Docket No. D–7513).	Commonwealth ...	August 3, 2001; August 10, 2001; *San Juan Star*.	The Honorable Sila Maria Calderon, Governor of Puerto Rico, Post Office Box 9020082, La Fortaleza, San Juan, Puerto Rico 00902.	November 9, 2001	720000 B
South Carolina: Lexington (FEMA Docket No. D–7515).	City of Columbia	August 20, 2001; August 27, 2001; *The State*.	The Honorable Robert D. Coble, Mayor of the City of Columbia, P.O. Box 147, Columbia, South Carolina 29201.	August 13, 2001	450172D

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2666 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified Base (1-percent-annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Acting Administrator, Federal Insurance and Mitigation Administration has resolved any appeals resulting from this notification.

The modified Base Flood Elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified Base Flood Elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood

insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

1.The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No.: B–7422).	City of Avondale (01–09–018P)	August 10, 2001; August 17, 2001; *Arizona Republic*.	The Honorable Ronald J. Drake, Mayor, City of Avondale, 525 North Central Avenue Avondale, Arizona 85323.	July 24, 2001	040038
Maricopa (FEMA Docket No.: B–7422).	City of Avondale (01–09–497P)	September 12, 2001; September 19, 2001; *Arizona Republic*.	The Honorable Ronald J. Drake, Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323.	August 23, 2001	040038
Maricopa (FEMA Docket No.: B–7422).	City of Goodyear (01–09–497P)	September 12, 2001; September 19, 2001; *Arizona Republic*.	The Honorable Bill Arnold, Mayor, City of Goodyear, 119 North Litchfield Road, Goodyear, Arizona 85338.	August 23, 2001	040046
Maricopa (FEMA Docket No.: B–7422).	City of Goodyear (01–09–124P)	March 14, 2001; March 21, 2001; *West Valley View*.	The Honorable Bill Arnold, Mayor, City of Goodyear, 119 North Litchfield Road, Goodyear, Arizona 85338.	February 27, 2001	040046
Maricopa (FEMA Docket No.: B–7422).	City of Scottsdale (01–09–632P)	September 19, 2001; September 26, 2001; *Arizona Republic*.	The Honorable Mary Manross, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, Arizona 85251.	August 31, 2001	045012
Pima (FEMA Docket No.: B–7422).	Unincorporated Areas. (01–09–430P)	August 23, 2001; August 30, 2001; *Arizona Daily Star and Tucson Citizen*.	The Honorable Raul Grijalva, Chairman, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	August 7, 2001	040073
California:					
Marin (FEMA Docket No.: B–7422).	City of Novato ..... (01–09–674P)	August 8, 2001; August 15, 2001; *Novato Advance*.	The Honorable James W. Henderson, Mayor, City of Novato, 900 Sherman Avenue, Novato, California 94945.	July 18, 2001	060178
San Diego (FEMA Docket No.: B–7419).	City of Oceanside (00–09–332P)	June 15, 2001; June 22, 2001; *North County Times*.	The Honorable Terry Johnson, Mayor, City of Oceanside, 300 North Coast Highway, Oceanside, California 92054.	May 31, 2001	060294
San Diego (FEMA Docket No.: B–7422).	San City of Poway. (00–09–080P)	August 9, 2001; August 16, 2001; *Poway News Chieftain*.	The Honorable Mickey Cafagna, Mayor, City of Poway, 13325 Civic Center Drive, Poway, California 92064.	July 25, 2001	060702
Sonoma (FEMA Docket No.: B–7419).	City of Cloverdale (01–09–122P)	June 13, 2001; June 20, 2001; *Cloverdale Reveille*.	The Honorable Robert Jehn, Mayor, City of Cloverdale, City Hall, P.O. Box 217, Cloverdale, California 95425–0217.	May 23, 2001	060376

State and county	Location and case No.	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Shasta (FEMA Docket No.: B–7419).	City of Redding ... (01–09–218P)	July 13, 2001; July 20, 2001; *Redding Record Searchlight*.	The Honorable Dave McGeorge, Mayor, City of Redding, 777 Cypress Avenue, Redding, California 96001.	October 18, 2001	060360
Colorado:					
Douglas (FEMA Docket No.: B–7419).	Town of Parker ... (01–08–180P)	July 11, 2001; July 18, 2001; *Douglas County News*.	The Honorable Gary Lasater, Mayor, Town of Parker, 20120 East Main Street, Parker, Colorado 80138.	June 22, 2001	080310
Douglas (FEMA Docket No.: B–7419).	Unincorporated Areas. (01–08–180P)	July 11, 2001; July 18, 2001; *Douglas County News*.	The Honorable Melanie Worley, Chairperson, Douglas County, Board of Commissioners, 100 Third Street, Castle Rock, Colorado 80104.	June 22, 2001	080049
Jefferson (FEMA Docket No.: B–7422).	City of Arvada ..... (01–08–059P)	August 30, 2001; September 6, 2001; *Arvada Sentinel*.	The Honorable Ken Fellman, Mayor, City of Arvada, City Hall, 8101 Ralston Road, Arvada, Colorado 80002.	December 5, 2001	085072
Jefferson (FEMA Docket No.: B–7422).	City of Lakewood (00–08–331P)	August 9, 2001; August 16, 2001: *Lakewood Sentinel*.	The Honorable Steve Burkholder, Mayor, City of Lakewood, 480 South Allison Parkway, Lakewood, Colorado 80226–3127.	July 25, 2001	085075
Jefferson (FEMA Docket No.: B–7422).	City of Westminster. (99–08–419P)	September 27, 2001; October 4, 2001; *Westminster Window*.	The Honorable Nancy M. Heil, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	September 20, 2001 ..	080008
Larimer (FEMA Docket No.: B–7422).	City of Fort Collins. (00–08–365P)	June 8, 2001; June 15, 2001: *Fort Collins Coloradoan*.	The Honorable Ray Martinez, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, Colorado 80522–0580.	August 23, 2001	080102
Kansas:					
Butler (FEMA Docket No.: B–7419).	City of Andover ... (00–07–552P)	July 5, 2001; July 12, 2001; *Anover Journal Advocate*.	The Honorable Dennis L. Bush, Mayor, City of Andover, P.O. Box 295, Andover, Kansas 67002–0295.	June 19, 2001	200383
Nevada:					
Clark (FEMA Docket No.: B–7419).	City of Mesquite .. (01–09–170P)	May 24, 2001; May 31, 2001: *Las Vegas Review-Journal*.	The Honorable Charles Home, Mayor, City of Mesquite, 10 East Mesquite Boulevard, Mesquite, Nevada 89027.	August 29, 2001	320035
Clark (FEMA Docket No.: B–7422).	City of Mesquite .. (01–09–997P)	September 19, 2001; September 26, 2001; *Las Vegas Review-Journal*.	The Honorable Charles Home, Mayor, City of Mesquite, 10 East Mesquite Boulevard, Mesquite, Nevada 89027.	September 10, 2001 ..	320035
Clark (FEMA Docket No.: B–7419).	Unincorporated Areas. (00–09–828P)	June 15, 2001; June 22, 2001; *Las Vegas Review-Journal*.	The Honorable Dario Herrera, Chairman, Clark County Board of Commissioners, 500 Grand Central Parkway, Las Vegas, Nevada 89155.	September 20, 2001 ..	320003
Douglas (FEMA Docket No.: B–7422).	Unincorporated Areas. (01–09–231P)	September 12, 2001; September 19, 2001; *Record Couier*.	Mr. Daniel C. Holler, County Manger, Douglas County, P.O. Box 218, Minden, Nevada 89423–0218.	August 16, 2001	320008
North Carolina: Wake (FEMA Docket No.: B–7419).	City of Raleigh .... (01–04–061P)	June 7, 2001; June 14, 2001; *News and Observer*.	The Honorable Paul Coble, Mayor, City of Raleigh, City Hall, P.O. Box 590, Raleigh, North Carolina 27602.	May 30, 2001	370243
Oklahoma:					
Oklahoma (FEMA Docket No.: B–7419).	City of Oklahoma City. (00–06–879P)	July 6, 2001; July 13, 2001: *Daily Oklahoman*.	The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	June 20, 2001	405378
Oklahoma (FEMA Docket No.: B–7412).	City of Oklahoma City. (01–06–608P)	February 16, 2001; February 23, 2001; *Daily Oklahoma*.	The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	May 24, 2001	405378
Oregon:					
Multnomah (FEMA Docket No.: B–7422).	City of Milwaukie (01–10–191P)	September 13, 2001; September 20, 2001; *The Oregonian*.	The Honorable Carolyn Tomei, Mayor, City of Milwaukie, 10722 Southeast Main Street, Milwaukie, Oregon 97222.	December 19, 2001 ..	410019

State and county	Location and case No.	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Multnomah (FEMA Docket No.: B–7422).	City of Portland ... (01–10–191P)	September 13, 2001; September 20, 2001; *The Oregonian*.	The Honorable Vera Katz, Mayor, City of Portland, 1221 Southwest Fourth Avenue, Suite 340, Portland, Oregon 97204.	December 19, 2001 ...	410183
Multnomah (FEMA Docket No.: B–7422).	Unincorporated Areas. (01–10–191P)	September 13, 2001; September 20, 2001; *The Oregonian*.	The Honorable Diane Linn, Chairperson, Multnomah County Board of Commissioners, 501 Southeast Hawthorne Boulevard, Suite 600, Portland, Oregon 97214.	December 19, 2001 ..	410179
South Dakota: Union (FEMA Docket No.: B–7422).	Unincorporated Areas. (99–08–326P)	January 18, 2001; January 25, 2001; *Leader Courier*.	The Honorable Roger Boldenow, Chairman, Union County Board of Commissioners, P.O. Box 519, Elk Point, South Dakota 57025–0519.	December 28, 2000 ..	460242
Texas:					
Bexar (FEMA Docket No.: B–7422).	City of San Antonio. (01–06–1953X) ...	September 27, 2001; October 4, 2001; *San Antonio Express News*.	The Honorable Edward D. Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	January 2, 2002	480045
Collin (FEMA Docket No.: B–7419).	City of Plano ..... (01–06–359P)	July 13, 2001; July 20, 2001; *Plano Star Courier*.	The Honorable Jeran Akers, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	June 20, 2001	480140
Dallas (FEMA Docket No.: B–7422).	City of Carrollton (00–06–1211P) ... (00–06–1214P) ... (00–06–1216P) ...	February 16, 2001; February 23, 2001; *Northwest Morning News (Formerly Metrocrest News)*.	The Honorable Mark Stokes, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, TX 75011–0535.	May 24, 2001	480167
Lubbock (FEMA Docket No.: B–7422).	City of Lubbock ... (00–06–1788P) ...	September 22, 2000; September 29, 2000 *Lubbock Avalanche Journal*.	The Honorable Windy Sitton, Mayor, City of Lubbock, P.O. Box 2000, Lubbock, TX 79457–2000.	December 28, 2000 ...	480452
Lubbock (FEMA Docket No.: B–7422).	City of Wolfforth .. (01–06–1799P) ...	September 27, 2001; Octiber 4, 2001; *Lubbock Avalanche Journal*.	The Honorable Sylvia Preston, Mayor, City of Wolfforth, 382 East Highway 62, Wolfforth, Texas 79382.	September 5, 2001 ...	480918
Utah:					
Washington (FEMA Docket No.: B–7422).	City of Santa Clara. (99–08–278P)	August 10, 2001; August 17, 2001; *The Spectrum*.	The Honorable Fred Rowley, Mayor, City of Santa Clara, 2721 Santa Clara Drive, P.O. Box 699, Santa Clara, Utah 84765.	November 15, 2001 ..	490178
Washington (FEMA Docket No.: B–7422).	City of St. George (99–08–278P)	August 10, 2001; August 17, 2001; *The Spectrum*.	The Honorable Daniel D.McArthur, Mayor, City of St. George, 175 East 200 North, St. George, Utah 84770.	November 15, 2001 ..	490177
Washington: Skamania (FEMA Docket No.: B–7422).	City of North Bonneville. (01–10–488P)	September 19, 2001; September 26, 2001; *Skamania County Pioneer*.	The Honorable John W. Kirk, Mayor, City of North Bonneville, P.O. Box 7, North Bonneville, Washington 98639.	September 13, 2001	530256

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2667 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–B–7426]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified Base Flood Elevations for new buildings and their contents.

DATES: These modified Base Flood Elevations are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director, Federal Insurance and Mitigation Administration, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified Base Flood Elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The modified Base Flood Elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified Base Flood Elevation determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified Base Flood Elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in Base Flood Elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified Base Flood Elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa	Town of Buckeye (01–09–453P)	November 1, 2001; November 8, 2001; *Blackeye Valley News*.	The Honorable Dusty Hull, Mayor, Town of Buckeye, 100 North Apache Road, Suite A, Buckeye, Arizona 85326.	October 9, 2001	040039
Maricopa	Town of Cave Creek. (02–09–241X)	December 27, 2001; January 3, 2002; *Arizona Republic*.	The Honorable Vincent Francia, Mayor, Town of Cave Creek, Cave Creek Town Hall, 37622 North Cave Creek Road, Cave Creek, AZ 85331.	April 3, 2002	040129
Maricopa	City of Phoenix ... (01–09–1003P) ...	September 21, 2001; September 28, 2001; *Arizona Republic*.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	September 10, 2001 ..	040051
Maricopa	City of Phoenix ... (01–09–285P)	November 8, 2001; November 15, 2001; *Arizona Republic*.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	October 15, 2001	040051
Maricopa	Unicorporated Areas of Maricopa. (01–09–453P)	November 1, 2001; November 8, 2001; *Buckeye Valley News*.	The Honorable Janice K. Brewer, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, Arizona 85003.	October 9, 2001	040037

State and county	Location and case No.	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maricopa	Unincorporated Areas of Maricopa. (02–09–241X)	December 27, 2001; January 3, 2002; *Arizona Republic*.	The Honorable Janice Brewer, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	April 3, 2002	040037
California:					
Kern	Unincorporated Areas of Kern. (01–09–804P)	October 22, 2001; October 25, 2001; *Bakersfield California*.	The Honorable Ken Peterson, Chairman, Kern County, Board of Supervisors, 1115 Truxton Avenue, Fifth Floor, Bakersfield, California 93301.	September 27, 2001	060075
Orange	City of Huntington Beach. (00–09–825P)	November 8, 2001; November 15, 2001; *Huntington Beach Independent*.	The Honorable Pam Julien Houchen, Mayor, City of Huntington Beach, 2000 Main Street, Huntington Beach, California 92648.	February 13, 2002	065034
Riverside	City of Norco (02–09–195X)	October 25, 2001; November 1, 2001; *Press Enterprise*.	The Honorable Hal H. Clark, Mayor, City of Norco, 3036 Sierra Avenue, Norco, California 92860.	January 30, 2002	060256
Riverside	Unicorporated Areas of Riverside. (02–09–195X)	October 25, 2001; November 1, 2001; *Press Enterprise*.	The Honorable Jim Venable, Chairperson, Riverside County, Board of Supervisors, 4080 Lemon Street, 14th Floor, Riverside, California 92501.	January 30, 2002	060245
San Diego	City of Carlsbad (01–09–204P)	November 1, 2001; November 8, 2001; *North County Times*.	The Honorable Claude A. Lewis, Mayor, City of Carlsbad, 1200 Carlsbad Village Drive, Carlsbad, California 92008.	October 25, 2001	060285
San Diego	City of Escondido (01–09–835P)	January 3, 2002; January 10, 2002; *North County Times*.	The Honorable Lori Pfeiler, Mayor, City of Escondido, 201 North Broadway, Escondido, California 92025.	April 10, 2002	060290
San Diego	City of Vista (01–09–568P)	November 28, 2001; December 5, 2001; *North County Times*.	The Honorable Gloria E. McClellan, Mayor, City of Vista, P.O. Box 1988, Vista, California 92085.	November 7, 2001	060297
Shasta	City of Redding (01–09–682P)	December 5, 2001; December 12, 2001; *Redding Record Searchlight*.	The Honorable Dave McGeorge, Mayor, City of Redding, 777 Cypress Avenue, Redding, California 96001.	March 12, 2002	060360
Ventura	City of Simi Valley. (01–09–981P)	December 12, 2001; December 19, 2001; *Ventura County Star*.	The Honorable William Davis, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, California 93063–2199.	November 26, 2001	060421
Colorado:					
Adams	City of Aurora (00–08–342P)	November 1, 2001; November 8, 2001; *Aurora Sentinel*.	The Honorable Paul E. Tauer, Mayor, City of Aurora, 1470 South Havana Street, Eighth Floor, Aurora, Colorado 80012–4090.	January 23, 2002	080002
Arapahoe	City of Cherry Hills Village. (01–08–262P)	October 18, 2001; October 25, 2001; *The Villager*.	The Honorable Joan Duncan, Mayor, City of Cherry Hills Village, 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80110.	January 23, 2002	080013
Boulder	City of Broomfield (01–08–339P)	October 31, 2001; November 7, 2001; *Boulder Daily Camera*.	The Honorable William Berens, Mayor, City of Broomfield, One DesCombes Drive, Broomfield, Colorado 80020.	February 5, 2002	085073
Larimer	City of Fort Collins. (01–08–349P)	December 27, 2001; January 3, 2002; *Fort Collins Coloradoan*.	The Honorable Ray Martinez, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, Colorado 80522–0580.	November 29, 2001	080102
Nevada:					
Clark	City of North Las Vegas. (01–09–514P)	November 21, 2001; November 28, 2001; *Las Vegas Review-Journal*.	The Honorable Michael L. Montandon, Mayor, City of North Las Vegas, 2200 Civic Center Drive, North Las Vegas, Nevada 89030.	October 31, 2001	320007
Washoe	Unincorporated Areas of Washoe. (01–09–307P)	December 21, 2001; December 28, 2001; *Reno Gazette-Journal*.	The Honorable Ted Short, Chairman, Washoe County, Board of Commissioners, P.O. Box 11130, Reno, Nevada 89520.	November 26, 2001	320019

State and county	Location and case No.	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas:					
Collin	City of Plano (01–06–1043P)	November 8, 2001; November 15, 2001; *Plano Star Courier*.	The Honorable Jeran Akers, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	October 17, 2001	480140
Dallas	City of Dallas (01–06–1381P)	December 27, 2001; January 3, 2002; *Commercial Recorder*.	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla Street, Dallas, Texas 75201.	December 6, 2001	480171
Dallas	City of Sachse (01–06–309P)	November 7, 2001; November 14, 2001; *Dallas Morning News*.	The Honorable Hugh Cairns, Mayor, City of Sachse, City Hall, 5560 Highway 78, Sachse, Texas 75048.	October 12, 2001	480186
Dallas	Unicorporated Areas of Dallas. (01–06–309P)	November 7, 2001; November 14, 2001; *Dallas Morning News*.	The Honorable Lee F. Jackson, Dallas County Judge, Administration Building, 411 Elm Street, Second Floor, Dallas, Texas 75202.	October 12, 2001	480165
Washington:					
Cowlitz	Unincorporated Areas of Cowlitz. (01–10–401P)	November 8, 2001; November 15, 2001; *Daily News*.	The Honorable Jeff M. Rasmussen, Chairman, Cowlitz County, Board of Commissioners, 207 Fourth Avenue North, Kelso, Washington 98626.	February 13, 2002	530032
Whatcom	Unincorporated Areas of Whatcom. (01–10–534P)	November 29, 2001; December 6, 2001; *Bellingham Herald*.	The Honorable Pete Kremen, County Executive, Whatcom County, 311 Grand Avenue, Suite 108, Bellingham, Washington 98225.	November 13, 2001	530198

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2668 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–D–7519]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Executive Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No

environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Connecticut:					
Fairfield	Town of Greenwich.	December 21, 2001; December 28, 2001; *Greenwich Times*.	Mr. Richard Bergstresser, First Selectman for the Town of Greenwich, 101 Field Point Road, Greenwich, Connecticut 06830.	December 7, 2001	090008 C
New Haven	City of Meriden	November 30, 2001; December 7, 2001; *Record-Journal*.	The Honorable Joseph J. Marinan, Jr., Mayor of the City of Meriden, 142 East Main Street, Meriden, Connecticut 06450–8022.	November 19, 2001	090081 C
Florida: Duval	City of Jacksonville.	August 1, 2001; August 8, 2001; *Financial News and Daily Record*.	The Honorable John A. Delaney, Mayor of the City of Jacksonville, City Hall, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	December 4, 2001	120077 E
Indiana:					
Lake	Town of Dyer	December 14, 2001; December 21, 2001; *Daily Herald*.	Mr. Glen Eberly, President, Town of Dyer Board of Trustees, One Town Square, Dyer, Indiana 46311.	December 6, 2001	180129 D
Noble	Unincorporated Areas.	December 19, 2001; *The News-Sun*.	Mr. Mark Pankap, President, Noble County Board of Commissioners, Noble County Courthouse, 101 North Orange Street, Albion, Indiana 46701.	January 18, 2002	180183 A
Lake	Town of Schererville.	December 14, 2001; December 21, 2001; *Daily Herald*.	Mr. Richard Kramer, Manager of the Town of Schererville, 833 West Lincoln Highway, Suite B20W, Schererville, Indiana 46375.	December 6, 2001	180142 B
Maine:					
Aroostook	Town of Fort Fairfield.	November 28, 2001; December 5, 2001; *Fort Fairfield Press*.	Mr. Dan K. Foster, Manager of the Town of Fort Fairfield, P.O. Box 350, Fort Fairfield, Maine 04742.	November 19, 2001	230018 B
Knox	Town of North Haven.	November 22, 2001; November 29, 2001; *The Courier-Gazette*.	Mr. Dake Collins, Town of North Haven Administrator, P.O. Box 400, North Haven, Maine 04853.	November 13, 2001	230228 B
Pennsylvania: Carbon.	Township of East Penn.	November 2, 2001; November 9, 2001; *Times News*.	Mr. Gordon Scherer, Chairman of the Township of East Penn Board of Supervisors, 167 Municipal Road, Lehighton, Pennsylvania 18253.	October 23, 2001	421013 B

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2669 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Communities affected
KANSAS		
FEMA Docket No. (B–7414)		
Tomahawk Creek:		
Approximately 3,500 feet upstream of confluence with Indian Creek Creek.	*850	Johnson County (Uninc. Areas), City of Leawood, City of Overland Park, City of Olathe.
Approximately 1,600 feet downstream of Roe Avenue	*866	
Just downstream of Pflumm Road	*1,007	
Approximately 4,800 feet upstream of a Pflumm Road		
Towahawk Creek Tributary No. 2:		
At confluence with Tomahawk Creek	*853	Johnson County (Uninc. Areas), City of Leawood.
Approximately 1,200 feet upstream of confluence with Towahawk Creek.	*859	
Tomahawk Creek Tributary No. 3:		
At confluence with Tomahawk Creek	*859	Johnson County (Uninc. Areas), City of Leawood.
Approximately 1,300 feet upstream of confluence with Tomahawk Creek.	*860	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Communities affected
Tomahawk Creek Tributary No. 4:		
At confluence with Tomahawk Creek	*864	Johnson County (Uninc. Areas), City of Leawood.
Approximately 1,500 feet upstream of confluence with Tomahawk Creek.	*866	
Tomahawk Creek Tributary No. 5:		
At confluence with Tomahawk Creek	*872	Johnson County (Uninc. Areas), City of Leawood.
Approximately 1,200 feet upstream of confluence with Tomahawk Creek.	*874	
Tomahawk Creek Tributary No. 6:		
At confluence with Tomahawk Creek	*872	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 1,850 feet upstream of confluence with Tomahawk Creek.	*881	
Tomahawk Creek Tributary No. 7:		
At confluence with Tomahawk Creek	*881	Johnson County (Uninc. Areas), City of Overland Park.
Just downstream of Metcalf Avenue	*929	
Tomahawk Creek Tributary No. 8:		
At confluence with Tomahawk Creek	*885	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 1,000 feet upstream of confluence with Tomahawk Creek.	*888	
Tomahawk Creek Tributary No. 9:		
At confluence with Tomahawk Creek	*890	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 1,360 feet upstream of Tomahawk Creek	900	
Tomahawk Creek Tributary No. 10:		
At confluence with Tomahawk Creek	*900	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 1,100 feet upstream of Foster Street	*935	
Tomahawk Creek Tributary No. 11:		
At confluence with Tomahawk Creek	*906	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 1,380 feet upstream of confluence with Tomahawk Creek.	*912	
Tomahawk Creek Tributary No. 12:		
At confluence with Tomahawk Creek	*912	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 4,700 feet upstream of Antioch Road	*955	
Tomahawk Creek Tributary No. 12B1:		
At confluence with Tomahawk Creek Tributary No. 12	*920	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 2,450 feet upstream of confluence with Tomahawk Creek.	*938	
Tomahawk Creek Tributary No. 13:		
At confluence with Tomahawk Creek	*929	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 900 feet upstream of 148th Street	*984	
Tomahawk Creek Tributary No. 13B1:		
At confluence with Tomahawk Creek Tributary No. 13	*935	Johnson County (Uninc. Areas), City of Overland Park.
Just downstream of Antioch Road	*935	
Tomahawk Creek Tributary No. 13E1:		
At confluence with Tomahawk Creek Tributary No. 13	*964	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 500 feet upstream of Switzer Road	*978	
Tomahawk Creek Tributary No. 13F1:		
At confluence with Tomahawk Creek Tributary No. 13	*979	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 1,100 feet upstream of confluence with Tomahawk Creek Tributary No. 13.	*989	
Tomahawk Creek Tributary No. 17:		
At confluence with Tomahawk Creek	*977	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 610 feet upstream of confluence with Tomahawk Creek.	*981	
Tomahawk Creek Tributary No. 18:		
At confluence with Tomahawk Creek	*989	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 1,100 feet downstream of 143rd Street	*997	
Tomahawk Creek Tributary No. 19:		
At confluence with Tomahawk Creek	*1,000	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 630 feet upstream of confluence with Tomahawk Creek.	*1,003	
Tomahawk Creek Tributary No. 20:		
At confluence with Tomahawk Creek	*1,011	Johnson County (Uninc. Areas), City of Overland Park, City of Olathe.
Approximately 300 feet upstream of confluence with Tomahawk Creek.	*1,011	
Tomahawk Creek Tributary No. 21:		
At confluence with Tomahawk Creek	*1,012	Johnson County (Uninc. Areas), City of Overland Park, City of Olathe.
Approximately 760 feet upstream of confluence with Tomahawk Creek.	*1,014	

ADDRESSES:

Johnson County (Unincorporated Areas): Maps are available for inspection at the Department of Planning, Development and Codes, 111 South Cherry, Suite 3500, Olathe, Kansas.

City of Leawood: Maps are available for inspection at the Planning Services Department, 4800 Town Center Drive, Leawood, Kansas.
City of Olathe: Maps are available for inspection at the Planning Department, 100 West Santa Fe, Olathe, Kansas.
City of Overland Park: Maps are available for inspection at City Hall, 8500 Santa Fe Drive, Overland Park, Kansas.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2665 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Baldwin County (Unincorporated Areas) (FEMA Docket Nos. D–7512 & D–7514)	
Fish River:	
Approximately 420 feet upstream of Threemile Creek	*104
At the upstream side of U.S. Route 51 (State Highway 59)	*196
Perone Branch:	
At confluence with Fish River	*34
At State Highway 59	*145
Styx River:	
At confluence with Perdido River	*9
At Brady Road (Truck Route 17)	*77
Mobile Bay:	
Approximately 200 feet south of intersection of Fort Morgan Road and Dune Drive	*7
Approximately 0.6 mile west of the intersection of Main Street and Bel Air Drive	*19
Bon Secour Bay:	
Southeast corner of intersection of Veterans Road and State Route 180	*9
Approximately 300 feet west of the intersection of Bay Road North and Beach Road	*15
Gulf of Mexico:	
At intersection of Ono Boulevard and Pompano Key Drive	*7

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 500 feet south of the intersection of Ponce de Leon Court and Choctow Road	*15
Perdido Bay:	
Approximately 250 feet northwest of the intersection of Magnolia Street and Mobile Avenue	*4
Approximately 1.1 miles east of the intersection of Boykin Boulevard and Azalea Street	*9
Wolf Bay:	
Approximately 500 feet south of the intersection of State Route 95 and East Quarry Drive	*5
Approximately 0.9 mile north of the intersection of Gulf Bay Road and Wolf Bay Terrace	*9
Weeks Bay:	
Approximately 1,000 feet south of intersection of Yupon Lane and Gavin Lane	*11
Approximately 500 feet west of intersection of Yupon Lane and Gavin Lane	*11
Oyster Bay:	
Approximately 2,750 feet north of intersection of Old Fort Morgan Trail	*10
Approximately 0.6 mile north of intersection of Quail Run and Oyster Bay Lane	*14
Maps available for inspection at the Baldwin County Building Department, 201 East Section Street, Bay Minette, Alabama.	
Bay Minette (City), Baldwin County (FEMA Docket No. D–7512)	
McCurtin Creek Tributary:	
Approximately 1,725 feet upstream of Rock Hill Road	*216
At dam	*221
Maps available for inspection at the City Hall, 301 D'Olive Street, Bay Minette, Alabama.	
Daphne (City), Baldwin County (FEMA Docket No. D–7512)	
D'Olive Creek:	
At the confluence with D'Olive Bay	*13
Approximately 100 feet downstream of Lake Forest Dam	*13
Mobile Bay:	
Approximately 2,500 feet west of the intersection of Main Street and Bel Air Drive	*19
At the intersection of Oak Bluff Drive and Maxwell Avenue	*13
Maps available for inspection at the Building Inspector's Office, 1705 Main Street, Daphne, Alabama.	
Fairhope (City), Baldwin County (FEMA Docket No. D–7512)	
Mobile Bay:	
Approximately 900 feet west of the intersection of Main Street and Chapman Street	*17
At the intersection of Pecan Avenue and Mobile Street	*11
Maps available for inspection at the Building Department, 161 North Section Street, Fairhope, Alabama.	
Gulf Shores (Town), Baldwin County (FEMA Docket No. D–7512)	
Gulf of Mexico:	
Approximately 250 feet south of the intersection of State Park RD 2 and Branyon Loop	*8
Approximately 500 feet southeast of the intersection of West Beach Boulevard and Sand Dollar Lane	*15
Bon Secour Bay:	
Approximately 0.7 mile east of intersection of Galloway Lane and Fort Morgan Road	*10
At most northwest corner of the Gulf Shores corporate limits along the Bon Secour Bay shoreline	*15
Oyster Bay:	
Approximately 250 feet north of intersection of Quail Run West and Oyster Bay Lane	*10
Approximately 0.4 mile north of intersection of Quail Run West and Oyster Bay Lane	*14
Maps available for inspection at the Community Development Department, 1905 West First Avenue, Gulf Shores, Alabama.	
Orange Beach (City), Baldwin County (FEMA Docket No. D–7512)	
Gulf of Mexico:	
Approximately 400 feet south of the intersection of Perdido Beach Boulevard and Polaris Street	*8
Approximately 1,000 feet south of the intersection of East Beach Boulevard and Hocklander Lane	*15
Perdido Bay:	
Intersection of Mobile Avenue and Camey Drive	*6
Approximately 350 feet southeast of intersection of Jackson Avenue and Burkart Drive	*9
Wolf Bay:	
At intersection of Hickory Lane and Canal Road	*6
Approximately 1,250 feet north of the intersection of Magnolia Avenue and Bay Circle	*8
Maps available for inspection at the Building Department, 4099 Orange Beach Boulevard, Orange Beach, Alabama.	
Spanish Fort (City), Baldwin County (FEMA Docket No. D–7512)	
Mobile Bay:	
Approximately 0.4 mile west of the intersection of Spanish Main and Bull Run Road	*15
Approximately 500 feet west of intersection of Caisson Trail and Spanish Main	*13
Maps available for inspection at the City of Spanish Fort Flood Protection Administrator's Office, 7581 Spanish Fort Boulevard, Spanish Fort, Alabama.	
CONNECTICUT	
Enfield (Town), Hartford County (FEMA Docket No. D–7512)	
Waterworks Brook:	
Approximately 140 feet downstream of breached dam	*54
Approximately 500 feet upstream of Elm Street	*124
Terry Brook:	
At the confluence with the Scantic River	*117
Approximately 250 feet upstream of Somers Road	*204
Maps available for inspection at the Enfield Town Engineer's Office, 820 Enfield Street, Enfield, Connecticut.	
Marlborough (Town), Hartford County (FEMA Docket No. D–7512)	
Blackledge River:	
Approximately 2,620 feet upstream of West Road	*352
Approximately 550 feet upstream of Jones Hollow Bridge	*384
Fawn Brook:	
Approximately 210 feet upstream of confluence with Blackledge River	*180
Approximately 2,925 feet upstream of South Main Street	*193
Unnamed Tributary of Dickinson Creek:	
At confluence with Dickinson Creek	*419
A point approximately 660 feet upstream of State Route 2	*423
Maps available for inspection at the Marlborough Town Planner's Office, Town Hall, 26 North Main Street, Marlborough, Connecticut.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
FLORIDA	
Astatula (Town), Lake County (FEMA Docket No. D–7508)	
Little Lake Harris:	
Entire shoreline within community	*64
Maps available for inspection at the Town of Astatula Clerk's Office, 25019 CR 561, Astatula, Florida.	
Clermont (City), Lake County (FEMA Docket No. D–7508)	
Wilma Lake North:	
Entire shoreline within community	*91
Lake Felter:	
Entire shoreline within community	*89
Wilma Lake South:	
Approximately 1,900 feet northeast of intersection of State Route 25 and Steves Road	*90
Maps available for inspection at the City of Clermont Planning & Zoning Department, 1 Westgate Plaza, Clermont, Florida.	
Eustis (City), Lake County (FEMA Docket No. D–7508)	
Ponding Area H5B:	
Entire shoreline within community	*70
Lake Eustis:	
Entire shoreline within community	*64
Maps available for inspection at the City of Eustis Building Department, 10 North Grove Street, Eustis, Florida.	
Franklin County (Unincorporated Areas) (FEMA Docket No. D–7512)	
Apalachicola Bay:	
Approximately 2.6 miles southeast of West Pass	*8
Approximately 4.1 miles southwest of Government Cut in St. George Island	*10
St. George Sound:	
Just east of St. George Island Bridge	*10
Shoreline of St. George Island at (and include) Marsh Island	*12
Gulf of Mexico:	
Approximately 2.6 miles southeast of West Pass	*8
Approximately 1.5 miles southeast of the confluence of Big Claires Creek with Ochlockonee Bay	*23
Alligator Harbor:	
Approximately 1,000 feet north of the intersection of State Route 370 and West Harbor Circle	*16
Approximately 900 feet east of Peninsula Point	*17
Maps available for inspection at the Planning and Engineering Department, 33 Commerce Street, Apalachicola, Florida.	
Fruitland Park (City), Lake County (FEMA Docket No. D–7508)	
Dream Lake:	
Entire shoreline within community	*73
Fountain Lake East:	
Entire shoreline within community	*86
Lake Gem:	
Entire shoreline within community	*91
Lake Eustis:	
Entire shoreline within community	*64
Fountain Lake West:	
Entire shoreline within community	*84
Lake Griffin:	
Approximately 1,000 feet northeast of the intersection of Hamlet Court and Picciola Cutoff	*61
Myrtle Lake:	
Entire shoreline within community	*72
Maps available for inspection at the City of Fruitland Park City Hall, Building Department, 506 West Berckman Street, Fruitland Park, Florida.	
Groveland (City), Lake County (FEMA Docket No. D–7508)	
Stewart Lake:	
Approximately 100 feet northwest of the intersection of Parkwood Road and Gadson Street	*100
Maps available for inspection at the City of Groveland Building Department, 156 South Lake Avenue, Groveland, Florida.	
Howey in the Hills (Town), Lake County (FEMA Docket No. D–7508)	
Ponding Area 455–1:	
Approximately 1,000 feet west of the intersection of Marilyn Avenue and Poinsettia Street	*84
Lake Harris:	
Entire shoreline within community	*64
Little Lake Harris:	
Entire shoreline within community	*64
Maps available for inspection at the Town of Howey in the Hills Town Hall, 101 North Palm Avenue, Howey in the Hills, Florida.	
Lake County (Unincorporated Areas) (FEMA Docket Nos. D-7508 & D–7512)	
Lake Denham:	
Entire shoreline within county	*64
Zephyr Lake:	
Entire shoreline within county	*109
Spring Lake:	
Entire shoreline within county	*74
Unity Lake:	
Entire shoreline within county	*64
Ponding Area 07–3:	
Entire shoreline within county	*74
Ponding Area 07–5:	
Approximately 450 feet northeast of the intersection of Thomas Avenue and U.S. Route 44A	*74
Ponding Area 461–1:	
Entire shoreline within county	*87
Ponding Area Q3–4:	*78
Ponding Area G9–1:	
Entire shoreline within county	*69
Ponding Area G1–4:	
Entire shoreline within county	*65
Ponding Area 725–1:	
Entire shoreline within county	*114
Lake Needham:	
Entire shoreline within county	*106
Ponding Area 650–1:	
Entire shoreline within county	*103
Ponding Area 650–2:	
Entire shoreline within county	*105
Ponding Area 525–1:	
Entire shoreline within county	*98
Ponding Area 525–2:	
Entire shoreline within county	*94
Ponding Area 525–3:	
Entire shoreline within county	*95
Lake Harris:	
Entire shoreline within county	*64
Ponding Area D 2 E 2:	*84
Ponding Area D 2 B:	*69
Lake Alice:	
Entire shoreline within county	*99
Ponding Area E 3 B:	*75
Ponding Area K 1 A:	*74
Ponding Area K 4 1:	*65
Martins Lake:	
Approximately 650 feet northwest from the intersection of Old Highway 50 and Forestwood Drive	*89
Ponding Area J–1–1:	
Approximately 100 feet west of the intersection of Orange Court and Bay Avenue	*74
Sunset Valley Lake:	
Entire shoreline within county	*82
Ponding Area 359–2:	*168
Ponding Area 362–1:	
Entire shoreline within county	*80
Lake Tem:	
Entire shoreline within county	*81
Ponding Area:	
Approximately 250 feet in a southwesterly direction from the intersection of Indianola Drive and Woodland Avenue	*64
Lake Illinois:	
Approximately 1,100 feet southwest from the intersection of Magnolia and Cypress Avenues	*79
Ponding Area K–11–3:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1,900 feet southwest from Magnolia and Cypress Avenues	*84
Emeralda Marsh:	
Entire shoreline within county	*60
Ponding Area 4:	
Entire shoreline within county	*74
Dukes Lake:	
Entire shoreline within county	*99
Lake Catherine:	
Entire shoreline within county	*99
Ponding Area 535–2:	*99
Minneola Annex Pond 1:	*95
Minneola Annex Pond 2:	*97
Ponding Area 395–1:	
Entire area within county	*62
Gallows Lake:	
Entire shoreline within county	*104
Ponding Area 510–1:	
Entire shoreline within county	*95
Little Bluff Lake:	
Entire shoreline within county	*99
Lake Douglas:	
Entire shoreline within county	*97
Wolf Branch Sink:	
Entire area within county	*82
Sorrento Swamp:	
Entire shoreline within county	*80
Lake Eustis:	
Entire shoreline within county	*64
Leesburg Tributary 1:	
Approximately 310 feet downstream of Airport Runway	*64
Approximately 0.61 mile upstream of South Whitney Road	*78
Leesburg Tributary 2:	
Approximately 1,000 feet downstream of Youngs Road	*64
Approximately 0.48 mile upstream of State Route 468	*80
Leesburg Tributary 3:	
Approximately 1,400 feet upstream of El Rancho Drive	*64
Approximately 2,050 feet downstream of El Rancho Drive	*77
Lake Griffin:	
Entire shoreline within county	*61
Lake Woodward:	
Approximately 900 feet north of the intersection of Codding Place and Mt. Mitchell Drive	*74
Park Lake:	
Entire shoreline within county	*74
Ponding Area 380–1:	*69
Ponding Area 380–4:	*71
Ponding Area 378–7:	*80
Ponding Area 380–2:	*70
Ponding Area 380–3:	*70
Lake Gary:	
Entire shoreline within county	*103
Saw Mill Lake:	
Entire shoreline within county	*102
Grassy Lake:	
Entire shoreline within county	*85
Little Grassy Lake:	
Entire shoreline within county	*90
Lake Idamere:	
Entire shoreline within county	*69
Indianhouse Lake West:	
Entire shoreline within county	*87
Indianhouse Lake East:	
Entire shoreline within county	*87
Ponding Area 395–2:	*55
Ponding Area 378–2:	*161
Ponding Area 378–6:	*86
Ponding Area 378–5:	*108
Ponding Area 378–4:	*120
Ponding Area 378–3:	*150
Lake Maggie:	*154
Lake Tavares:	
Entire shoreline within county	*71
Lake Arthur:	
Entire shoreline within county	*84
Big Prairie Lake:	
Entire shoreline within county	*94
Blacks Still Lake:	
Entire shoreline within county	*85
Boggy Marsh:	
Entire shoreline within county	*118
Church Lake:	
Entire shoreline within county	*88
Lake Nellie:	
Entire shoreline within county	*101
Neighborhood Lakes North:	
Entire shoreline within county	*60
Neighborhood Lakes South:	
Entire shoreline within county	*61
Pike Lake:	
Entire shoreline within county	*102
Trout Lake:	
Entire shoreline within county	*98
Pine Island Lake:	
Entire shoreline within county	*108
Plum Lake:	
Entire shoreline within county	*87
Island Road:	
Entire shoreline within county	*70
Lake Seneca:	
Entire shoreline within county	*78
Lake Madge:	
Entire area within county	*80
Sawgrass Bay:	
Entire area within county	*106
Lake Spencer:	
Entire shoreline within county	*85
Horseshoe Lake (East):	
Entire shoreline within county	*89
Horseshoe Lake (West):	
Entire shoreline within county	*85
Dilly Marsh:	
Entire shoreline within county	*87
Dilly Lake:	
Entire shoreline within county	*87
Hancock Bay North:	
Entire shoreline within county	*110
Hancock Bay South:	
Entire shoreline within county	*114
Hancock Lake:	
Entire shoreline within county	*115
Myrtle Lake:	
Entire shoreline within county	*72
Lake Lucie:	
Entire shoreline within county	*64
Crooked Lake:	
Entire shoreline within county	*118
Keene Lake:	
Entire shoreline within county	*111
Hidden Lake:	
Entire shoreline within county	*112
Stewart Lake:	
Entire shoreline within county	*100
Sumner Lake:	
Entire shoreline within county	*97
Olsen Lake:	
Entire shoreline within county	*100
Crescent Lake:	
Entire shoreline within county	*107
Crystal Lake:	
Entire shoreline within county	*79
Lake Felter:	
Entire shoreline within county	*89
Lake Gertrude:	
Entire shoreline within county	*72
Lake Glona:	
Entire shoreline within county	*103
Sawgrass Lake:	
Entire shoreline within county	*106
Shepherd Lake:	
Entire shoreline within county	*86
Square Lake:	
Entire shoreline within county	*110
Wash Lake:	
Entire shoreline within county	*101
Wilma Lake North:	
Entire shoreline within county	*91
Wilma Lake South:	
Entire shoreline within county	*90
Island Lake:	
Entire shoreline within county	*104
Ponding Area 535–1:	
Approximately 500 feet northeast of the intersection of Media Road and County Route 561A	*100
Ponding Area 535–3:	
Approximately 500 feet northeast of the intersection of Media Road and County Route 561A	*100
Ponding Area 535–4:	
Entire shoreline within county	*99
Wash Pond 1:	
Entire shoreline within county	*101
Wash Pond 2:	
Entire shoreline within county	*101
Wash Pond 3:	
Entire shoreline within county	*101
Wash Pond 4:	
Entire shoreline within county	*101
Wash Pond 5:	
Entire shoreline within county	*105
Pond Chain 555–1:	
Entire shoreline within county	*85
Ponding Area 470–1:	
Entire shoreline within county	*88
Ponding Area 345–1:	*82
Ponding Area 455–1:	
Entire area within county	*84
Lake 530–1:	
Entire shoreline within county	*90
Lake Saunders:	
Entire shoreline within county	*78
Wolf Branch:	
Approximately 0.49 mile upstream of State Route 46 ..	*95
At Griffin Lane	*166
Ponding Area 555–1:	*82
Ponding Area 555–2:	*82
Ponding Area 555–3:	
Approximately 1,200 feet southwest of the intersection of Arabian Way and Thoroughbred Lane	*90
Lake Ella:	
Entire shoreline within county	*70
Lake Umatilla:	
Entire shoreline within county	*69
Lake Willie:	
Entire shoreline within county	*104
Jacks Lake:	
Entire shoreline within county	*89
Lake Ella 170:	
Entire shoreline within county	*79
Lake Junietta:	
Entire shoreline within county	*68
Ponding Area Q2–1:	
Entire shoreline within county	*77
Lake Hermosa:	
Entire shoreline within county	*84
Leesburg Unnamed Ponding Area:	
Entire shoreline within county	*70

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Lake County Public Works, 123 North Sinclair Avenue, Tavares, Florida.	
Leesburg (City), Lake County (FEMA Docket No. D–7508)	
Leesburg Tributary 2:	
From approximately 1,325 feet upstream of Youngs Road	*77
Upstream side of State Route 44	*81
Lake Denham:	
Entire shoreline within county	*64
Ponding Area Q2–1:	
Entire shoreline within county	*77
Ponding Area Q–3–4:	
Entire shoreline within county	*78
Leesburg Tributary 1:	
Approximately 300 feet upstream of South Whitney	*78
Approximately 0.80 mile upstream of South Whitney Road	*79
Maps available for inspection at the City of Leesburg Public Works Department, 413 East North Boulevard, Leesburg, Florida.	
Minneola (City), Lake County (FEMA Docket No. D–7516)	
Plum Lake:	
Entire shoreline within county	*87
Ponding Area 535–1:	*100
Ponding Area 535–2:	*99
Little Grassy Lake:	
Approximately 0.55 mile northeast of the intersection of Perl Street and Galena Avenue	*90
Grassy Lake:	
Entire shoreline within county	*85
Maps available for inspection at the Minneola City Hall, 302 West Pearl Street, Minneola, Florida.	
Montverde (Town), Lake County (FEMA Docket No. D–7508)	
Lake Florence:	
Entire shoreline within county	*76
Ponding Area 555–1:	*82
Ponding Area 555–2:	*82
Maps available for inspection at the Montverde Town Hall, 17404 Sixth Street, Montverde, Florida.	
Mount Dora (City), Lake County (FEMA Docket No. D-7508)	
Lake Franklin:	
Entire shoreline within county	*106
Lake Nettie:	
Entire shoreline within county	*89
Lake John:	
Entire shoreline within county	*82
Wolf Branch Sink:	*82
Lake Woodward:	
Approximately 900 feet northeast of the intersection of Codding Place and Mt. Mitchell Drive	*74
Ponding Area 359–1:	*76
Wolf Branch:	
At upstream side of Wooden Driveway Bridge	*127
Approximately 200 feet upstream of Country Club Boulevard	*164
Maps available for inspection at the City of Mount Dora Building & Zoning Department, 900 North Donnelly Street, Mount Dora, Florida.	
Tavares (City), Lake County (FEMA Docket No. D–7508)	
Lake Eustis:	
Entire shoreline within community	*64
Lake Harris:	
Entire shoreline within community	*64
Maps available for inspection at the City of Tavares Planning & Zoning Department, 201 East Main Street, Tavares, Florida.	
ILLINOIS	
Kendall County (Unincorporated Areas) (FEMA Docket No. D–7514)	
Harvey Creek:	
From county boundary	*638
At approximately 775 feet upstream of confluence with Little Rock Creek	*617
Maps available for inspection at the Kendall County Planning and Zoning Department, 111 West Fox Street, Yorkville, Illinois.	
Newark (Village), Kendall County (FEMA Docket No. D–7514)	
Dave-Bob Creek:	
Approximately 175 feet upstream of confluence with Clear Creek	*620
Approximately 560 feet upstream of Chicago Road	*663
Maps available for inspection at the Village of Newark Building Department, 101 West Lions Street, Newark, Illinois.	
Sandwich (City), DeKalb County (FEMA Docket No. D–7514)	
Harvey Creek:	
Approximately 775 feet upstream of Little Rock Creek	*617
At Dayton Street	*640
Maps available for inspection at the City Engineering Office, 144 East Railroad Street, Sandwich, Illinois.	
INDIANA	
Grant County (Unincorporated Areas) (FEMA Docket No. D–7512)	
Lugar Creek:	
At the confluence with Mississinewa River	*794
At confluence with Monroe Ditch and Tippey Ditch	*835
Monroe Ditch:	
At the confluence with Lugar Creek	*835
A point approximately 1.4 miles upstream of State Route 700	*851
Tippey Ditch:	
At the confluence with Lugar Creek	*835
Downstream side of Bradford Pike	*841
Mississinewa River:	
Approximately 0.4 mile downstream of State Routes 9 and 37	*784
Approximately 1,600 feet upstream of confluence of Bean Run	*824
Maps available for inspection at the Grant County Area Planning Office, 401 South Adams Street, Marion, Indiana.	
MAINE	
Lebanon (Town), York County (FEMA Docket No. D–7512)	
Salmon Falls River:	
At downstream corporate limits	*190
At upstream corporate limits	*421
Maps available for inspection at the Lebanon Code Enforcement Office, 655 Upper Guinea Road, Lebanon, Maine.	
York (Town), York County (FEMA Docket No. D–7508)	
Atlantic Ocean:	
Approximately 900 feet southeast of the intersection of Hiram Street and Willard Street	*22
Approximately 1,000 feet southeast of Bayview Avenue and Long Sands Road	*10
Shallow Flooding Area:	
Approximately 150 feet northeast of the intersection of Ocean Avenue and Marietta Avenue	#2
Approximately 300 feet southwest of the #1 intersection of Nubble Road and Long Beach Avenue along the west side of Long Beach Avenue	#1

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Along Shore Road in the vicinity of Phillips Cove	#1
Approximately 1,350 feet southeast of the #1 intersection of Shore Road and Agamenticus Avenue in the vicinity of Pint Cove	#1
Along Bay Haven Road in the vicinity of Cape Neddick Harbor.	
Along York Street, south of Long Sands Road, in the vicinity of Little River	#1
Approximately 1,700 feet south of intersection of Seabreeze Lane and Surf Point Road	#1
Cape Neddick River:	
At Shore Road	*10
Approximately 650 feet downstream of U.S. Route 1	*10
Maps available for inspection at the York Town Planner's Office, 186 York Street, York, Maine.	
MASSACHUSETTS	
Westwood (Town), Norfolk County (FEMA Docket No. D–7512)	
Bubbling Brook:	
Approximately 40 feet upstream of the confluence with Pettee Pond	*144
Approximately 800 feet upstream of North Street	*228
Mill Brook:	
Approximately 40 feet upstream of confluence with Pettee Pond	*144
Approximately 1,000 feet upstream of Hartford Street	*236
Purgatory Brook:	
At Everett Street	*66
Approximately 1.19 miles upstream of Gay Street	*175
South Brook:	
At the confluence with Purgatory Brook	*67
Downstream side of East Street	*76
Maps available for inspection at the Westwood Building Department, 50 Corby Street, Westwood, Massachusetts.	
MINNESOTA	
Blaine (City), Anoka County (FEMA Docket No. D–7512)	
County Ditch 41 (Sand Creek):	
At upstream side of 117th Avenue	*892
Approximately 1,100 feet upstream of State Route 65	*895
County Ditch 60 (Branch 1):	
Approximately 350 feet downstream of Jefferson Street	*894
At State Route 14/downstream side of Polk Street	*895
Pleasure Creek:	
Approximately 450 feet upstream of University Avenue	*892
At 98th lane	*893
Maps available for inspection at the City of Blaine Administrative Office, Engineering Department, 9150 Central Avenue Northeast, Blaine, Minnesota.	
NEW HAMPSHIRE	
Conway (Town), Carroll County (FEMA Docket No. D–7512)	
Kearsarge Brook:	
At the Conway Scenic Railroad bridge	*471
Approximately 0.36 mile upstream of Cranmore Road bridge	*550
Pequawket Pond:	
Entire shoreline within community	*464
Maps available for inspection at the Town Hall, 1634 East Main Street, Center Conway, New Hampshire.	
Nashua (City), Hillsborough County (FEMA Docket No. D–7506)	
Nashua River:	
At the downstream side of B&M Railroad bridge	*114
Approximately 0.75 mile upstream of State Route 111	*176
Bartemus Brook:	
At confluence with Nashua River	*165
At upstream corporate limits	*166
Lyle Reed Brook:	
At confluence with Nashua River	*167
Approximately .075 mile upstream of State Route 111	*167
Maps available for inspection at the Nashua City Hall, 229 Main Street, Nashua, New Hampshire.	
NEW JERSEY	
Berkeley (Township), Ocean County (FEMA Docket No. D–7512)	
Atlantic Ocean:	
At 10th Lane, extended	*16
Approximately 100 feet east of intersection of 10th Lane and East Central Avenue	#1
Barnegat Bay:	
Shoreline at Balsem Drive, extended	*9
Approximately 1 mile northeast of Sedge Islands	*6
Maps available for inspection at the Berkeley Town Hall, 627 Pinewald-Keswick Road, Bayville, New Jersey 08721–0287.	
NEW YORK	
Fort Plain (Village), Montgomery County (FEMA Docket No. D–7514)	
Otsquago Creek:	
Approximately 540 feet upstream of the confluence with the Mohawk River	*306
Approximately 50 feet upstream of State Route 80	*336
Maps available for inspection at the Fort Plain Village Hall, 168 Canal Street, Fort Plain, New York.	
Herkimer (Village), Herkimer County (FEMA Docket No. D–7514)	
West Canada Creek:	
Approximately 600 feet downstream of East State Street (State Route 5)	*387
At the upstream corporate limits with the Town of Herkimer (approximately 1.36 miles upstream of East State Street)	*413
Maps available for inspection at the Herkimer Village Municipal Hall, 120 Green Street, Herkimer, New York.	
Jay (Town), Essex County (FEMA Docket No. D–7514)	
East Branch Ausable River:	
At the confluence with Ausable River	*550
At the upstream corporate limits (approximately 2.24 miles upstream of NYS Route 9N)	*724
Ausable River:	
At the downstream corporate limits	*491
At the confluence of East and West Branches of Ausable River	*550
Tributary to East Branch Ausable River:	
At the confluence with East Branch Ausable River	*589
At NYS Route 9R	*765
West Branch Ausable River:	
At the confluence with the Ausable River and East Branch Ausable River	*550
Approximately 250 feet upstream of the confluence with the Ausable River	*552
Maps available for inspection at the Jay Town Hall, School Street, Ausable Forks, New York.	
PENNSYLVANIA	
Bowmanstown (Borough), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 0.76 mile downstream of State Route 895	*417
Approximately 0.49 mile upstream of State Route 895	*432
Fireline Creek:	
At confluence with Lehigh River	*424
Approximately 1,750 feet downstream of Cherry Hill Road	*545

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Bowmanstown Borough Hall, Mill and Ore Streets, Bowmanstown, Pennsylvania.	
East Penn (Township), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 1.7 miles downstream of Palmerton Dam	*388
Approximately 5,100 feet upstream of State Route 895	*438
Maps available for inspection at the East Penn Township Building, 167 Municipal Road, Lehighton, Pennsylvania.	
Franklin (Township), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 1 mile downstream of U.S. Route 209	*452
Approximately 0.82 mile downstream of Lehigh Valley Railroad	*497
Maps available for inspection at the Franklin Township Hall, 900 Fairyland Road, Lehighton, Pennsylvania.	
Jim Thorpe (Borough), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 0.82 mile downstream of Lehigh Valley Railroad	*497
Approximately 2 miles upstream of State Route 903	*564
Maps available for inspection at the Jim Thorpe Borough Hall, 101 East Tenth Street, Jim Thorpe, Pennsylvania.	
Lehighton (Borough), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 1,160 feet downstream of U.S. Route 209	*464
Approximately 1.3 miles upstream of U.S. Route 209	*482
Mahoning Creek:	
At the confluence with Lehigh River	*464
Approximately 1,600 feet upstream of the confluence with Lehigh River	*464
Maps available for inspection at the Lehighton Borough Hall, 1 Constitution Avenue, Lehighton, Pennsylvania.	
Lower Towamensing (Township), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 1.7 miles downstream of Palmerton Dam	*388
Approximately 620 feet downstream of Pennsylvania Turnpike	*443
Aquashicola Creek:	
At the confluence with Lehigh River	*393
Approximately 2.3 miles upstream of State Route 2009	*468
Fireline Creek:	
Approximately 1,750 feet downstream of Cherry Hill Road	*545
Approximately 1.2 miles upstream of Cherry Hill Road	*687
Maps available for inspection at the Lower Towamensing Township Hall, 595 Hahns Dairy Road, Palmerton, Pennsylvania.	
Mahoning (Township), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 5,100 feet upstream of State Route 895	*438
Approximately 0.58 mile downstream of State Route 903	*526
Mahoning Creek:	
At the confluence with Lehigh River	*464
Approximately 500 feet upstream of confluence with Lehigh River	*464
Maps available for inspection at the Mahoning Township Office, 2685 Mahoning Drive East, Lehighton, Pennsylvania.	
Nesquehoning (Borough), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 1,900 feet upstream of State Route 903	*542
Approximately 2 miles upstream of State Route 903	*564
Nesquehoning Creek:	
At confluence with Lehigh River	*555
Approximately 1,850 feet upstream of Tonolli Corporate Road	*1,014
Maps available for inspection at the Nesquehoning Borough Hall, 114 West Catawissa, Nesquehoning, Pennsylvania.	
Palmerton (Borough), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 5,070 feet downstream of Palmerton Dam	*395
Approximately 1.37 miles upstream of Palmerton Dam	*417
Aquashicola Creek:	
Approximately 3,710 feet upstream of confluence with Lehigh River	*393
Approximately 1,000 feet downstream of CONRAIL	*418
Maps available for inspection at the Palmerton Borough Hall, 443 Delaware Avenue, Palmerton, Pennsylvania.	
Parryville (Borough), Carbon County (FEMA Docket No. D–7512	
Lehigh River:	
Approximately 850 feet downstream of Pennsylvania Turnpike	*443
Approximately 1 mile downstream of U.S. Route 209	*452
Pohopoco Creek:	
At confluence with Lehigh River	*443
Approximately 1,175 feet upstream of confluence with Lehigh River	*443
Maps available for inspection at the Parryville Borough Hall, 967 Cherryhill Road, Parryville, Pennsylvania.	
Weissport (Borough), Carbon County (FEMA Docket No. D–7512)	
Lehigh River	
Approximately 0.52 mile downstream of U.S. Route 209	*460
Approximately 700 feet upstream Central Railroad	*475
Maps available for inspection at the Weissport Borough Hall, 440 Allen Street, Weissport, Pennsylvania.	
VIRGINIA	
Monterey (Town), Highland County (FEMA Docket No. D–7514)	
West Strait Creek:	
Approximately 650 feet downstream of U.S. Route 220	*2,853
Approximately 630 feet upstream of the west stream crossing of Mill Alley	*2,967
Maps available for inspection at the Monterey Building and Zoning Department, Main Street, Monterey, Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2664 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–160; MM Docket No. 90–189; RM–6904; RM–7114; RM–7186; RM–7415; RM–7298]

Radio Broadcasting Services; Grass Valley and Jackson, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule, application for review.

SUMMARY: This document dismisses an Application for Review filed by Nevada County Broadcasters, Inc. directed against a staff *Memorandum Opinion and Order* in this proceeding. *See* 64 FR 63258, Published November 19, 1999. This action is contingent on the concurrent grants of applications filed by Station KNCO, Grass Valley, California, (File No. BPH–20011025AAB), and Station KNGT, Jackson, California, (File No. BPH–20011024ABE), both proposing operation on Channel 232A. The reference coordinates for the Channel 232A at Grass Valley, California, are 39–14–44 and 120–57–52. The reference coordinates for the Channel 232A allotment at Jackson, California, are 38–24–44 and 120–35–32. With this action, the proceeding is terminated.

DATES: Effective February 5, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 90–189, adopted January 16, 2002, and released January 18, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals ll, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 231A and adding Channel 232A at Grass Valley.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 232B1 and adding Channel 232A at Jackson.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 02–2616 Filed 2–4–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010823216-2020-02; I.D. 071601A]

RIN 0648-AP32

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Delay of the Implementation Date of the Year-4 Default Management Measures for Small-Mesh Multispecies

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

ACTION: Final rule.

SUMMARY: NMFS amends the regulations that implement Amendment 12 to the Northeast Multispecies Fishery Management Plan (FMP) to change the date of the Year-4 default management measures for small-mesh multispecies (silver hake (whiting), red hake and offshore hake), from May 1, 2002, to May 1, 2003. Delaying the implementation date for an additional year is in conformance with the original intent of Amendment 12 to the FMP. As specified in the FMP, this action is necessary to provide at least 2 full years of data on the fishery so that the Whiting Monitoring Committee (WMC) can fully assess the effectiveness of the current management measures and recommend alternative default measures, if appropriate.

DATES: Effective March 7, 2002.

ADDRESSES: Copies of the Amendment 12 document, its Regulatory Impact Review (RIR), final Regulatory Flexibility Analysis (FRFA) and the Final Supplemental Environmental Impact Statement (FSEIS), and other supporting documents for Amendment 12 are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, at 978–281–9272.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) voted at its December 1998 meeting that May 1, 1999, would begin Year 1 of Amendment 12, with the expectation that the Amendment would be implemented by the autumn of 1999. The Council submitted its final version of Amendment 12 in April 1999. Based upon the Council's assumption of an autumn 1999 implementation date, the regulations implementing Amendment 12 specified that the Year-4 default measures would become effective on May 1, 2002. However, due to extensive review and revisions, the Amendment did not actually become effective until April 28, 2000. Thus, Year 1 of Amendment 12 was actually only 3 days in duration (April 28 - April 30, 2000), rather than 8 to 10 months, as originally anticipated by the Council. As a result, under the current regulations, the WMC would have less than 2 years of data to analyze, and only one opportunity to implement an annual adjustment before the default measures are scheduled to be implemented (May 1, 2002). This is not consistent with the Council's intent in Amendment 12. A proposed rule and request for comments was published in the **Federal Register** (66 FR 48020) on September 17, 2001. Details concerning the background of this action are discussed extensively in the preamble to the proposed rule and are not repeated here. In addition, copies of the analytical documents conducted in support of Amendment 12 upon which this action is based are available (see **ADDRESSES**).

Comments and Responses

Comments on the proposed rule for this action were accepted through October 17, 2001. A total of 143 comments were received, all of which were from the commercial fishing industry; 141 were signed form letters. All 143 comments supported this action. This action is also strongly supported by both the New England and

Mid-Atlantic Fishery Management Councils. A summary of the comments are as follows:

Comment: Commentor supports moving the default measures for small-mesh multispecies back one year because it recognizes the abbreviated nature of what was to have been a 4-year period as well as the possibility that current research will negate the need for implementation of the default ruling altogether.

Response: Comment is acknowledged.

Comment: Commentor, writing on behalf of its membership, supports delay of implementation of the year-4 default measures until May 1, 2003, because it will provide the Whiting Monitoring Committee with the additional time necessary to review the effectiveness of the existing plan.

Response: Comment is acknowledged.

Comment: 141 commentors support delay of implementation of the default measures because, they state, NMFS would then have two full years of data on the whiting fishery to gauge the effects of the trip limits and minimum mesh sizes. They add that delay would also allow the Whiting Monitoring Committee to fully assess the current management measures and recommend alternative default measures, if necessary.

Response: Comment is acknowledged.

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding the economic impact of this action. As a result, a regulatory flexibility analysis was not prepared.

This action has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

This final rule does not contain policies with federalism implications under E.O. 13132.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 30, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraph (z)(2) introductory text is revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(z) * * *

(2) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, beginning May 1, 2003, it is unlawful for an owner or operator of a vessel issued a valid Federal multispecies permit to do any of the following:

* * * * *

3. In § 648.80, the first sentence of paragraph (a)(3)(i)(A); paragraphs (a)(3)(i)(B), (a)(4)(i)(B) and (a)(4)(i)(C); the first sentences of paragraphs (a)(7)(i)(B), (a)(8)(i)(A), and (a)(8)(i)(B); paragraph (a)(9)(i)(D)(*1*) and (a)(9)(i)(D)(*2*); the first sentence of paragraphs (a)(14)(i)(B) and (a)(14)(i)(C); paragraph (b)(3)(i)(A); the first sentence of paragraph (b)(3)(i)(B); and paragraph (c)(2)(iii) are revised to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(3) * * *

(i) * * *

(A) Through April 30, 2003, an owner or operator of a vessel fishing in the northern shrimp fishery described in this section under this exemption may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake--up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster--up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. * * *

(B) Beginning May 1, 2003, an owner or operator of a vessel fishing for northern shrimp may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake--up to 100 lb (45.36 kg); and American lobster--up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

* * * * *

(4) * * *

(i) * * *

(B) Through April 30, 2003, an owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined--up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish, and red hake--up to 10 percent each, by weight, of all other species on board; monkfish and monkfish parts--up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster--up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Beginning May 1, 2003, an owner or operator of a vessel fishing in this area is subject to the mesh size restrictions specified in paragraph (a)(4)(i)(D) of this section and may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined--up to a maximum of 10,000 lb (4,536 kg), except for the allowable incidental species listed in paragraph (a)(4)(i)(B) of this section.

* * * * *

(7) * * *

(i) * * *

(B) *Small-mesh multispecies.* Beginning May 1, 2003, an exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of small-mesh multispecies bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of small-mesh multispecies caught as bycatch is, or can be reduced to, less than 10 percent, by weight, of total catch and

that such exemption will not jeopardize fishing mortality objectives. * * *

* * * * *

(8) * * *

(i)(A) Unless otherwise prohibited in § 648.81, through April 30, 2003, a vessel subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(3)(ii) or (a)(8)(ii) of this section and § 648.86(d) from July 15 through November 15, when fishing in Small-mesh Area 1, and from January 1 through June 30, when fishing in Small-mesh Area 2. * * *

(B) Unless otherwise prohibited in § 648.81, beginning May 1, 2003, in addition to the requirements specified in paragraph (a)(8)(i)(A) of this section, nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length. * * *

* * * * *

(9) * * *

(i) * * *

(D)(*1*) Through April 30, 2003, the following species may be retained, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake--up to 200 lb (90.72 kg); monkfish and monkfish parts--up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster--up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts--up to 10 percent, by weight, of all other species on board.

(*2*) Beginning May 1, 2003, all nets must comply with a minimum mesh size of 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length. Vessels may retain the allowable incidental species listed in paragraph (a)(9)(i)(D)(*1*) of this section.

* * * * *

(14) * * *

(i) * * *

(B) Up to and including April 30, 2003, all nets must comply with a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restriction as specified in paragraph (a)(14)(i)(D) of this section. * * *

(C) Beginning May 1, 2003, in addition to the requirements specified in paragraph (a)(14)(i)(B) of this section, all nets must comply with a minimum mesh size of 3-inch (7.62 cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(14)(i)(D) of this section. * * *

* * * * *

(b) * * *

(3) * * *

(i) * * *

(A) Through April 30, 2003, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(B) Beginning May 1, 2003, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may not use nets with mesh size less than 3 in (7.62 cm), unless exempted pursuant to paragraph (b)(4) of this section, and may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake--up to 10,000 lb (4,536 kg), and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the possession limit restrictions specified under § 648.86. * * *

* * * * *

(c) * * *

(2) * * *

(iii) *Small mesh beginning May 1, 2003*. Beginning May 1, 2003, nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length.

* * * * *

4. In § 648.86, the headings to paragraphs (d) and (e) are revised to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(d) *Small-mesh multispecies through April 30, 2003.*

* * * * *

(e) *Small-mesh multispecies beginning on May 1, 2003*--

* * * * *

5. In § 648.90, the last sentence of paragraph (a)(2) is revised to read as follows:

§ 648.90 Multispecies framework specifications.

(a) * * *

(2) * * * In addition, for the 2003 fishing year, the WMC must consider, and recommend as appropriate, management options other than the default measures for small-mesh multispecies management (mesh and possession limit restrictions for small-mesh multispecies beginning May 1, 2003).

* * * * *

[FR Doc. 02–2726 Filed 2–4–02; 8:45 am]

BILLING CODE 3510–22–S

Rules and Regulations

Federal Register

Vol. 67, No. 24

Tuesday, February 5, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 330 and 351

RIN 3206–AJ18

Placement Assistance and Reduction in Force Notices

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final placement assistance and reduction in force regulations to replace references to the repealed Job Training Partnership Act with references to the Workforce Investment Act of 1998.

DATES: These regulations are effective February 5, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Galemore, 202–606–0960, FAX 202–606–2329, TDD (202) 606–0023, or e-mail at *pjgalemo@opm.gov.*

SUPPLEMENTARY INFORMATION: On October 26, 2000, OPM published interim regulations at 65 FR 64133 to replace references to the repealed Job Training Partnership Act (JTPA) with references to its successor statute, the Workforce Investment Act (WIA) of 1998. OPM is making the interim regulations final without further revision.

Background

The JTPA, Public Law 97–300, October 12, 1982, as amended, required the States to provide employment assistance programs to dislocated workers and others as defined in the Act. Since 1995, through OPM regulations published in §§ 330.405, 351.803, and 351.807 of title 5, Code of Federal Regulations (CFR), agencies have been required to give JTPA program information to employees in their specific reduction in force notices.

The JTPA was repealed effective July 1, 2000. States now provide placement assistance programs under the WIA, Public Law 105–220, August 7, 1998. The Omnibus Consolidated and Emergency Supplemental Appropriations Act, Public Law 105–277, section 405, October 21, 1998, amended the reduction in force statute at 5 U.S.C. 3502(d) to reflect this change in the controlling statute.

The interim regulations were issued solely to replace references to the repealed JTPA with references to its successor statute, the WIA. No other wording was changed.

The interim regulations were effective November 27, 2000. Interested parties could submit written comments to OPM concerning the regulations during the 60-day period following publication.

Comments

OPM did not receive any comments on the interim regulations.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 330 and 351

Administrative practice and procedure, Armed forces reserves, Government Employees, Individuals with disabilities.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the interim regulations revising 5 CFR parts 330 and 351 which were published at 65 FR 64133 on October 26, 2000, are adopted as final regulations without change.

[FR Doc. 02–2672 Filed 2–4–02; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 330, 332, 351, 353

RIN 3206–AJ32

Career Transition Assistance for Surplus and Displaced Federal Employees

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations making the current career transition assistance programs permanent to help Federal employees displaced from their jobs by downsizing. These regulations adopt interim regulations published June 4, 2001, as final.

EFFECTIVE DATE: March 7, 2002.

FOR FURTHER INFORMATION CONTACT: Jacqueline Yeatman, (202) 606–0960, FAX (202) 606–2329, or by email at: *jryeatma@opm.gov.*

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2001, OPM published interim regulations removing the sunset date from the Career Transition Assistance Plan (CTAP) and Interagency Career Transition Assistance Plan (ICTAP). These regulations also permanently eliminated the Interagency Placement Program (IPP), deleting references to the IPP in parts 332, 351 and 353 and replacing them with ICTAP where appropriate.

Comments

Four Federal agencies commented on these regulations. All four agreed with the regulations as published, supporting OPM's decision to permanently replace the IPP with CTAP and ICTAP and to eliminate the agency reporting requirements. One agency suggested that we consider redesignating CTAP as ACTAP (Agency Career Transition Assistance Plan) to reduce confusion between this agency placement program and the ICTAP, the interagency program. We believe the best way to implement such a change would be in conjunction with future proposed regulations.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Part 330

Armed forces reserves, Government employees.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the interim rule amending 5 CFR parts 330, 332, 351 and 353 which was published at 66 FR 29895 on June 4, 2001, as adopted as a final rule without change.

[FR Doc. 02–2674 Filed 2–4–02; 8:45 am]

BILLING CODE 6325–38–M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

RIN 3206–AJ14

Reduction in Force Retreat Rights

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation that clarifies a released employee's potential right to ''Retreat'' to another position in a reduction in force. This regulation states that an agency determines the potential grade range of a released employee's retreat right solely upon the position held by the employee on the effective date of the reduction in force rather than the grade range of the position to which the employee may have a right to retreat.

DATES: This regulation is effective on February 5, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon, FAX 202–606–2329.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 2000, OPM published an interim regulation at 65 FR 62991 that clarifies OPM's longstanding policy on the procedure that an agency uses to determine a released employee's potential right to ''Retreat'' to another position in a reduction in force.

The interim regulation stated that an agency determines the grade or grade-interval range of a released employee's retreat rights solely on the basis of the official position of record held by the employee on the effective date of the reduction in force. The regulation also stated that an agency does not consider the grade or grade-interval range of the position to which the employee may have a retreat right.

The interim regulation was effective upon publication in the **Federal Register**. Interested parties could submit written comments to OPM concerning the regulation in the 60 day period following publication.

Comments

OPM did not receive any comments on the regulation.

Final Regulation

The interim regulation OPM published at 65 FR 62991 is published as a final regulation without further revision.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This regulation has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 351

Administrative practice and procedure, Government employees.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the interim regulation published at 65 FR 62991 on October 20, 2000, is adopted as final without change.

[FR Doc. 02–2673 Filed 2–4–02; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE172; Special Conditions No. 23–110–SC]

Special Conditions: GROB–WERKE, Burkhurt Grob e.k., Unternehmensbereich Luft-und Raumfahrt, Model G120A Airplane, Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions, request for comments.

SUMMARY: These special conditions are issued to GROB–WERKE, Burkhurt Grob e.k., Unternehmensbereich Luft-und Raumfahrt (GROB–WERKE), for a type certificate for the G120A airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of an electronic attitude direction indicator for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is January 29, 2002. The Federal Aviation Administration (FAA) must receive any comments on this rule on or before March 7, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. CE172, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone 816–329–4146; facsimile 816–329–4149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these

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

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE172.'' The postcard will be date stamped and returned to the commenter.

Background

On February 6, 2001, GROB–WERKE, Burkhurt Grob e.k., Unternehmensbereich Luft-und Raumfahrt, Lettenbachstrasse 9, 86874, Tussenhausen-Mattsies, Germany, made an application to the FAA for a type certificate for the G120A airplane. The proposed modification incorporates a novel or unusual design feature, such as electronic attitude direction indicator that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, GROB–WERKE must show that the G120A airplane meets the following provisions, or the applicable regulations in effect on the date of application, 14 CFR part 23 at Amendment 23–54.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions are normally issued in accordance with § 11.19 as required by and become a part of the type certification basis in accordance with § 21.17 (a)(2).

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

Novel or Unusual Design Features

GROB–WERKE plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include an electronic attitude direction indicator, which is susceptible to the HIRF environment, which was not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. In addition, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows: The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

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

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

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts rms per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF

requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the G120A airplane. Should GROB–WERKE apply at a later date for a design approval to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the specified airplane model(s). It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, §§ 21.16 and 21.101; and 14 CFR part 11, 11.19.

The Special Conditions

Accordingly, by the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the G120A airplane manufactured by GROB–WERKE, which includes an electronic attitude direction indicator.

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF). Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

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

Issued in Kansas City, Missouri, on January 29, 2002.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2719 Filed 2–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–3]

Amendment to Class D Airspace; Eglin AFB, FL; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final rule (99–ASO–19), which was published in the **Federal Register** on December 14, 1999, (64 FR 69631), amending Class D airspace at Eglin AFB, FL. This action corrects errors in the legal description for the Class D airspace at Eglin AFB, FL.

EFFECTIVE DATE: 0901 UTC, April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Background

Federal Register Document 99–32347, Airspace Docket No. 99–ASO–19, published on December 14, 1999, (64 FR 69631), amends Class D airspace at Eglin AFB, FL. Errors were discovered in the legal description, describing the Class D airspace area. One word, ''of'' has been changed to ''to'', and the word ''east'' has been inserted to more clearly describe the airspace boundaries. These actions correct the errors.

Designations for Class D airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

Need for Correction

As published, the final rule contains errors which incorrectly describe the geographical boundaries of the Class D airspace area. Accordingly, pursuant to the authority delegated to me, the legal description for the Class D airspace area at Eglin AFB, FL, incorporated by reference at § 71.1, 14 CFR 71.1, and published in the **Federal Register** on December 14, 1999, (64 FR 69631), is corrected by making the following correcting amendment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

In consideration of the foregoing, the Federal Aviation Administration corrects the adopted amendment, 14 CFR part 71, by making the following correcting amendment:

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

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

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

§ 71.1 [Corrected]

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

Paragraph 5000 Class D Airspace

ASO FL D Eglin AFB, FL [CORRECTED]

Eglin AFB, FL
(Lat. 30°29′00″N, long. 86°31′34″W)
Destin—Fort Walton Beach
(Lat. 30°24′00″N, long. 86°28′17″W)
Destin NDB
(Lat. 30°24′18″N, long. 86°28′26″W)
Duke Field
(Lat. 30°39′07″N, long. 86°31′23″W)
Hurlburt Field
(Lat. 30°25′44″N, long. 86°41′20″W)

That airspace extending upward from the surface, to and including 2,600 feet MSL within a 5.5-mile radius of Eglin AFB and within a 4-mile radius of Destin—Fort Walton Beach Airport and within 2.5 miles each side of the 147° bearing from the Destin NDB, extending 7 miles southeast of the NDB, excluding the portion north of a line connecting the 2 points of intersection within a 5.2-mile radius circle centered on Duke Field; excluding the portion southwest of a line connecting the 2 points of intersection within a 5.3-mile radius of Hurlburt Field; excluding a portion east of a line beginning at lat. 30°30′43″N., long 86°26′21″W., extending north to the 5.5-mile radius and north of a line beginning at lat. 30°30′43″N., long. 86°26′21″W. extending east to the 5.5-mile radius.

* * * * *

Issued in College Park, Georgia, on January 29, 2002.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–2721 Filed 2–4–02; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–45371]

Exemption of Transactions in Certain Options and Futures on Security Indexes From Section 31 of the Exchange Act

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is, by rule, exempting two classes of securities from the fee and assessment requirements of Section 31 of the Securities Exchange Act of 1934 (''Exchange Act''): options on narrow-based security indexes and futures on narrow-based security indexes. In light of the very low amount of Section 31 fees currently collected on options on narrow-based security indexes, the Commission is granting the exemption for options on such indexes to relieve certain national securities exchanges of the burden of having to calculate whether an index is narrow-based or broad-based. The Commission is granting the exemption for futures on narrow-based security indexes to promote a level playing field between options and futures.

EFFECTIVE DATE: February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Gaw, Special Counsel, 202–942–0158, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background and Summary

Section 31 of the Exchange Act [1] requires national securities exchanges and national securities associations to pay fees and assessments to the Commission based on sales of or transactions in certain securities. Specifically, a national securities exchange is required to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted on that exchange,[2] and a national securities association is required to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted by or through any member of the association otherwise than on a national securities exchange.[3] In addition, an exchange or association is required to pay to the Commission an assessment for each round turn transaction on a security future.[4] Section 31(f) of the Exchange Act [5] provides that ''[t]he Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee or assessment imposed by [Section 31], if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system.''

On January 16, 2002, President Bush signed into law the Investor and Capital Markets Fee Relief Act (''Fee Relief Act'') [6] which, among other things, amends Section 31 to provide that ''options on securities indexes (excluding a narrow-based security index)'' are exempt from the fee requirements of Section 31. Thus, as provided by statute, national securities exchanges and national securities associations are not required to pay to the Commission fees on sales of options on security indexes that are not narrow-based security indexes [7] (*i.e.,* are ''broad-based security indexes''). The exclusion of sales of options on broad-based indexes from Section 31 fees is consistent with the treatment of futures on broad-based indexes, which compete with options on broad-based indexes and are not subject to assessments under Section 31.

The Commission today is amending Rule 31–1 under the Exchange Act [8] by adding new paragraphs (f) and (g) to exempt options and futures, respectively, on narrow-based security indexes from Section 31. The Commission also is adopting conforming amendments to the preliminary note in Rule 31–1.

II. Discussion

A. Exemption for Options on Narrow-Based Security Indexes

The Exchange Act defines a narrow-based security index to be an index that has any one of the following four characteristics: (1) It has nine or fewer component securities; (2) any one of its component securities comprises more than 30 percent of its weighting; (3) any group of five of its component securities together comprise more than 60 percent of its weighting; or (4) the lowest weighted component securities

[1] 15 U.S.C. 78ee.

[2] *See* 15 U.S.C. 78ee(b).

[3] *See* 15 U.S.C. 78ee(c).

[4] *See* 15 U.S.C. 78ee(d).

[5] 15 U.S.C. 78ee(f).

[6] Pub. L. No. 107–123, 115 Stat. 2390 (2002).

[7] The term ''narrow-based security index'' is defined in Section 3(a)(55)(B) of the Exchange Act, 15 U.S.C. 78c(a)(55)(B).

[8] 17 CFR 240.31–1.

comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50 million (or in the case of an index with 15 or more component securities, $30 million).[9] This definition was added to the Exchange Act by the Commodity Futures Modernization Act of 2000 which, among other things, authorized the trading of futures on single securities and on narrow-based security indexes.

Trading of futures on narrow-based security indexes is subject to joint regulation by the Commission and the Commodity Futures Trading Commission (''CFTC''), whereas trading of futures on broad-based security indexes is subject to the sole jurisdiction of the CFTC. To ensure that trading of an index future is not subject to one regulatory framework one instant and another regulatory framework the next instant, an index is excluded from the definition of ''narrow-based security index'' if: (1) a future on such index traded on a CFTC-regulated market for at least 30 days as a future on a broad-based security index; and (2) such index has not had the above characteristics of a narrow-based security index for more than 45 business days over three calendar months.[10] This exclusion, in effect, creates a tolerance period that permits trading in futures on broad-based security indexes to continue to be regulated exclusively by the CFTC if the index becomes narrow-based for 45 or fewer business days in a three-month period.[11]

This statutory tolerance period applies only when a future is trading on an index. When a future is not trading on an index, the index can switch continuously between a broad-based security index and a narrow-based security index. Thus, when a future is not trading on an index, an option on that index could be an option on a narrow-based security index one instant—and thus be subject to Section 31 fees—and be an option on a broad-based security index—and thus be exempt from Section 31 fees—just an instant later. Exchanges and associations must, therefore, continuously monitor the status of an index underlying an option and pay Section 31 fees to the Commission only for sales executed when the underlying index was narrow-based.

Currently, the trading volume of options on narrow-based security indexes, and thus the amount of Section 31 fees levied on such trading, is insignificant. The fees paid by the exchanges to the Commission in 2001 for all sales of options on indexes that were, or in the near future might become, narrow-based security indexes was below $35,000.[12] In light of the currently low dollar volume of sales of options on narrow-based security indexes and the resources that exchanges and associations must devote to monitoring the narrow-based status of the underlying indexes, the Commission believes that it is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system to exempt options on narrow-based security indexes from the fee requirements of Section 31.

To the extent that the dollar volume of sales of options on narrow-based security indexes increases, the Commission may reevaluate its decision today to exempt such products from Section 31 fees.[13]

B. Exemption for Futures on Narrow-Based Security Indexes

In addition, the Commission is exempting futures on narrow-based security indexes from the fee assessment requirements of Section 31. The Commission believes that such an exemption is necessary and appropriate to maintain a level competitive playing field between futures on narrow-based security indexes and options on narrow-based security indexes that compete with one another. The Commission notes that one of the reasons that Congress relieved exchanges and associations from the requirement to pay Section 31 fees on options on security indexes (excluding narrow-based security indexes) is that futures on such indexes are not subject to Section 31 assessments. Similarly, the Commission believes that an exemption for futures on narrow-based security indexes is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system. As with the exemption for options on narrow-based security indexes, the Commission may reevaluate its decision today to exempt futures on narrow-based security indexes from Section 31 assessments after trading commences in these products.

III. Consideration of the Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act[14] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act[15] requires the Commission, when promulgating rules under the Exchange Act, to consider the impact any such rules would have on competition. Section 23(a)(2) further provides that the Commission may not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission has considered the effect of the amendments to Rule 31–1 on efficiency, competition, and capital formation. The Commission does not believe that these amendments will impose any burden on competition. To the contrary, the Commission believes that the amendments will promote a level playing field between options and futures on narrow-based security indexes.

The Commission also has considered whether exempting options and futures on narrow-based security indexes from Section 31 might divert trading activity from securities that are not exempt from Section 31 to these options and futures that are exempt. However, the Commission views this prospect as highly unlikely. Options and futures on single stocks and options and futures on narrow-based security indexes are, in practice, very imperfect substitutes for each other.[16] Given this imperfection, the very small per-transaction Section 31 fee on transactions in the single-stock options and futures would not likely be the controlling factor in a market participant's decision to purchase index

[9] *See* 15 U.S.C. 78c(a)(55)(B)(i)—(iv).

[10] *See* 15 U.S.C. 78c(a)(55)(C)(iii).

[11] If the index becomes narrow-based for *more* than 45 days over three consecutive calendar months, the Exchange Act then provides an additional grace period of three months during which the index is excluded from the definition of narrow-based security index. *See* 15 U.S.C. 78c(a)(55)(E).

[12] By contrast, the Commission collected a total of approximately $1.1 billion in Section 31 fees in the twelve months from September 2000 to August 2001.

[13] The Commission could consider, for example, adopting rules that establish a tolerance period for security indexes underlying options that is similar to the statutory tolerance period for futures on security indexes. *See supra* notes 10–11 and accompanying text.

[14] 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78w(a)(2).

[16] A market participant would view an option or future on a narrow-based security index as a close substitute for individual options or futures on the component securities only if the market participant desired to have an interest in all of the index's component securities, and in the proportion that such securities were weighted in the index.

options or futures rather than options or futures on the index's component securities.

IV. Administrative Procedure Act and Other Considerations

Section 553(b) of the Administrative Procedure Act (''APA'') [17] generally requires an agency to publish notice of a proposed rule making in the **Federal Register**. This requirement does not apply, however, if the agency ''for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [18]

Although President Bush signed the Fee Relief Act into law on January 16, 2002, it became effective retroactively to December 28, 2001.[19] Thus, in complying with the requirements of Section 31, national securities exchanges and national securities associations currently must continuously monitor whether an index underlying an index option is narrow-based or broad-based. The Commission finds that it is unnecessary and contrary to the public interest to continue to require exchanges and associations to incur this burden and assess the required fees during a notice and comment period when the amount of such fees would be an infinitesimal portion of the total fees collected and paid to the Commission under Section 31. Therefore, the Commission finds good cause to waive the APA's notice and comment provisions with respect to the amendments to Rule 31–1.

The APA also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[20] However, this requirement does not apply if the rule grants or recognizes an exemption or relieves a restriction [21] or if the agency finds good cause not to delay the effective date.[22] The Commission finds that the amendments to Rule 31–1 meet both criteria. The amendments exempt two classes of securities—options on narrow-based security indexes and futures on narrow-based security indexes—from the fee assessments of Section 31. Moreover, as discussed above, making the rule amendments effective immediately will spare exchanges and associations the burden and expense of monitoring indexes and assessing the required fees for the period during which the amendments are not effective. Therefore, the Commission finds good cause to issue the rule amendments without a delayed effective date.

The Regulatory Flexibility Act [23] is not applicable to the promulgation of the rule amendments. The flexibility analysis requirement of the Regulatory Flexibility Act applies only if the Commission would be required by the APA to publish general notice of the proposed rulemaking.[24] As discussed above, the Commission has determined that the APA does not require it to solicit public comment in this case.

The Paperwork Reduction Act [25] is not applicable to the promulgation of the amendments because they do not impose any collection of information requirements that would require the approval of the Office of Management and Budget.

V. Consideration of Costs and Benefits

A. Costs

Eliminating Section 31 fees for transactions in options or futures on narrow-based indexes theoretically could result in slightly higher fees on transactions in other securities that do not benefit from a Section 31 exemption. The Exchange Act, as amended by the Fee Relief Act, requires the Commission to set rates for Section 31 fees so that such rates are reasonably likely to produce aggregate fee collections that equal amounts prescribed by the Fee Relief Act.[26] Thus, although the Commission may exempt certain securities from Section 31, it cannot reduce the total amount of fees that it is required to collect under Section 31. An exemption granted to certain securities could, therefore, result in a higher rate paid on transactions in the remaining, non-exempted securities. However, because the fees collected on trades in options on narrow-based security indexes are very small relative to the overall fees collected on non-exempt securities transactions in the United States,[27] the Commission concludes that the amendments to Rule 31–1 adopted today will have a negligible effect, if any, on the fees paid on these other securities transactions.[28] Furthermore, the Commission believes that, although futures on narrow-based security indexes have not yet begun trading, the dollar volume of trading in these products will be very small for the foreseeable future. Therefore, the Commission also believes that an exemption for futures on narrow-based security indexes will have a negligible effect, if any, on the fees paid on other securities transactions.

B. Benefits

The benefits of the amendments to Rule 31–1 adopted today will equal the costs saved: (1) By certain national securities exchanges from not having to monitor the indexes underlying options for purposes of Section 31; (2) by certain national securities exchanges from no longer having to collect Section 31 fees from market participants for transactions in options on narrow-based security indexes; and (3) by market participants who effect transactions in options on narrow-based security indexes and who will no longer have to pay Section 31 fees on such transactions.

1. Benefits From Relieving Monitoring Burdens

With the adoption of the amendments to Rule 31–1, all index options and index futures—whether based on narrow-based or broad-based indexes—are now exempt from Section 31 fees. The Commission believes that three national securities exchanges will derive certain benefits from not having to monitor whether an index that underlies an option is narrow-based or broad-based for purposes of Section 31.

In August 2001, the Commission adopted a rule that established a methodology for calculating the market value of a narrow-based security index (''Index Calculation Rule'').[29] In adopting the Index Calculation Rule, the Commission estimated the costs that would be imposed on national securities exchanges, designated contract markets, derivatives transaction execution facilities, and foreign boards of trade to calculate the market value of security indexes in accordance with the rule. As noted above, the Fee Relief Act excluded from Section 31 options on broad-based security indexes but not options on narrow-based security indexes. Thus, when the Fee Relief Act

[17] 5 U.S.C. 553(b).

[18] 5 U.S.C. 553(b)(B).

[19] *See* Section 11 of the Fee Relief Act.

[20] *See* 5 U.S.C. 553(d).

[21] *See* 5 U.S.C. 553(d)(1).

[22] *See* 5 U.S.C. 553(d)(3).

[23] 5 U.S.C. 601–612.

[24] *See* 5 U.S.C. 603(a).

[25] 44 U.S.C. 3501 *et seq.*

[26] *See* 15 U.S.C. 78ee(j).

[27] *See supra* note 12 and accompanying text.

[28] Assuming, for the sake of argument, that the Commission would collect $35,000 in fees on trades in options on narrow-based security indexes in the absence of this exemption in fiscal year 2003, this amount would have represented only 0.0041% of the $849 million in Section 31 fees targeted for collection in fiscal year 2003 under Section 31, as amended by the Fee Relief Act. This amount is so small that it would not affect the fee rate that the Commission is required to publish for fiscal year 2003 pursuant to Section 31. *See* 15 U.S.C. 78ee.

[29] *See* Securities Exchange Act Release No. 44724 (August 20, 2001), 66 FR 44490 (August 23, 2001) (adopting Rules 3a55–1 to 3a55–3).

became effective retroactively to December 28, 2001, three additional national securities exchanges [30] were required adhere to the Index Calculation Rule to ascertain whether the indexes underlying their option products were narrow-based or broad-based, for purposes of paying Section 31 fees only on the correct index options. The Commission believes that one of the benefits of the rule amendments adopted today will be the elimination of the monitoring costs for these three exchanges.

In the adopting release for the Index Calculation Rule, the Commission—upon a suggestion made by one of the commenters—assumed that two full-time staff persons, one supervisory and the other clerical, would be required to apply the new rule. The Commission estimated the total annual cost of employing one clerical staff person would be approximately $57,600, and that the total annual cost of employing a supervisory staff person would be approximately $180,000. The Commission concluded, therefore, that the total cost to each affected exchange to engage the staff necessary to comply with the Index Calculation Rule would be $237,600 annually.[31] Further, the Commission anticipated that there would be systems implementation costs associated with the Index Calculation Rule. The Commission estimated that each affected exchange would incur a one-time system installation fee of $300 and additional systems costs of $25,800 annually.[32]

The Commission believes that a Section 31 exemption for transactions in options on narrow-based security indexes will relieve three national securities exchanges of the compliance costs associated with the Index Calculation Rule. These exchanges will no longer incur the costs of monitoring indexes in a manner consistent with that rule for purposes of paying Section 31 fees, which costs were estimated by the Commission in the adopting release. Thus, the Commission believes that each of the three exchanges will avoid a one-time system installation fee of $300; additional systems costs of $25,800 annually; and staffing costs of $237,600 annually.

A futures market would derive no corresponding benefit from a Section 31 exemption for futures on narrow-based security indexes because the futures market will still be required to monitor the indexes underlying its futures products, in a manner prescribed by the Index Calculation Rule, to ensure compliance with the appropriate regulatory framework.

2. Benefits of Relieving Collection Burdens

Furthermore, the Commission believes that three national securities exchanges will derive a small benefit from not having to collect and pay to the Commission Section 31 fees on options on narrow-based security indexes. However, the Commission believes that the collection and payment of Section 31 fees for options on narrow-based security indexes required only minor configurations to the existing systems of the exchanges, and that discontinuing such collection and payment will yield only very small cost savings to these exchanges.

The Commission does not believe that the futures markets will derive any corresponding benefit from a Section 31 exemption on transactions in futures on narrow-based security indexes. Currently, futures on narrow-based security indexes are not traded on any U.S. futures market. Furthermore, the Commission does not believe that these markets have current plans to trade such products in the near future. Therefore, because the futures markets would not in any case have had to devote resources to the collection and payment of Section 31 fees on transactions in futures on narrow-based security indexes, the Commission does not believe that the exemption granted today for such futures would create any benefits for the futures markets. The Commission believes, nevertheless, that such an exemption is necessary to establish a level playing field between options and futures on narrow-based security indexes at such time as these futures may be traded.

3. Benefits of Eliminating Section 31 Fees Payable By Market Participants Who Effect Transactions in Options or Futures on Narrow-based Security Indexes

One benefit of the amendments to Section 31 adopted today is that market participants who effect transactions in options or futures on narrow-based security indexes will not have to pay Section 31 fees on such transactions. However, as noted above, the Commission acknowledges that this benefit is offset by the increase in the rate of Section 31 fees that must be paid by market participants on transactions in other, non-exempted securities.

VI. Statutory Authority

The amendments to Rule 31–1 under the Exchange Act are being adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly Sections 23(a) and 31 of the Exchange Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Rule Amendment

For the reasons set forth above, the Commission amends Part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

* * * * *

2. Section 240.31–1 is amended by:

a. Removing the phrase ''other than narrow-based security indexes'' in the first sentence of the Preliminary Note;

b. Removing the period at the end of paragraph (a) and adding in its place a ''.'';

c. Removing the ''and'' at the end of paragraph (d);

d. Removing the period at the end of paragraph (e) and adding in its place a '';''; and

e. Adding paragraphs (f) and (g) to read as follows:

§ 240.31–1 Securities transactions exempt from transaction fees.

* * * * *

(f) Sales of options on narrow-based security indexes; and

(g) Round turn transactions in futures on narrow-based security indexes.

Dated: January 31, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2764 Filed 2–1–02; 10:26 am]

BILLING CODE 8010–01–P

[30] Currently, there are five registered national securities exchanges that trade options. Only three of them—the American Stock Exchange, the Chicago Board Options Exchange, and the Philadelphia Stock Exchange—trade options on security indexes, some of which are narrow-based. Thus, a Section 31 exemption for options on narrow-based security indexes will affect only these three exchanges.

[31] *See* 66 FR at 44510.

[32] *See id.*

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8972]

RIN 1545–AW05

Averaging of Farm Income; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations that were published in the **Federal Register** on Tuesday, January 8, 2002 (67 FR 817) relating to the election to average farm income in computing tax liability.

DATES: This correction is effective January 8, 2002.

FOR FURTHER INFORMATION CONTACT: John M. Moran (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 1301 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8972), that were the subject of FR Doc. 02–183, is corrected as follows:

§ 1–1301–1 [Corrected]

On page 821, column 1, § 1.1301–1, paragraph (d)(3)(ii), *Example* (ii), line 9, the language ''years 1990, 2000, and 2001. T's 2002 tax'' is corrected to read ''years 1999, 2000, and 2001. T's 2002 tax.''

LaNita Van Dyke,

Acting Chief, Regulations Unit, Office of Special Counsel, (Modernization and Strategic Planning).

[FR Doc. 02–2744 Filed 2–4–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 724 and 846

RIN 1029–AC02

Individual Civil Penalties—Change of Address for Appeals

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is revising its regulations governing individual civil penalties to reflect a change of address for the Department of the Interior's Office of Hearings and Appeals (OHA). OHA is moving to a new location in Arlington, Virginia, effective February 11, 2002.

DATES: This rule is effective February 11, 2002.

FOR FURTHER INFORMATION CONTACT: Andy DeVito, Office of Surface Mining Reclamation and Enforcement, Room 117, South Interior Building, 1951 Constitution Avenue NW, Washington, DC 20240; Telephone 202–208–2701.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Procedural Matters and Required Determinations.

I. Background

In 30 CFR parts 724 and 846, 0SM has established procedures for the assessment of individual civil penalties against a corporate director, officer, or agent of a corporate permittee who knowingly and willfully authorized, ordered, or carried out a violation or a failure or refusal to comply. Included in the procedures are provisions allowing the individual to appeal a proposed individual civil penalty assessment to OHA which is part of the Department of the Interior. OHA consists of a headquarters office, located in Arlington, Virginia, and nine field offices located throughout the country. Since 1970, the headquarters office has been located at 4015 Wilson Boulevard, and that address is included in one section each within 30 CFR parts 724 and 846.

Effective February 11, 2002, the OHA headquarters office is being relocated to 801 North Quincy Street, Arlington, Virginia. In anticipation of that move, OSM is revising its administrative appeals regulations to reflect OHA's new street address.

II. Procedural Matters and Required Determinations.

Administrative Procedure Act

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. OSM has determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule because the rule merely changes an address contained in the regulations and does not impose any new OSM regulatory requirements. These same reasons also provide OSM with good cause under 5 U.S.C. 553(d)(3) of the APA to have the regulation become effective on a date that is less than 30 days after the date of publication in the **Federal Register**.

Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

a. The change of address 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.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This rule does not raise novel legal or policy issues.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not considered a significant energy action under Executive Order 13211. The change of address will not have a significant affect on the supply, distribution, or use of energy.

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.*). As previously stated, the change of address will not have an adverse economic impact. Further, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

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 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 U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

Unfunded Mandates

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, Tribal, or local governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1534) is not required.

Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

Executive Order 12612—Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment for the reasons discussed above.

Executive Order 12988—Civil Justice Reform

In accordance with 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 Order.

Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act to the Office of Management and Budget is not required.

National Environmental Policy Act

OSM has reviewed this rule and determined that it is categorically excluded from the National Environmental Policy Act process in accordance with the Departmental Manual 516 DM 2, Appendix 1.10. (Categorical Exclusion for policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature).

List of Subjects

30 CFR Part 724

Administrative practice and procedure, Penalties, Surface mining, underground mining.

30 CFR Part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Dated: January 23, 2002.

J. Steven Griles,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, 30 CFR parts 724 and 846 are amended as set forth below:

PART 724—INDIVIDUAL CIVIL PENALTIES

1. The authority citation for part 724 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 724.17 [Amended]

2. In § 724.17(b)(l), remove ''4015 Wilson Boulevard'' and add ''801 North Quincy Street.''

PART 846—INDIVIDUAL CIVIL PENALTIES

3. The authority citation for part 846 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 846.17 [Amended]

4. In § 846.17(b)(1), remove ''4015 Wilson Boulevard'' and add ''801 North Quincy Street.''

[FR Doc. 02–2746 Filed 2–4–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[AL–071–FOR]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposed revisions to and additions of rules concerning valid existing rights. Alabama revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: February 5, 2002.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282. Internet: *aabbs@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Alabama 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 Alabama program on May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 20, 1982, **Federal Register** (47 FR 22062). You can find later actions on the

Alabama program at 30 CFR 901.15 and 901.16.

II. Submission of the Amendment

By letter dated August 28, 2001 (Administrative Record No. AL–0647), Alabama sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Alabama sent the amendment in response to our letter dated August 23, 2000 (Administrative Record No. AL–0644), that we sent to Alabama under 30 CFR 732.17(c).

We announced receipt of the proposed amendment in the October 18, 2001, **Federal Register** (66 FR 52879). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on November 19, 2001. Because no one requested a public hearing or meeting, we did not hold one. We did not receive any comments.

During our review of the amendment, we identified concerns about a number of editorial inconsistencies, cross-reference errors, and wording ambiguities. We notified Alabama of these concerns by letter dated December 4, 2001 (Administrative Record No. AL–0652). However, because none of these concerns were substantive in nature, we are proceeding with this final rule.

III. OSM's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment to the Alabama program.

Any revisions that we do not discuss below concern minor wording changes or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Alabama's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State rules listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State rules and the Federal regulations are minor.

Topic	State rule	Federal counterpart regulation
Definition of significant recreational, timber, economic, or other values incompatible with surface coal mining operations.	880–X–2A–.06	30 CFR 761.5
Definition of valid existing rights	880–X–2A–.06	30 CFR 761.5
Areas where surface coal mining operations are prohibited or limited.	880–X–7B–.06(a) through (g)	30 CFR 761.11(a) through (g)
Exception for existing operations	880–X–7B–.07	30 CFR 761.12
Procedures for relocating or closing a public road or waiving the prohibition on surface coal mining operations within the buffer zone of a public road.	880–X–7B–.09	30 CFR 761.14
Procedures for waiving the prohibition of surface coal mining operations within the buffer zone of an occupied dwelling.	880–X–7B–.10	30 CFR 761.15
Submission and processing of requests for valid existing rights	880–X–7B–.11	30 CFR 761.16
Regulatory authority obligations at time of permit application review.	880–X–7B–.12	30 CFR 761.17
General requirements for coal exploration on lands designated unsuitable for surface mining operations.	880–X–8C–.05(1)(g)	30 CFR 772.12(b)(14)
Approval or Disapproval of exploration applications	880–X–8C–.06(2)(e)	30 CFR 772.12(d)(2)(iv)
Relationship to areas designated unsuitable for mining	880–X–8D–.08(3)	30 CFR 778.16(c)
Protection of public parks and historic places	880–X–8F–.14(1)(2)	30 CFR 780.31(a)(2)

Because the above State rules have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

B. Revisions to Alabama's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

Alabama proposes to add a new Rule 880–X–7B–.08 to describe the procedures applicants for surface coal mining permits and the regulatory authority must follow when an applicant intends to claim the exception provided in Rule 880–X–7B–.06(b) to conduct surface coal mining operations on Federal lands within a national forest. Specifically, paragraph (a) provides that an applicant must request the Alabama Surface Mining Commission (ASMC) to obtain the Secretarial findings required by Rule 880–X–7B–.06. Paragraph (b) allows an applicant to submit this request to the ASMC before preparing and submitting an application for a permit or permit revision, and describes what the request must contain. Finally, paragraph (c) provides that when a proposed surface coal mining operation or proposed permit revision includes Federal lands within a national forest, the regulatory authority may not issue a permit or approve a permit revision until after the Secretary of the Interior makes the findings required in Rule 880–X–7B–.6(b).

We find that the provisions of this section are substantively identical to those in the counterpart Federal regulation at 30 CFR 761.13, with one exception. The Federal regulation at 30 CFR 761.13 requires applicants to submit their requests for the Secretarial findings required by 30 CFR 761.11(b) directly to OSM. Under Alabama's rule, applicants must submit their request to the ASMC. We interpret Alabama's provision to mean that the ASMC will forward such requests to OSM so that the necessary Secretarial findings can be obtained. Thus, Alabama's provision merely adds an additional responsibility for the regulatory authority. It does not affect the essential provisions of the rule. Therefore, we find that 880–X–7B–.08 is no less effective than the Federal regulation at 30 CFR 761.13, and we are approving it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On September 18, 2001, under section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL–0648). The Fish and Wildlife Service (FWS) responded on October 15, 2001

(Administrative Record No. AL–0650), and stated that it had no objection to the proposed revisions and additions. The Mine Safety and Health Administration (MSHA) also responded on October 18, 2001 (Administrative Record No. AL–0651), and stated that it did not have any comments.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence of the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA for its concurrence.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. AL–0648). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On September 18, 2001, we requested comments on Alabama's amendment (Administrative Record No. AL–0648), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment Alabama sent to us on August 28, 2001.

To implement this decision, we are amending the Federal regulations at 30 CFR part 901, which codify decisions concerning the Alabama program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that a State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The taking implications assessment for the Federal valid existing rights rule appears in Part XXIX.E. of the preamble to that rule. See 64 FR 70766, 70822–27, December 17, 1999.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget 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, and 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 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 22, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 901 is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for Part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 901.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* *	* * *
August 28, 2001	February 5, 2002	ASMC Rules 880–X–2A–.06; 7B-.06(a) through (g), .07 through .12; 8C–.05(1)(g), .06(2)(e); 8D–.08(3); and 8F–.14(1)(2).

[FR Doc. 02–2747 Filed 2–4–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–220–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving a proposed amendment to the Kentucky regulatory program (the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposed to revise its program at 405 KAR 7:097 pertaining to reclamation in lieu of cash payment of civil penalties. Kentucky intended to revise its program as required by Federal regulations.

EFFECTIVE DATE: February 5, 2002.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (859) 260–8402.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Kentucky 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 Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of the approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.12, 917.13, 917.15, 917.16 and 917.17.

II. Submission of the Amendment

By letter dated December 22, 1998 (Administrative Record No. KY–1449), the Kentucky Department of Surface Mining Reclamation Enforcement (Kentucky) sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky sent the amendment in response to a required program amendment at 30 CFR 732.17(b) and to include the changes made at its own initiative. The amendment, at 405 KAR 7:097, authorizes the Natural Resources and Environmental Protection Cabinet (Cabinet) to allow a permittee, person, or operator (hereinafter collectively called the in-kind permittee) to perform in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution—instead of making cash payment of a civil penalty assessed under KRS 350.990(11).

We announced receipt of the proposed amendment in the January 25, 1999, **Federal Register** (64 FR 3670). The public comment period ended on February 24, 1999. Kentucky made changes to the original submission. On April 9, 1999, a Statement of Consideration and amended regulations were filed with the Kentucky Legislative Research Committee (Administrative Record No. KY–1458). By letter dated June 10, 1999 (Administrative Record No. KY–1461), Kentucky submitted the final version of the proposed amendment to OSM. A new comment period was opened in the July 16, 1999, **Federal Register** (64 FR 38391) and closed on August 2, 1999. In both **Federal Register** notices, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. We received comments from an environmental group and a mining company.

During our review of this amendment, we identified several issues requiring

clarification. A list of questions to Kentucky and Kentucky's responses are provided in an OSM memorandum, dated November 20, 2000, (Administrative Record No. KY–1507). We requested further clarification on one of the issues by letter dated February 23, 2001, (Administrative Record No. KY–1504). Kentucky responded in a letter dated April 2, 2001 (Administrative Record No. KY–1510).

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

The submittal of this proposed amendment implements House Bill 839 passed by the Kentucky 1986 General Assembly. OSM's approval of the Kentucky statute required Kentucky, prior to implementation, to submit to OSM for its approval proposed regulations to implement House Bill 839. This was codified at 30 CFR 917.16(c)(3). Therefore, we are removing the required amendment at 30 CFR 917.16(c)(3).

Kentucky proposes to authorize the Cabinet to allow an in-kind permittee to perform in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution (hereinafter collectively called in-kind reclamation or in-kind work)—instead of making cash payment of a civil penalty assessed under KRS 350.990. This regulation also establishes criteria and procedures to implement KRS 350.990(11). A written request must be filed to perform in-kind work. If authorized, the performer of the work must enter into a binding Civil Penalty Reclamation Agreement (Agreement) with the Cabinet for work selected by the Cabinet. No fees are required for the written request or the Agreement. Those who enter into an Agreement: must obtain legal right of entry to the work site; must maintain liability insurance coverage; will, in some cases, be required to obtain a performance bond; and must perform the work activities specified in the Agreement. If the in-kind work is not completed according to the Agreement, the full amount of the assessed civil penalty must be paid. Certain proposed in-kind permittees, civil penalties, and sites are ineligible for in-kind activities. Certain kinds of activities and costs are not authorized.

There are no corresponding Federal regulations that establish specific requirements applicable to State regulatory programs that provide for in-kind reclamation. In a January 29, 1987, letter to Kentucky and other State regulatory authorities, OSM established minimum criteria for approval of State program amendments concerning in-kind reclamation (Administrative Record No. KY–1508). To be approved for in-kind reclamation, a State program amendment must:

1. Identify categories of sites that qualify for reclamation under the program amendment;
2. Specify the criteria and procedures for determining the dollar value of reclamation work to be performed;
3. Contain a plan for evaluating the performance of the reclamation work;
4. Contain timeframes for completion of the reclamation work; and
5. Specify the recourse available to the State regulatory authority should the reclamation work not meet established standards or not be completed.

Section 1 of the proposed amendment establishes the applicability and general provisions of in-kind reclamation. An in-kind permittee may perform in-kind reclamation in lieu of cash payment of one or more civil penalties if the aggregate amount of the penalties is $2,500 or more. The in-kind reclamation will be authorized under a legally binding Agreement. The in-kind permittee will be held responsible for obtaining a legal right of entry to the activity site and liability insurance coverage. The amendment requires that the liability-insurance policy remain in force during the course of the Agreement. Upon the incapacity of the insurer to continue coverage, the in-kind permittee is required to promptly notify the Cabinet. The Cabinet will give the in-kind permittee up to 90 days to replace the coverage, after which the in-kind reclamation must cease. The Cabinet may then terminate the Agreement. By a letter dated April 2, 2001, Kentucky stated it will exercise its discretion as to how rapidly to terminate the Agreement in view of all the facts at hand such as: the likelihood that the in-kind permittee will obtain replacement insurance in a short time and then expeditiously complete the in-kind reclamation; the amount of work uncompleted; and the severity of environmental problems at the site. The State noted that absent convincing evidence of a good faith effort to obtain replacement insurance and evidence of probable success in timely obtaining it, Kentucky will move quickly to terminate the Agreement, within two weeks and almost certainly 30 days of the cessation of the in-kind reclamation work (Administrative Record No. KY–1510).

Section 1 states that the in-kind permittee is required to provide a performance bond for in-kind reclamation of a mine site. In a memorandum dated November 20, 2001, Kentucky stated that the term ''mine site'' is used to differentiate between a site that was disturbed by mining (either coal or non-coal) and a site affected by some other type of environmental problem (trash dumps, straight pipes, brine from gas wells, etc.). The term is not meant to represent or replace any terms formally used in SMCRA (Administrative Record No. KY–1507).

For in-kind reclamation of lands other than mine sites (non-mine sites), the Cabinet may require a performance bond if it determines that the authorized activities could create a risk of environmental harm. This bond would be in addition to any bond required by another Federal, State, or local law. Kentucky stated that because the activities under this administrative regulation are not surface coal mining and reclamation operations, as defined by SMCRA, the bond does not have to meet the provisions of 405 KAR Chapter 10. However, it noted that bonds that do meet these provisions would be acceptable to the Cabinet.

Finally, Kentucky said that because the activities are not ''surface coal mining and reclamation operations,'' the in-kind reclamation would be subject to standards delineated in the Agreement, and would not be subject to Title V standards under SMCRA. We agree that in-kind reclamation of the sites described in the Kentucky amendment would not constitute surface coal mining and reclamation operations therefore, these sites would not be subject to the permitting or bonding requirements under Title V of SMCRA.

As we stated in the April 5, 1989, rulemaking (54 FR 13814), no permit is required ''when reclamation activities are conducted where no coal extraction or other activities described in the definition of 'surface coal mining operations' at section 701(28) of SMCRA are taking place.'' We further stated that section 506(a) of SMCRA only requires a permit for surface coal mining operations as ''defined in section 701(28), not the additional reclamation activities specified in the definition of surface coal mining and reclamation operations defined in section 701(27) [of SMCRA].'' *Id.* at 13816.

At 405 KAR 7:097, Section 1(9), the Kentucky amendment prohibits the removal of coal in connection with any in-kind reclamation. Section 1(10) of the amendment specifies that authorized activities include only ''on-ground activities that directly result in reclamation, environmental rehabilitation, or correction of

environmental pollution.'' Therefore, the amendment does not authorize coal extraction or any of the other activities described in the definition of ''surface coal mining operations'' at section 701(28) of SMCRA. The reclamation obligation cited in the definition of ''surface coal mining and reclamation operations'' is an integral part of the surface coal mining operations and applies to entities mining coal. ''The right to mine carries with it the obligation to restore the land after mining has ceased.'' *See* 54 FR 13814 (April 5, 1989). Even an operator mining without a permit ''incurs the obligation to reclaim.'' See 54 *Id.* at 13821. Hence, an in-kind permittee under the Kentucky amendment would not be subject to the permitting, bonding requirements or reclamation standards of Title V of SMCRA.

Section 1 lists certain limitations with respect to the in-kind reclamation program. Some of these include the following:

- As previously stated, coal removal in connection with the authorized reclamation activities is prohibited;
- Educational, promotional, training, and other activities that may indirectly affect the environment is prohibited;
- In-kind reclamation activities that do not exceed in estimated cost the assessed amount of the civil penalty will not be authorized; and
- Crediting of costs incurred under the Agreement in excess of the civil penalty amount to satisfy penalties not covered by the Agreement will not be permitted.

Subsection 1 (13) specifies that the Kentucky Division of Abandoned Mine Lands (AML) shall determine the estimate of the cost of the in-kind reclamation activities. To clarify this statement, OSM met with Kentucky on November 20th, 2000 to determine how the cost estimates would be calculated. Kentucky stated that the cost estimates will be based upon the type of work to be performed at a unit cost and is based upon AML staff's most current actual cost experience in the vicinity of the work site (Administrative Record No. KY–1507).

The Director finds that Subsection 1 (13) satisfies the second minimum criterion set forth in the January 29, 1987, letter (Administrative Record No. KY–1508).

Sections 2 through 4 identify circumstances under which certain proposed in-kind permittees, civil penalties, and sites will not be eligible for in-kind reclamation. A proposed in-kind permittee that is ineligible to receive a permit under KRS Chapter 350 and 405 KAR Chapters 7–24 for a reason other than nonpayment of a civil penalty will not be eligible for in-kind reclamation. In-kind reclamation in lieu of civil penalties will not be authorized if the violation that led to any of the civil penalties remains unabated; or if the proposed in-kind permittee entered into an agreed order with the Cabinet to pay the civil penalty and failed to comply with the agreed order. Section 4 defines an ineligible site as that which is:

- Under a valid permit under KRS Chapter 350 for which a bond has not been forfeited;
- Under another valid Federal, State, or local permit under which the permit holder has responsibility for environmental conditions at the site; or
- Is affected by an ongoing enforcement action for violation of Federal, State, or local environmental laws, unless the agency pursuing the enforcement action consents.

Kentucky further clarified that the only post-SMCRA sites that are eligible are those ''where the bond is forfeited, the bond is inadequate, alternative enforcement has failed and there is no other enforcement recourse under Title V'' of SMCRA. The Director finds that Section 4 of the proposed amendment and the delineation of mine sites and non-mine sites in Section 1 and the Kentucky's November 20, 2000, response (Administrative Record No. 1507) satisfy the first minimum criterion set forth in the January 29, 1987, letter (Administrative Record No. 1508).

Provisions and requirements for the selection of sites for in-kind reclamation are included in Section 5 of the amendment. The amendment authorizes the Cabinet to compile a prioritized list of candidate sites for consideration, and requires that the list be made available to the public. The section further requires the Cabinet to consult with the county fiscal court; and authorizes the Cabinet to consult with the in-kind permittee, other government agencies, and the general public in its selection of a site and in-kind reclamation activity for each application. The amendment permits the Cabinet to give preference to sites or activities that address environmental impacts from coal mining.

Section 6 describes the criteria concerning the types of in-kind reclamation activities and what costs can be authorized. Activities not authorized include: those that the in-kind permittee already has a duty to perform under KRS Chapter 350 or other Federal, State or local law; activities which the in-kind permittee already has a legal obligation to perform under a valid contract; and activities on lands or waters in which the in-kind permittee has a financial interest. The amendment prohibits certain costs such as: those which incurred prior to the Agreement; equipment or services donated by a party other than the in-kind permittee; payments for access to the site; transportation; and administrative costs and overhead. The amendment permits authorization of reclamation activities in conjunction with AML projects of the Cabinet under KRS 350.550 through 350.597. The amendment also permits the authorization of in-kind reclamation in conjunction with the reclamation of bond-forfeiture sites, provided the in-kind permittee: did not own or control the site under KRS Chapter 350; was not an operator or agent on the site under KRS Chapter 350; and has no direct or indirect ownership or other interest in the land.

Section 7 of the amendment specifies the procedures an in-kind permittee must follow to request performance of in-kind reclamation. Among other stipulations, the amendment clarifies that filing a request will not stay the collection of the civil penalty. The amendment also requires the Cabinet to notify the in-kind permittee in writing whether it intends to pursue an Agreement within 15 days of receipt of the request.

Section 8 lists the information required in the Agreement and other provisions and limitations relating to the Agreement. Subsection 8 (1)(g) requires that the Agreement specify the time span within which the authorized activities shall be completed. Subsection 8 (5) stipulates that the Cabinet may terminate the Agreement at any time if the in-kind permittee fails to satisfy its terms. Subsections 8 (7) and (8) state that the civil penalty shall remain due and payable until the Cabinet has determined in writing that the in-kind permittee has satisfactorily fulfilled the terms of the Agreement; and if the Agreement is breached, the full-assessed civil penalty will be due and payable. Subsection 8 (6) requires the Cabinet to conduct field inspections as necessary to monitor progress under the Agreement. In a November 20, 2000, memorandum (Administrative Record No. KY–1507), Kentucky stated that the in-kind reclamation site will be inspected during critical phases of the work and the number of inspections will depend in part on the size or duration of the project. Kentucky stated that at a minimum an in-kind reclamation site will be inspected once to ensure the work is satisfactorily completed under the terms of the Agreement (Administrative Record No. KY–1507).

The Director finds that Subsections 8 (1)(g) and (5) through (8), and the November 20, 2000, (Administrative Record No. KY–1507) memorandum satisfy the third, fourth and fifth minimum criteria, as set forth in the January 29, 1987, letter (Administrative Record No. KY–1508).

The civil penalty provisions at section 518 of SMCRA and the Federal rules at 30 CFR 845.20 do not specify the method of payment for assessed penalties. Since Kentucky is not changing how it assesses civil penalties, this amendment continues to uphold the purpose of civil penalties, which is to ''deter violations and to ensure maximum compliance with . . . [SMCRA] on the part of the coal mining industry.'' (30 CFR 845.2) Allowing an in-kind permittee to perform reclamation in lieu of paying a civil monetary penalty is still a penalty. Therefore, the Director finds that the June 10, 1999, revised amendment is consistent with the purpose and requirements for payment of penalties in section 518 of SMCRA. Additionally, the amendment satisfies the minimum criteria for approval set forth in the January 29, 1987, letter.

IV. Summary and Disposition of Comments

Public Comments

By letters dated, January 14, 1999 (Administrative Record No. KY–1453), February 8, 1999 (Administrative Record No. KY–1456), and July 21, 1999 (Administrative Record No. KY–1464), these three comment letters were submitted by an environmental group and a mining company.

One commenter posited that in-kind reclamation activities constitute a regulated ''surface coal mining operation'' and therefore must occur under a SMCRA Title V permit and bond. The commenter claimed that the proposal to substitute an Agreement for a permit is dubious unless the Agreement contains all of the safeguards and conditions of a permit, including public notice and the opportunity to comment on the proposed reclamation; bond coverage; and a specific reclamation plan setting enforceable and measurable benchmarks to assure that the site is left no worse and is in fact properly reclaimed. The commenter is concerned that in-kind reclamation will occur under circumstances that create a risk of inadequate reclamation from the surface landowner's standpoint. Third-party intervention on a site under an Agreement may extinguish the obligations of the party who initially disturbed and abandoned the site. If the reclamation work turns out to have been inadequate, the landowner will be left without recourse.

As stated in our findings, we do not agree that the definition of ''surface coal mining and reclamation operations'' includes the in-kind activities authorized under this amendment. Therefore, no Title V permitting or bonding requirements apply. Sections (1)(6)(b) and (1)(7) of the amendment safeguard the landowner's interests by requiring that the permittee performing the in-kind reclamation (1) have a public liability insurance policy in effect in an amount adequate to compensate for both personal injury and property damage that may result from the reclamation activities; and (2) provide a performance bond for all in-kind reclamation of mine sites. For in-kind reclamation of sites other than mine sites, the Cabinet may require a performance bond if the reclamation activities could create a risk of environmental harm. Perhaps the most important safeguard is the requirement that the in-kind permittee obtain right of entry from the landowner.

We do not share the commenter's concern that third-party intervention on a mine site under an Agreement may extinguish the obligations of the party who initially disturbed and abandoned the site. First, to the extent that the in-kind permittee corrects outstanding violations, we see no reason why the landowner would have any objection to the extinguishments of those obligations. Second, Section 4 of the amendment provides that sites under a valid SMCRA permit for which the bond has not been forfeited are not eligible. It also specifies that sites under another valid federal, state, or local permit are not eligible if the permit holder still has responsibility for environmental conditions at the site. Third, nothing in the amendment absolves the previous permittee or operator of any liability.

One commenter questioned the adequacy of Section 7(6) of the amendment, which requires the Cabinet to notify the in-kind permittee within 15 days whether it intends to pursue an Agreement in response to the in-kind permittee's request to perform in-kind reclamation. According to the commenter, 15 days is insufficient time to involve the surface landowner and adjoining landowners in Agreement negotiation and the decision on whether to allow the in-kind reclamation activity.

SMCRA and the implementing Federal regulations contain no provisions relating to landowner participation in in-kind reclamation. Therefore, we have no legal basis for requiring that Kentucky make the modifications sought by the commenter. In addition, we concur with Kentucky's Statement of Consideration that the landowner will automatically have a major role in the Agreement process because the in-kind permittee must first obtain right of entry from the landowner. Kentucky also stated that, as a practical matter, there will be discussions with the surface landowner, and possibly with adjoining surface owners, during the process of determining whether a specific site is an appropriate candidate for in-kind reclamation (Administration Record No. KY–1458). Section 5(4) of the amendment grants Kentucky the discretion to consult with private individuals regarding the selection of sites and the activities to be authorized. Additionally, Section 8 gives Kentucky the discretion to include other parties to the Agreement if they are necessary.

The commenter further stated that the amendment should specify a time by which negotiations will either be successfully completed or the penalty will be collected. In its Statement of Consideration, Kentucky stated that if the negotiation over the Agreement is unproductive, the Cabinet can end the discussion at any time and demand cash payment.

Finally, the commenter argued that any unpaid civil penalty interest should continue to accrue during negotiations. In response, Kentucky stated that any interest due and owing would not be tolled during discussions.

A commenter stated that the regulation should explicitly reference the process by which a third-party landowner can secure review and enforcement of the terms of a reclamation agreement. The commenter is concerned that, without explicit reference to such a process, an Agreement will fail to provide the required opportunity for public review that is mandated for permit-related actions by the Cabinet, and thus fail to provide a mechanism as effective as the permit in this regard. According to another comment, Section 8 of the amendment should clarify that when an Agreement falls within the ambit of the definition of ''surface coal mining and reclamation operations,'' the inspection and citizen participation procedures of 405 KAR Chapters 7–24 apply. The commenter further states that, for other reclamation activities, inspections should occur at all critical times in the reclamation plan, and termination of the Agreement should automatically trigger forfeiture of whatever bond has been posted.

As discussed in our findings, in-kind reclamation is not a surface coal mining and reclamation operation. Therefore, there is no legal basis to require that reclamation agreements include provisions for inspection, enforcement, and public participation consistent with those applicable to permits and permitting actions under Title V of SMCRA. However, Kentucky has stated that if a landowner observes actions or conditions that he believes are inconsistent with the Agreement, he can bring them to the attention of the Cabinet and the in-kind permittee. In addition, Section 8(6) of the amendment requires that the Cabinet conduct field inspections as necessary to monitor progress under the Agreement. In subsequent correspondence Kentucky stated that it intends to conduct inspections during critical phases of the work and would conduct at least one inspection upon completion of work. Kentucky anticipates that most in-kind reclamation projects will be small and take less than a week to complete.

A commenter states that—

> [I]t is not clear that the person performing in-lieu activity who fails to properly conduct such activity would be ''permit-blocked'' from future permit issuance if there remained outstanding violations of the law on an ''in-lieu'' site. While the regulation notes that the agreement must specify ''the consequences of failure to satisfy the terms of the Civil Penalty Reclamation Agreement,'' it must be clarified that the consequences of such failure include mandatory issuance of enforcement orders and permit blocking for outstanding unabated NOVs and COs.

If the comment refers to outstanding violations of environmental laws committed on the in-kind reclamation site by someone other than the in-kind permittee, we disagree that the in-kind permittee should be held liable for violations he, himself, did not commit, even if he fails to satisfy the terms of the Agreement. There is no legal basis under SMCRA for assigning responsibility for those violations to the in-kind permittee.

If, on the other hand, the commenter is referring to violations committed by the in-kind permittee on the in-kind reclamation site, we have no authority to require the State to take enforcement action under Title V of SMCRA because in-kind reclamation is not a surface coal mining operation under SMCRA and is outside the jurisdiction of SMCRA. However, under Section 8(7) of the amendment, if Kentucky terminates the Agreement for failure to comply with all of its terms, the in-kind permittee will be liable for the full amount of all existing civil penalties he previously owed. Consequently, the permittee would be subject to the prohibition on issuance of future surface coal mining permits under 405 KAR 8:010 Section 13 and section 510(c) of SMCRA.

One commenter expressed concerns over Subsections (3) through (5) of Section 2 in the December 22, 1998, version of the proposed amendment. In that version, an in-kind permittee was deemed ineligible for in-kind reclamation if: he had an outstanding violation under KRS Chapter 350 and had not corrected the violation; he owned or controlled a surface coal mining operation for which the permit had been revoked or the bond forfeited, or which was currently in violation of KRS Chapter 350, and the correction of the violation had not been completed; or he was in violation of other Federal, State, or local environmental laws. The commenter indicated that large companies with multiple operations are rarely, if ever, free from violations of any laws and regulations. The time required to avoid or correct violations of environmental laws can be extensive. The limitations imposed by the amendment would have afforded large companies very little opportunity to perform in-kind reclamation.

In response to a similar comment received during the state's rulemaking process, Kentucky has eliminated Subsections (1) through (5) in the June 10, 1999, version of the amendment. The amendment now defines an ineligible in-kind permittee as one who is ineligible to receive a permit under KRS Chapter 350 and 405 KAR Chapters 7–24 for a reason other than non-payment of a civil penalty. The Director finds that this change renders the above comment moot.

A commenter recommends that Section 8 of the proposed amendment should require that the Agreement include other permits needed for the State or Federal government, including water, floodplain, air, dredge-and-fill, transportation, etc. We believe that adding this requirement is repetitive since subsection 1(8) already requires that the in-kind permittee comply with all Federal, State, and local laws and regulations.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503 (b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Kentucky program (Administrative Record No. KY–1509). No comments were received.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written concurrence from EPA for those provisions of the proposed program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Kentucky proposed in this amendment pertain to air or water quality standards. Therefore we did not ask EPA to concur on the amendment. By letter dated February 1, 1999, we requested comments on the amendment from EPA (Administrative Record Number KY–1509). EPA did not respond to our request.

V. OSM's Decision

Based on the above findings we approve the amendment sent to us by Kentucky.

To implement this decision, we are amending the Federal regulations at 30 CFR part 917, which codify decisions concerning the Kentucky program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effectively immediately will expedite that process. This will not create a hardship for Kentucky but rather aid Kentucky's reclamation abilities. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications under Executive Order 12630 and, therefore, a takings implication assessment is not required. This determination is based on the fact that the rule would allow a person assessed a civil monetary penalty the option of performing in-kind reclamation, environmental rehabilitation, or similar action to correct environmental damage in lieu of making cash payment.

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 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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, and 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 the 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.*). This determination is based on the fact that the rule would allow a person assessed a civil monetary penalty the option, after certain requirements are met, of performing in-kind reclamation, environmental rehabilitation, or similar action to correct environmental damage in lieu of making a cash payment. The rule does not impose any new costs. It is assumed that the person choosing this option would do so because of a perceived benefit that would result.

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. For the reasons previously stated, 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.

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.

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 merely provides an alternative means of paying a penalty. The rule does not impose any new costs.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 19, 2001.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 917 is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 917.15 is amended in the table by adding a new entry in chronological order by *date of final publication* to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	*	* * *
December 22, 1998	February 5, 2002	405 KAR 7:097 approved (in-kind reclamation)

§ 917.16 [Amended]

3. Section 917.16 is amended by removing and reserving paragraph (c)(3).

[FR Doc. 02–2748 Filed 2–4–02; 8:45 am]

BILLING CODE 4310–05–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 259

[Docket No. 2002–3 CARP]

Filing of Claims for DART Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Waiver of regulation.

SUMMARY: Due to a serious disruption in the delivery of mail, the Copyright Office of the Library of Congress is announcing alternative methods for the filing of claims to the DART royalty funds for the year 2001. In order to ensure that their claims are timely received, claimants are encouraged to file their DART claims electronically or by fax, utilizing the special procedures described in this Notice.

EFFECTIVE DATE: February 5, 2002.

ADDRESSES: If hand delivered, an original and two copies of each claim should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE, Washington, DC 20540. Submissions by electronic mail should be made to ''dartclaims@loc.gov'; *see* **SUPPLEMENTARY INFORMATION** for other information about electronic filing. Submissions by facsimile should be sent to (202) 252–3423. If sent by mail, an original and two copies of each claim should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Gina Giuffreda, CARP Specialist, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Chapter 10 of the Copyright Act, 17 U.S.C., places a statutory obligation on manufacturers and importers of digital audio recording devices and media (''DART'') who distribute the products in the United States to submit royalty fees to the Copyright Office. 17 U.S.C. 1003. Distribution of these royalty fees may be made to any interested copyright owner who has filed a claim and (1) whose sound recording was distributed in the form of digital musical recordings or analog musical recordings and (2) whose musical work was distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions. 17 U.S.C. 1006.

Section 1007 provides that claims to these royalty fees must be filed ''[d]uring the first 2 months of each calendar year'' with the Librarian of Congress ''in such form and manner as the Librarian of Congress shall prescribe by regulation.'' 17 U.S.C. 1007. Part 259 of title 37 of the Code of Federal Regulations sets forth the procedures for the filing of claims to the DART royalty funds. Section 259.5 states that in order for a claim to be considered timely filed with the Copyright Office, the claims either have to be hand delivered to the Office by the last day in February [1] or if sent by mail, received by the Office by the last day in February or bear a January or February United States Postal Service postmark. 37 CFR 259.5(a). Claims received after the last day in February will be accepted as timely filed only upon proof that the claim was placed within the United States Postal Service during the months of January or February. 37 CFR 259.5(e). A January or February postmark of the United States Postal Service on the envelope containing the claim or, if sent by certified mail return receipt requested, on the certified mail receipt constitutes sufficient proof that the claim was timely filed.[2] 37 CFR 259.5(e). However, the regulations do not provide for the filing of DART claims by alternative methods such as electronic submission or facsimile transmission; and until now, the Office has perceived no need for alternative methods in filing these claims.

Unfortunately, recent events, namely the concerns about anthrax in the United States Postal Service facilities in the District of Columbia, have caused severe disruptions of postal service to the Office since October 17, 2001. See 66 FR 62942 (December 4, 2001) and 66 FR 63267 (December 5, 2001). Such disruptions continue and will most likely worsen in the coming weeks, since all incoming mail will be diverted to an off-site location for treatment. Consequently, in light of these disruptions, the Office is offering and recommending alternative methods for the filing of DART claims to the 2001 royalty funds. The alternative methods set forth in this document apply only to the filing of DART claims for the 2001 royalties which are due by February 28, 2002, and in no way apply to other filings with the Office.

This document covers only the means by which claims may be accepted as timely filed; all other filing requirements, such as the content of claims, remain unchanged, except as noted herein. See 37 CFR part 259.

Acceptable Methods of Filing DART Claims for the Year 2001

Claims to the 2001 DART royalty funds may be submitted as follows:

a. Hand Delivery

In order to best ensure the timely receipt by the Copyright Office of their DART claims, the Office strongly encourages claimants to personally deliver their claims by 5 p.m. E.S.T. on February 28, 2002, to the Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE, Washington, DC. Private carriers should not be used for such delivery, as packages brought in by private carriers are subject to treatment at the off-site facility before being delivered to the Office and will be deemed untimely and rejected unless the treated package is received by the Office of the Copyright General Counsel by 5 p.m. E.S.T. on February 28, 2002. Thus, claims should be hand delivered by the claimant or a representative of the claimant (i.e., the claimant's attorney or a member of the attorney's staff).

Claimants hand delivering their claims should note that they must follow all provisions set forth in 37 CFR part 259.

b. Electronic Submission

Claimants may submit their claims via electronic mail as file attachments, and such submissions should be sent to ''dartclaims@loc.gov.'' The Office has devised forms for both single and joint DART claims, which are posted on its website at *http://www.loc.gov/copyright/forms/dart.* Claimants filing their claims electronically must use these and only these forms, and the forms must be sent in a single file in either Adobe Portable Document (''PDF'') format, in Microsoft Word

[1] In those years where the last day of February falls on a Saturday, Sunday, a holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims must be received by the first business day in March. 37 CFR 259.5(b).

[2] Claims dated only with a business meter that are received after the last day in February will not be accepted as having been timely filed. 37 CFR 259.5(c).

Version 10.0 or earlier, or in WordPerfect 9 or earlier. Claims sent as attachments using formats other than those specified in this Notice will not be accepted by the Office. Likewise, claims sent as text messages, and not as attachments, will also be rejected by the Office.

When filing claims electronically, all provisions set forth in 37 CFR part 259 apply except § 259.3(b), which requires the original signature of the claimant or of the claimant's duly authorized representative on the claim. The Office is waiving this provision for this filing period because at this time the Office is not equipped to receive and process electronic signatures.

Claims filed by electronic mail must be received by the Office no later than 11:59 p.m. E.S.T. on February 28, 2002. Specifically, the electronic message must be received in the Office's server by that time. Any claim received after that time will be considered as untimely filed. Therefore, claimants submitting their claims via electronic mail are strongly encouraged to send their claim no later than February 27, 2002, in order to better ensure timely receipt by the Office.

c. Facsimile

Claims may be filed with the Office via facsimile transmission and such filings must be sent to (202) 252–3423. Claims filed in this manner must be received in the Office no later than 5 p.m. E.S.T. on February 28, 2002. The fax machine will be disconnected at that time. Claims sent to any other fax number will not be accepted by the Office.

When filing claims via facsimile transmission, claimants must follow all provisions set forth in 37 CFR part 259 apply with the exception of § 259.5(d), which prohibits the filing of claims by facsimile transmission. The Office is waiving this provision at this time in order to assist claimants in the timely filing of their claims.

d. By Mail

Section 259.5(a)(2) directs claimants filing their claims by mail to send the claims to the Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Claimants electing to send their claims by mail are encouraged to send their claims by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt in order to provide proof of timely filing, should the claim reach the Office after the last day in February. In the event there is a question as to whether the claim was deposited with the United States Postal Service during the months of January or February, the claimant must produce the certified mail receipt (PS Form 3800) which bears a United States Postal Service postmark, indicating an appropriate date.

However, concerns about possible anthrax contamination of the mail have resulted in the imminent treatment of all mail coming to the Copyright Office. In the near future, all Copyright Office mail will be sent to an off-site facility for treatment, including irradiation. Although it is not possible at this time to determine the length of time needed to complete this process, the delay could be significant. In addition, it is not known what, if any, damage will be caused to the mail as a result of treatment.

Given these uncertainties, claimants are strongly urged not to use the mail as a means of filing their claims to the 2001 DART royalties. While the Office is not prohibiting the filing of claims by mail, those who do so assume the risk that their claim will not reach the Office in a timely manner, or at all, and/or that the mail, when received by the Office, will be significantly damaged. Claims sent by mail should be addressed in accordance with § 259.5(a)(2), and the Office again strongly encourages the claimant to send the claim by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt, as it constitutes the only acceptable proof of timely filing of the claim. Claims dated only with a business meter that are received by the Office after February 28, 2002, will be rejected as being untimely filed.

When filing claims by this method, claimants must follow all provisions set forth in 37 CFR part 259.

If a claimant has deposited his or her claim in the mail prior to the publication of this Notice, the claimant is encouraged to also use one of the alternative methods of filing described herein in order to better ensure that their claim will be received by the Office in a timely fashion.

Waiver of Regulation

The regulations governing the filing of DART claims require ''the original signature of the claimant or of a duly authorized representative of the claimant,'' 37 CFR 259.3(b), and do not allow claims to be filed by ''facsimile transmission,'' 37 CFR 259.5(d). This document, however, waives these provisions as set forth herein solely for the purpose of filing claims to the 2001 DART royalties. The Office is not, and indeed cannot, waive the statutory deadline for the filing of DART claims. See, United States v. Locke, 471 U.S. 84, 101 (1985). Thus, claimants are still required to file their claims by February 28, 2002.

Waiver of an agency's rules is ''appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.'' Northeast Cellular Telephone Company v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also, Wait Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972). Under ordinary circumstances, the Office is reluctant to waive its regulations. However, the recent anthrax scare constitutes a special—indeed, an extraordinary—circumstance which has forced the Office to deviate from its usual mail processing procedures. Specifically, all incoming mail will be sent to an off-site location for treatment before being delivered to the Office. This process will delay the Office's receipt of its mail; however, the actual length of this delay is not known at this time. In addition, it is unknown at this time the degree to which the integrity of treated mail will be compromised. Thus, given such uncertainties, the Office believes that the public interest will best be served by waiving, for this filing period only, the requirement that DART claims bear the original signature of the claimant or of a duly authorized representative of the claimant, when, and only when, such claim is filed electronically.

Because the Office is discouraging claimants from filing their claims through the mail due to the uncertainties surrounding the mail treatment process, the public interest would not be served if the Office required DART claimants to provide original signatures on their claims for this filing period and disallowed filing by facsimile because claimants would then be limited to filing their claims by the two options currently available—hand delivery and U.S. mail. Thus, the only way claimants could ensure timely filing of their claims would be to hand deliver them to the Office. Those claimants for whom personal delivery of their claims is not feasible would be placed at an unfair disadvantage.

The Office cannot waive the statutory deadline set forth in 17 U.S.C. 1007 and accept claims filed after February 28, 2002. See Locke, supra. Therefore, in order to serve the public interest the Office is providing claimants with alternative methods of filing, in addition to those set forth in the regulations, in

order to assist them in timely filing their claims. By allowing claims to be filed by electronic mail and facsimile transmission, the Office is affording to all claimants an equal opportunity to meet the statutory deadline.

Again, this waiver applies only to the filing of DART claims to the 2001 royalties which must be filed by February 28, 2002. Once the mail treatment process is operational, the Office may need to reexamine its regulations governing any filing coming into the Office. However, such reexamination, if necessary, will take place at a future date.

Dated: February 1, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02–2875 Filed 2–4–02; 8:45 am]

BILLING CODE 1410–33–P

POSTAL SERVICE

39 CFR Part 551

Semipostal Stamp Program

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule implements legislative changes to the semipostal stamp program. The amendments to Postal Service regulations involve the duration of the program, pricing, and responsibility for tracking costs.

EFFECTIVE DATE: February 5, 2002.

FOR FURTHER INFORMATION CONTACT: Cindy Tackett, (202) 268–6555.

SUPPLEMENTARY INFORMATION:

The Semipostal Authorization Act, Public Law No. 106–253, 114 Stat. 634 (2000), authorizes the Postal Service to establish a 10-year program to sell semipostal stamps. The differential between the price of a semipostal stamp and the First-Class Mail® service rate, less an offset for the reasonable costs of the Postal Service, consists of an amount to fund causes that the ''Postal Service determines to be in the national public interest and appropriate.'' By law, revenue from sales (net of postage and the reasonable costs of the Postal Service) is to be transferred to selected executive agencies within the meaning of 5 U.S.C. § 105.

After soliciting public comment on proposed rules, on June 12, 2001, the Postal Service published a final rule establishing the regulations for the Semipostal Stamp Program. On November 12, 2001, Public Law No. 107–67, 115 Stat. 514 (2001), was enacted. Public Law No. 107–67 extends the sales period of the *Breast Cancer Research* stamp until December 31, 2003, and provides that the Postal Service must issue two additional semipostal stamps, to which selected provisions of 39 U.S.C. 416 apply. The first is a semipostal stamp to provide assistance to the families of the emergency relief personnel killed or permanently disabled in connection with the terrorist attacks of September 11, 2001. The *Heroes* semipostal stamp is to be issued as soon as practicable and may remain on sale through December 31, 2004. Funds raised in connection with this semipostal stamp are to be transferred to the Federal Emergency Management Agency.

The second is a semipostal stamp to fund domestic violence programs. The *Domestic Violence* semipostal stamp is to be issued as soon as practicable, but no later than the beginning of 2004, and may remain on sale through December 31, 2006. Funds raised in connection with this stamp are to be transferred to the U.S. Department of Health and Human Services.

To implement Public Law No. 107–67, the Postal Service is revising its regulations governing the Semipostal Stamp Program. In particular, 39 CFR 551.6 is revised to incorporate the new pricing formula for semipostal stamps issued under authority of 39 U.S.C. 416. This includes not only semipostal stamps issued by the Postal Service under its discretionary authority, but also the *Heroes* and *Domestic Violence* semipostal stamps. The new pricing formula provides that the differential, i.e., the difference between the purchase price and the postage value, must be at least 15 percent of the postage value of the semipostal stamp, and the price must be divisible by five. Section 551.6 is accordingly revised to reflect the change in the pricing formula.

Public Law No. 107–67 provides that both the *Heroes* and *Domestic Violence* semipostal stamps are not subject to any limitation prescribed by the Postal Service ''relating to whether more than one semipostal may be offered for sale at the same time.'' The Postal Service notes that 39 CFR 551.5(a) establishes a limit of one semipostal stamp issued at one time. In light of the specific exceptions listed in Public Law No. 107–67, the Postal Service interprets this limitation to extend only to semipostal stamps issued under the Postal Service's discretionary program. Hence, the Postal Service submits that it is unnecessary to promulgate a substantive change to 39 CFR 551.5, although the section is revised to refer to the enactment of Public Law No. 107–67.

Finally, several nonsubstantive changes are made to Part 551 to incorporate the enactment of Public Law No. 107–67 and to reflect organizational changes within the Postal Service. Specifically, in 39 CFR 551.1 reference is made to Public Law No. 107–67. Sections 551.1 and 551.8 are revised to reflect a new organizational unit name for the Office of Finance, with responsibilities related to semipostal stamps. In addition, § 551.8(b) is amended to include the sharing of responsibility for selecting comparable stamps between the Offices of Accounting, Finance, Controller and the Office of Stamp Services.

The Postal Service hereby adopts the following revisions to the *Code of Federal Regulations.*

List of Subjects in 39 CFR Part 551

Administrative practice and procedure, Postal Service.

For the reasons set out in this document, the Postal Service hereby amends 39 CFR Part 551 as follows:

PART 551—[AMENDED]

1. The authority citation for 39 CFR part 551 is revised to read as follows:

Authority: 39 U.S.C. 101, 201, 203, 401, 403, 404, 410, 416, and the Semipostal Authorization Act, Pub. L. 106–253, 114 Stat. 634 (2000), as amended by Pub. L. 107–67, section 652, 115 Stat. 514 (2001).

2. Revise § 551.1 to read as follows:

§ 551.1 Semipostal Stamp Program.

The Semipostal Stamp Program is established under the Semipostal Authorization Act, Public Law 106–253, 114 Stat. 634 (2000), as amended by Public Law 107–67, section 652, 115 Stat. 514 (2001). The Office of Stamp Services has primary responsibility for administering the Semipostal Stamp Program. The Office of Accounting, Finance, Controller has primary responsibility for the financial aspects of the Semipostal Stamp Program.

3. Amend § 551.5 by revising paragraph (a) to read as follows:

§ 551.5 Frequency and other limitations.

(a) The Postal Service is authorized to issue semipostal stamps for a 10-year period beginning on the date on which semipostal stamps are first sold to the public under 39 U.S.C. 416. The 10-year period will commence after the sales period of the *Breast Cancer Research* stamp is concluded in accordance with the Stamp Out Breast Cancer Act, and as amended by the Semipostal Authorization Act, the Breast Cancer Research Stamp Act of 2001, and Public Law 107–67, section 650, 115 Stat. 514.

The Office of Stamp Services will determine the date of commencement of the 10-year period.

* * * * *

4. Amend § 551.6 by revising paragraph (a) to read as follows:

§ 551.6 Pricing.

(a) The Semipostal Authorization Act, as amended by Public Law 107–67, section 652, 115 Stat. 514 (2001), prescribes that the price of a semipostal stamp is the rate of postage that would otherwise regularly apply, plus a differential of not less than 15 percent. The price of a semipostal stamp shall be an amount that is evenly divisible by five. For purposes of this provision, the First-Class Mail® single-piece first-ounce rate of postage will be considered the rate of postage that would otherwise regularly apply.

* * * * *

5. Amend § 551.8 by revising paragraphs (b), (c), and (d) introductory text to read as follows:

§ 551.8 Cost offset policy.

* * * * *

(b) Overall responsibility for tracking costs associated with semipostal stamps will rest with the Office of Accounting, Finance, Controller. Individual organizational units incurring costs will provide supporting documentation to the Office of Accounting, Finance, Controller.

(c) For each semipostal stamp, the Office of Stamp Services, in coordination with the Office of Accounting, Finance, Controller, shall, based on judgment and available information, identify the comparable commemorative stamp(s) and create a profile of the typical cost characteristics of the comparable stamp(s) (*i.e.*, manufacturing process, gum type), thereby establishing a baseline for cost comparison purposes. The determination of comparable commemorative stamps may change during or after the sales period, if the projections of stamp sales differ from actual experience.

(d) Except as specified, all costs associated with semipostal stamps will be tracked by the Office of Accounting, Finance, Controller. Costs that will not be tracked include:

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–2741 Filed 2–4–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NY002; FRL–7137–7]

Clean Air Act Final Full Approval of Operating Permit Program; State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating final full approval of the operating permit program submitted by the State of New York in accordance with Title V of the Clean Air Act (the Act) and its implementing regulations. This approved program allows New York to issue federally enforceable operating permits to all major stationary sources and to certain other sources within the State's jurisdiction. EPA is promulgating this final program approval to replace the approval granted in the December 5, 2001 **Federal Register** (66 FR 63180), effective on November 30, 2001, which was based on New York State emergency rules that will expire on February 1, 2002.

EFFECTIVE DATE: January 31, 2002.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing this final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Steven C. Riva, Chief, Permitting Section, Air Programs Branch, at the above EPA office in New York or at telephone number (212) 637–4074.

SUPPLEMENTARY INFORMATION: In the December 5, 2001 **Federal Register** (66 FR 63180), EPA issued a final approval of the operating permit program submitted by the State of New York, based, in part, on emergency rules that became effective on September 19, 2001, and that were scheduled to expire on December 18, 2001. Concurrent with EPA's proposed approval of the emergency rules, EPA proposed approval of the New York State operating permit program based on draft permanent rules that the State was expected to shortly submit in adopted form. The draft permanent rules were identical to the adopted emergency rules. On December 4, 2001, New York State filed a 60-day extension to its emergency rulemaking. Thus, the emergency rules are now scheduled to expire on February 1, 2002.

Subsequent to publication of the December 5, 2001 **Federal Register** Notice (66 FR 63180), New York submitted to EPA on January 2, 2002, copies of final permanent rules that became effective on January 18, 2002. These permanent rules are identical to those effective under the emergency rulemaking.

The final New York State operating permit program approval that was effective on November 30, 2001, and based in part on New York's emergency rules, was proposed by EPA in an October 25, 2001 **Federal Register** Notice (66 FR 53966). During the subsequent 30-day public comment period, EPA received one comment letter dated November 23, 2001 from the New York Public Interest Research Group (NYPIRG). NYPIRG challenged EPA's ability to proceed with full approval when, according to the comment, the program does not clearly conform to the requirements of 40 CFR part 70. NYPIRG also commented on the inadequacy of New York's definition of ''major source.'' The remaining issues raised in this comment letter were outside the scope of the subject action. As discussed in the December 5, 2001 **Federal Register**, EPA disagrees with these comments. 66 FR at 63181.

Therefore, based on the final, permanent rulemaking that became effective on January 18, 2002, EPA hereby grants final, full approval to the State of New York for an operating permit program in accordance with Title V of the Act and 40 CFR part 70. The specific program changes that are the subject of this Notice, which are the same changes that were the subject of EPA's approval under New York State's emergency rules, are delineated in the December 5, 2001 **Federal Register** Notice (66 FR 63180).

EPA is using the good cause exception under the Administrative Procedure Act (APA) to make the full approval of the State's program effective on January 31, 2002. In relevant part, section 553(d) provides that publication of ''a substantive rule shall be made not less than 30 days before its effective date, except—* * * (3) as otherwise provided by the agency for good cause found and published with the rule.'' Good cause may be supported by an agency determination that a delay in the effective date is ''impracticable, unnecessary, or contrary to the public interest.'' APA section 553(b)(3)(B). EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes

that it is in the public interest for the program to take effect before February 1, 2002. EPA's full final approval of New York State's program based on the State's emergency rulemaking expires on February 1, 2002. In the absence of this full approval taking effect on January 31, 2002, the federal part 71 program would automatically take effect in New York State and would remain in place until the effective date of the fully-approved state program. EPA believes it is in the public interest for sources, the public and the State to avoid any gap in coverage of the State program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because New York has been administering the title V permit program for more than five years, first under an interim approval and then under full approval. Finally, sources are already complying with many of the newly approved requirements as a matter of state law. Thus, there is little or no additional burden with complying with these requirements under the federally approved State program.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Act and 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective on January 31, 2002.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 8, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act).

List of Subjects in 40 CFR Part 70

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

Dated: January 28, 2002.

Jane M. Kenny,

Regional Administrator, Region 2.

For reasons set out in the preamble, Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by adding paragraph (d) in the entry for New York to read as follows:

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

* * * * *

New York

* * * * *

(d) The New York State Department of Environmental Conservation submitted program revisions on June 8, 1998 and January 2, 2002. The rule revisions contained in the June 8, 1998 and January 2, 2002 submittals adequately addressed the conditions of the interim approval effective on December 9, 1996. The State is hereby

granted final full approval effective on January 31, 2002.

* * * * *

[FR Doc. 02–2708 Filed 2–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7136–6]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Lake Linden parcel and Operable Unit 2 of Torch Lake Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region V is publishing a direct final notice of deletion of the Lake Linden parcel and Operable Unit 2 from the Torch Lake Superfund Site (Site), located in Houghton County, Michigan, from the National Priorities List (NPL). Operable Unit 2 consists of all the submerged tailings, sediments, surface water and groundwater portions of the Torch Lake Superfund Site.

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Michigan, through the Michigan Department of Environmental Quality, because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not necessary at this time.

DATES: This direct final notice of deletion will be effective April 8, 2002, unless EPA receives adverse comments by March 7, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final notice of deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Steven Padovani, Remedial Project Manager (RPM) at (312) 353–6755, *Padovani.Steven@EPA.Gov* or Gladys Beard, State NPL Deletion Process Manager at (312) 886–7253, *Beard.Gladys@EPA.Gov,* U.S. EPA Region V, 77 W. Jackson, Chicago, IL 60604, (mail code: SR–6J) or at 1–800–621–8431.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the site information repositories located at: EPA Region V Library, 77 W. Jackson, Chicago, Il 60604, (312) 353–5821, Monday through Friday 8 a.m. to 4 p.m.; Lake Linden Public Library, 601 Calumet Lake Linden, MI 49945 (906) 296–0698 Monday through Friday 8 a.m. to 4 p.m. and Tuesday and Thursday 6 a.m. to 8:30 p.m.; Portage Lake District Library, 105 Huron, Houghton, MI 49931, (906) 482–4570, Monday, Tuesday and Thursday 10 a.m. to 9 p.m, Wednesday and Friday 10 a.m to 5 p.m. and Saturday 12 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Steven Padovani, Remedial Project Manager at (312) 353–6755, *Padovani.Steven@EPA.Gov* or Gladys Beard, State NPL Deletion Process Manager at (312) 886–7253, *Beard.Gladys@EPA.Gov* or 1–800–621–8431, (SR–6J), U.S. EPA Region V, 77 W. Jackson, Chicago, IL 60604.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region V is publishing this direct final notice of deletion of the Lake Linden parcel and Operable Unit 2 of the Torch Lake Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in section 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective April 8, 2002, unless EPA receives adverse comments by March 7, 2002, on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Lake Linden parcel and Operable Unit 2 of the Torch Lake Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c), requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of this Site:

(1) The EPA consulted with Michigan on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) Michigan concurred with deleting these portions of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of intent to delete is published today in the ''Proposed Rules'' section of the **Federal Register**, as well as is being published in a major local newspaper of general circulation at or near the Site, and is being distributed to appropriate federal, state, and local government officials and other interested parties. The newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with a decision on the deletion based on the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for these Partial Site deletions from the NPL:

Site Description

The Torch Lake Superfund Site (the Site) is located on the Keweenaw Peninsula in Houghton County, Michigan. The Site includes Torch Lake, the west shore of Torch Lake, the northern portion of Portage Lake, the Portage Lake Canal, Keweenaw Waterway, the North Entry to Lake Superior, Boston Pond, Calumet Lake, and other areas associated with the Keweenaw Basin. Tailing piles and slag piles deposited along the western shore of Torch Lake, Northern Portage Lake, Keweenaw Waterway, Lake Superior, Boston Pond, and Calumet Lake are also included as part of the Site. Tailing piles are located at Lake Linden, Hubbell/Tamarack City, Mason, Calumet Lake, Boston Pond, Michigan Smelter, Isle-Royale, Dollar Bay, and Gross Point. Slag piles are located at Quincy Smelter and Hubbell City.

Site History

Torch Lake was the site of copper milling and smelting facilities and operations for over 100 years. The lake was a repository of milling wastes, and served as the waterway for transportation to support the mining industry. The first mill opened on Torch Lake in 1868. At the mills, copper was extracted by crushing or ''stamping'' the rock into smaller pieces and driving them through successively smaller meshes. The copper and crushed rock were separated by gravimetric sorting in a liquid medium. The copper was sent to a smelter. The crushed rock particles, called ''tailings,'' were discarded along with mill processing water, typically by pumping into the lakes.

Mining output, milling activity, and tailing production peaked in the Keweenaw Peninsula in the early 1900s to 1920. All of the mills at Torch Lake were located on the west shore of the lake and many other mining mills and smelters were located throughout the Keweenaw Peninsula. In about 1916, advances in technology allowed recovery of copper from tailings previously deposited in Torch Lake. Dredges were used to collect submerged tailings, which were then screened, recrushed, and gravity separated. An ammonia leaching process involving cupric ammonium carbonate was used to recover copper and other metals from conglomerate tailings. During the 1920s, chemical reagents were used to further increase the efficiency of reclamation. The chemical reagents included lime, pyridine oil, coal tar creosotes, wood creosote, pine oil, and xanthates. After reclamation activities were complete, chemically treated tailings were returned to the lakes. In the 1930s and 1940s, the Torch Lake mills operated mainly to recover tailings in Torch Lake. In the 1950s, copper mills were still active, but by the late 1960s, copper milling had ceased.

Over 5 million tons of native copper was produced from the Keweenaw Peninsula and more than half of this was processed along the shores of Torch Lake. Between 1868 and 1968, approximately 200 million tons of tailings were dumped into Torch Lake filling at least 20 percent of the lake's original volume.

In June 1972, a discharge of 27,000 gallons of cupric ammonium carbonate leaching liquor occurred into the north end of Torch Lake from the storage vats at the Lake Linden Leaching Plant. The Michigan Water Resources Commission (MWRC) investigated the spill. The 1973 MWRC report discerned no deleterious effects associated with the spill, but did observe that discoloration of several acres of lake bottom indicated previous discharges.

In the 1970s, environmental concern developed regarding the century-long deposition of tailings into Torch Lake. High concentrations of copper and other heavy metals in Torch Lake sediments, toxic discharges into the lakes, and fish abnormalities prompted many investigations into long- and short-term impacts attributed to mine waste disposal. The International Joint Commission's Water Quality Board designated the Torch Lake basin as a Great Lakes Area of Concern (AOC) in 1983. Also in 1983, the Michigan Department of Public Health announced an advisory against the consumption of Torch Lake sauger and walleye fish due to tumors of unknown origin. The Torch Lake Site was proposed for inclusion on the National Priorities List (NPL) in October of 1984. The Site was placed on the NPL in June 1986. The Torch Lake Site is also on the list of sites identified under Michigan's Natural Resources and Environmental Protection Act 451 Part 201.

A Draft Remedial Action Plan (RAP) for the Torch Lake AOC was developed by Michigan Department of Natural Resources (MDNR) in October 1987 to address the contamination problems and to recommend the remedial action for Torch Lake. Revegetation of lakeshore tailings to minimize air-borne particulate matter was one of the recommended remedial actions in the RAP.

Attempts to establish vegetation on the tailing piles in Hubbell/Tamarack City have been conducted since the 1960s to stabilize the shoreline and to reduce air particulate from tailings. It has been estimated that 40 to 50 percent of tailings in this area are vegetated. The Portage Lake Water and Sewage Authority have been spray-irrigating sewage sludge on tailings in Mason City to promote natural vegetation.

Remedial Investigation and Feasibility Study (RI/FS)

On May 9, 1988, Special Notice Letters were issued to Universal Oil Products (UOP) and Quincy Mining Co. to perform a Remedial Investigation/Feasibility Study (RI/FS). UOP is the successor corporation of Calumet Hecla Mining Company which operated its milling and smelting on the shore of Lake Linden and disposed the generated tailings in the area. Quincy Mining Co. conducted smelting operations in the

Hubbell area and disposed of tailings. On June 13, 1988, a Notice Letter was issued to Quincy Development Company, which was the current owner of a tailing pile located on the lake shore of Mason City. Negotiations for the RI/FS Consent Order with these Potentially Responsible Parties (PRPs) were not successful due to issues such as the extent of the Site, and the number of PRPs. Subsequently, U.S. EPA contracted with Donohue & Associates in November 1988 to perform the RI/FS at the Site.

On June 21, 1989, U.S. EPA collected a total of eight samples from drums located in the Old Calumet and Hecla Smelting Mill Site near Lake Linden, the Ahmeek Mill Site near Hubbell City, and the Quincy Site near Mason. On August 1, 1990, nine more samples were collected from drums located above the Tamarack Site near Tamarack City. Based on the results of these samples, U.S. EPA determined that some of these drums may have contained hazardous substances. During the week of May 8, 1989, the U.S. EPA also conducted ground penetrating radar and a subbottom profile (seismic) survey of the bottom of Torch Lake. The area in which this survey was conducted is immediately off-shore from the Old Calumet and Hecla Smelting Mill Site. The survey located several point targets (possibly drums) on the bottom of Torch Lake. Based on the drum sampling results and seismic survey, U.S. EPA executed an Administrative Order by Consent, dated July 30, 1991, which required six companies and individuals to sample and remove drums located on the shore and lake bottom. Pursuant to the Administrative Order, these entities removed 20 drums with unknown contents off-shore from the Peninsula Copper Inc., and the Old Calumet and Hecla Smelting Mill Site in September 1991. A total of 808 empty drums were found in the lake bottom. These empty drums were not removed from the lake bottom. A total of 82 drums and minor quantities of underlying soils were removed from the shore of Torch Lake. The removed drums and soils were sampled, over packed, and disposed off-site at a hazardous waste landfill.

Due to the size and complex nature of the Site, three OUs have been defined for the Site. OU I includes surface tailings, drums, and slag piles on the western shore of Torch Lake. Approximately 500 acres of tailings are exposed surficially in OU I. The Lake Linden parcel is included in OU I, as well as the Hubbell/Tamarack and Mason parcels.

OU II includes groundwater, surface water, submerged tailings and sediment in Torch Lake, Portage Lake, the Portage channel, and other water bodies at the site.

OU III includes tailing and slag deposits located in the north entry of Lake Superior, Michigan Smelter, Quincy Smelter, Calumet Lake, Isle-Royale, Boston Pond, and Grosse-Point(Point Mills).

Remedial Investigations (RIs) have been completed for all three operable units. The RI and Baseline Risk Assessment (BRA) reports for OU I was finalized in July 1991. The RI and BRA reports for OU III were finalized on February 7, 1992. The RI and BRA reports for OU II were finalized in April 1992. The Ecological Assessment for the entire Site was finalized in May 1992.

Record of Decision Findings

A Record of Decision (ROD) was completed to select remedial actions for OU I and III on September 30, 1992. A ROD was completed to select remedial actions for OU II on March 31, 1994.

The remedies primarily address ecological impacts. The most significant ecological impact is the severe degradation of the benthic communities in Torch Lake as a result of metal loadings from the mine tailings. The remedial action required that the contaminated stamp sands (tailings) and slag piles contributing to site-specific ecological risks at the Torch Lake Superfund Site (OUI & OUIII) be covered with a soil and vegetative cover as identified in the RODs for this Site and as documented in the Final Design Document dated September 10, 1998. No further response action was selected for OU II. OU II will be allowed to undergo natural recovery and detoxification.

In addition, the RODs for OU I and OU III required long-term monitoring of Torch Lake to assess the natural recovery and detoxification process after the remedy was implemented. Torch Lake was chosen as a worst-case scenario to study the recovery process. It was assumed that other affected water bodies would respond as well, or better, than Torch Lake to the implemented remedy.

Response Actions

A final design for OU I and OU III was completed in September 1998. Also in September 1998, U.S. EPA obligated $15.2 million for the implementation of the selected remedies for OU I and OU III. As of January 1, 2001, the remedial actions at the Lake Linden and Hubbell/Tamarack City portions of OU I have been completed.

Operation and Maintenance

As mention above, the RODs for OU I & OU III required long-term monitoring of Torch Lake to assess the natural recovery and detoxification process after the remedy was implemented. Other O & M activities include site inspections, repairs and fertilization of the vegetative cover, if necessary. Based on site inspections conducted during Summer 2001, repairs and fertilization of the soil and vegetative cover at the Lake Linden parcel are no longer necessary.

Five-Year Review

Because hazardous substance will remain at the Site above levels that allow for unrestricted use and unlimited exposure. The EPA will conduct periodic reviews at this Site. The review will be conducted pursuant to CERCLA section 121 (c) and as provided in the current guidance on Five Year Reviews; OSWER Directive 9355.7–03B-P, Comprehensive Five-Year Review Guidance, June 2001. The first five-year review for the Torch Lake Site is scheduled for September 2003.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence from the State of Michigan, has determined that all appropriate responses under CERCLA for the Lake Linden parcel and OU II have been completed, and that no further response actions under CERCLA are necessary. Therefore, EPA is deleting the Lake Linden parcel and Operable Unit 2 of the Torch Lake Superfund Site from the NPL.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication. This action will be effective April 8, 2002, unless EPA receives adverse comments by March 7, 2002. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. EPA will prepare a response to comments and as appropriate continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 18, 2002.

Gary V. Gulezian,

Acting Regional Administrator, Region V.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

2. Table 1 of appendix B to part 300 is amended under Michigan ''MI'' by revising the entry for ''Torch Lake'' and the city ''Houghton County, Michigan'' to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	(Notes) [A]
*	* * *	* * *	*
MI	Torch Lake	Houghton	P
*	* * *	* * *	*

[A] * * *
P=Sites with partial deletion(s).

* * * * *

[FR Doc. 02–2507 Filed 2–4–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7777]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance Administration and Mitigation Directorate, 500 C Street, SW.; Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II:				
New York: Davenport, Town of, Delaware County.	360192	July 7, 1975, Emerg.; May 15, 1985, Reg. February 2, 2002.	02/02/02	02/02/02
Evans, Town of, Erie County	360240	April 21, 1972, Emerg.; September 30, 1977, Reg. February 2, 2002.	02/02/02	02/02/02
Big Flats, Town of, Chemung County	360148	March 23, 1973, Emerg.; September 30, 1981, Reg. February 2, 2002.	02/02/02	02/02/02
Region VIII:				
Montana: Cascade County, Unincorporated Area.	300008	May 22, 1975, Emerg.; April 15, 1980, Reg. February 15, 2002.	02/15/02	02/15/02
North Dakota: McHenry County, Unincorporated Areas.	380307	March 23, 1976, Emerg.; September 18, 1987, Reg. February 15, 2002.	02/15/02	02/15/02
Karisruhe, City of, McHenry County	380048	September 22, 1999, Emerg.; February 15, 2002	02/15/02	02/15/02
Lebanon, Township of McHenry County	380309	March 29, 1996, Emerg.; September 18, 1987, Reg. February 15, 2002.	02/15/02	02/15/02
Newport, Township of, McHenry County	380308	March 24, 1976, Emerg.; September 18, 1987, Reg. February 15, 2002.	02/15/02	02/15/02
Villard, Township of, McHenry County	380317	March 31, 1977, Emerg.; September 18, 1987, Reg. February 15, 2002.	02/15/02	02/15/02
Ward County, Unincorporated Areas	380157	April 9, 1971, Emerg.; October 15, 1976, Reg. February 15, 2002.	02/15/02	02/15/02
Burlington, Township of, Ward County	380650	February 19, 1982, Emerg.; February 19, 1982, Reg. February 15, 2002.	02/15/02	02/15/02
Des Lacs, City of, Ward County	380712	November 24, 1999, Emerg.; February 15, 2002	02/15/02	02/15/02
Minot, City of, Ward County	385367	March 17, 1970, Emerg., March 17, 1970, Reg. February 15, 2002.	02/15/02	02/15/02

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: January 28, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance Administration and Mitigation Administration.

[FR Doc. 02–2670 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Acting Executive Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Duval (FEMA Docket No. D–7515).	City of Jacksonville.	August 8, 2001; August 15, 2001; *Financial News and Daily Record*.	The Honorable John A. Delaney, Mayor of the City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	August 1, 2001	120077D&E
Illinois:					
Cook (FEMA Docket No. D–7513.	Unincorporated Areas.	August 9, 2001; August 16, 2001; *Northbrook Star*.	Mr. John H. Stroger, Jr., President of the Cook County Board of Commissioners, 118 North Clark Street, Room 537, Chicago, Illinois 60602.	November 15, 2001 ..	170054 F
Williamson (FEMA Docket No. D–7513).	City of Marion	July 30, 2001; August 6, 2001; *The Marion Daily Republican*.	The Honorable Robert Butler, Mayor of the City of Marion, City Hall, 1102 Tower Square Plaza, Marion, Illinois 62959.	November 5, 2001	170719 B
Indiana:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Rush (FEMA Docket No. D–7513).	Unincorporated Areas.	July 31, 2001; August 7, 2001; *Rushville Republican*.	Mr. Kenneth Brashaber, President of the Rush County Board of Commissioners, County Courthouse, 101 East Second Street, Rushville, Indiana 46173.	July 20, 2001	180421 B
Rush (FEMA Docket No. D–7513).	City of Rushville ..	July 31, 2001; August 7, 2001; *Rushville Republican*.	The Honorable Robert M. Bridges, Mayor of the City of Rushville, Rushville City Hall, 133 West First Street, Rushville, Indiana 46173.	July 20, 2001	180223 B
New Jersey: Morris (FEMA Docket No. D–7511).	Borough of Madison.	March 22, 2001; March 29, 2001; *Madison Eagle*.	The Honorable John J. Dunne, Mayor of the Borough of Madison, Hartley Dodge Memorial, 50 Kings Road, Madison, New Jersey 07940.	June 12, 2001	340347 B
Pennsylvania: Dauphin (FEMA Docket No. D–7513).	Township of East Hanover.	August 3, 2001; August 10, 2001; *Patriot News*.	Mr. George Rish, Township of Hanover Board of Supervisors, 8848 Jonestown Road, Grantville, Pennsylvania 17028.	November 9, 2001	420377 B
Puerto Rico: (FEMA Docket No. D–7511).	Commonwealth ...	June 19, 2001; June 26, 2001; *San Juan Star*.	The Honorable Rafael Cordero Santiago, Mayor of the Municipality of Ponce, P.O. Box 1709, Ponce, Puerto Rico 00733–1709.	September 26, 2001 ..	720000 D
(FEMA Docket No. D–7513).	Commonwealth ...	August 3, 2001; August 10, 2001; *San Juan Star*.	The Honorable Sila Maria Calderon, Governor of Puerto Rico, Post Office Box 9020082, La Fortaleza, San Juan, Puerto Rico 00902.	November 9, 2001	720000 B
South Carolina: Lexington (FEMA Docket No. D–7515).	City of Columbia	August 20, 2001; August 27, 2001; *The State*.	The Honorable Robert D. Coble, Mayor of the City of Columbia, P.O. Box 147, Columbia, South Carolina 29201.	August 13, 2001	450172D

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2666 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified Base (1-percent-annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Acting Administrator, Federal Insurance and Mitigation Administration has resolved any appeals resulting from this notification.

The modified Base Flood Elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified Base Flood Elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood

insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

1.The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No.: B–7422).	City of Avondale (01–09–018P)	August 10, 2001; August 17, 2001; *Arizona Republic*.	The Honorable Ronald J. Drake, Mayor, City of Avondale, 525 North Central Avenue Avondale, Arizona 85323.	July 24, 2001	040038
Maricopa (FEMA Docket No.: B–7422).	City of Avondale (01–09–497P)	September 12, 2001; September 19, 2001; *Arizona Republic*.	The Honorable Ronald J. Drake, Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323.	August 23, 2001	040038
Maricopa (FEMA Docket No.: B–7422).	City of Goodyear (01–09–497P)	September 12, 2001; September 19, 2001; *Arizona Republic*.	The Honorable Bill Arnold, Mayor, City of Goodyear, 119 North Litchfield Road, Goodyear, Arizona 85338.	August 23, 2001	040046
Maricopa (FEMA Docket No.: B–7422).	City of Goodyear (01–09–124P)	March 14, 2001; March 21, 2001; *West Valley View*.	The Honorable Bill Arnold, Mayor, City of Goodyear, 119 North Litchfield Road, Goodyear, Arizona 85338.	February 27, 2001	040046
Maricopa (FEMA Docket No.: B–7422).	City of Scottsdale (01–09–632P)	September 19, 2001; September 26, 2001; *Arizona Republic*.	The Honorable Mary Manross, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, Arizona 85251.	August 31, 2001	045012
Pima (FEMA Docket No.: B–7422).	Unincorporated Areas. (01–09–430P)	August 23, 2001; August 30, 2001; *Arizona Daily Star and Tucson Citizen*.	The Honorable Raul Grijalva, Chairman, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	August 7, 2001	040073
California:					
Marin (FEMA Docket No.: B–7422).	City of Novato ..... (01–09–674P)	August 8, 2001; August 15, 2001; *Novato Advance*.	The Honorable James W. Henderson, Mayor, City of Novato, 900 Sherman Avenue, Novato, California 94945.	July 18, 2001	060178
San Diego (FEMA Docket No.: B–7419).	City of Oceanside (00–09–332P)	June 15, 2001; June 22, 2001; *North County Times*.	The Honorable Terry Johnson, Mayor, City of Oceanside, 300 North Coast Highway, Oceanside, California 92054.	May 31, 2001	060294
San Diego (FEMA Docket No.: B–7422).	San City of Poway. (00–09–080P)	August 9, 2001; August 16, 2001; *Poway News Chieftain*.	The Honorable Mickey Cafagna, Mayor, City of Poway, 13325 Civic Center Drive, Poway, California 92064.	July 25, 2001	060702
Sonoma (FEMA Docket No.: B–7419).	City of Cloverdale (01–09–122P)	June 13, 2001; June 20, 2001; *Cloverdale Reveille*.	The Honorable Robert Jehn, Mayor, City of Cloverdale, City Hall, P.O. Box 217, Cloverdale, California 95425–0217.	May 23, 2001	060376

State and county	Location and case No.	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Shasta (FEMA Docket No.: B–7419).	City of Redding ... (01–09–218P)	July 13, 2001; July 20, 2001; *Redding Record Searchlight*.	The Honorable Dave McGeorge, Mayor, City of Redding, 777 Cypress Avenue, Redding, California 96001.	October 18, 2001	060360
Colorado:					
Douglas (FEMA Docket No.: B–7419).	Town of Parker ... (01–08–180P)	July 11, 2001; July 18, 2001; *Douglas County News*.	The Honorable Gary Lasater, Mayor, Town of Parker, 20120 East Main Street, Parker, Colorado 80138.	June 22, 2001	080310
Douglas (FEMA Docket No.: B–7419).	Unincorporated Areas. (01–08–180P)	July 11, 2001; July 18, 2001; *Douglas County News*.	The Honorable Melanie Worley, Chairperson, Douglas County, Board of Commissioners, 100 Third Street, Castle Rock, Colorado 80104.	June 22, 2001	080049
Jefferson (FEMA Docket No.: B–7422).	City of Arvada ..... (01–08–059P)	August 30, 2001; September 6, 2001; *Arvada Sentinel*.	The Honorable Ken Fellman, Mayor, City of Arvada, City Hall, 8101 Ralston Road, Arvada, Colorado 80002.	December 5, 2001	085072
Jefferson (FEMA Docket No.: B–7422).	City of Lakewood (00–08–331P)	August 9, 2001; August 16, 2001: *Lakewood Sentinel*.	The Honorable Steve Burkholder, Mayor, City of Lakewood, 480 South Allison Parkway, Lakewood, Colorado 80226–3127.	July 25, 2001	085075
Jefferson (FEMA Docket No.: B–7422).	City of Westminster. (99–08–419P)	September 27, 2001; October 4, 2001; *Westminster Window*.	The Honorable Nancy M. Heil, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	September 20, 2001 ..	080008
Larimer (FEMA Docket No.: B–7422).	City of Fort Collins. (00–08–365P)	June 8, 2001; June 15, 2001: *Fort Collins Coloradoan*.	The Honorable Ray Martinez, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, Colorado 80522–0580.	August 23, 2001	080102
Kansas:					
Butler (FEMA Docket No.: B–7419).	City of Andover ... (00–07–552P)	July 5, 2001; July 12, 2001; *Anover Journal Advocate*.	The Honorable Dennis L. Bush, Mayor, City of Andover, P.O. Box 295, Andover, Kansas 67002–0295.	June 19, 2001	200383
Nevada:					
Clark (FEMA Docket No.: B–7419).	City of Mesquite .. (01–09–170P)	May 24, 2001; May 31, 2001: *Las Vegas Review-Journal*.	The Honorable Charles Home, Mayor, City of Mesquite, 10 East Mesquite Boulevard, Mesquite, Nevada 89027.	August 29, 2001	320035
Clark (FEMA Docket No.: B–7422).	City of Mesquite .. (01–09–997P)	September 19, 2001; September 26, 2001; *Las Vegas Review-Journal*.	The Honorable Charles Home, Mayor, City of Mesquite, 10 East Mesquite Boulevard, Mesquite, Nevada 89027.	September 10, 2001 ..	320035
Clark (FEMA Docket No.: B–7419).	Unincorporated Areas. (00–09–828P)	June 15, 2001; June 22, 2001; *Las Vegas Review-Journal*.	The Honorable Dario Herrera, Chairman, Clark County Board of Commissioners, 500 Grand Central Parkway, Las Vegas, Nevada 89155.	September 20, 2001 ..	320003
Douglas (FEMA Docket No.: B–7422).	Unincorporated Areas. (01–09–231P)	September 12, 2001; September 19, 2001; *Record Couier*.	Mr. Daniel C. Holler, County Manger, Douglas County, P.O. Box 218, Minden, Nevada 89423–0218.	August 16, 2001	320008
North Carolina: Wake (FEMA Docket No.: B–7419).	City of Raleigh .... (01–04–061P)	June 7, 2001; June 14, 2001; *News and Observer*.	The Honorable Paul Coble, Mayor, City of Raleigh, City Hall, P.O. Box 590, Raleigh, North Carolina 27602.	May 30, 2001	370243
Oklahoma:					
Oklahoma (FEMA Docket No.: B–7419).	City of Oklahoma City. (00–06–879P)	July 6, 2001; July 13, 2001: *Daily Oklahoman*.	The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	June 20, 2001	405378
Oklahoma (FEMA Docket No.: B–7412).	City of Oklahoma City. (01–06–608P)	February 16, 2001; February 23, 2001; *Daily Oklahoma*.	The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	May 24, 2001	405378
Oregon:					
Multnomah (FEMA Docket No.: B–7422).	City of Milwaukie (01–10–191P)	September 13, 2001; September 20, 2001; *The Oregonian*.	The Honorable Carolyn Tomei, Mayor, City of Milwaukie, 10722 Southeast Main Street, Milwaukie, Oregon 97222.	December 19, 2001 ..	410019

State and county	Location and case No.	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Multnomah (FEMA Docket No.: B–7422).	City of Portland ... (01–10–191P)	September 13, 2001; September 20, 2001; *The Oregonian*.	The Honorable Vera Katz, Mayor, City of Portland, 1221 Southwest Fourth Avenue, Suite 340, Portland, Oregon 97204.	December 19, 2001 ...	410183
Multnomah (FEMA Docket No.: B–7422).	Unincorporated Areas. (01–10–191P)	September 13, 2001; September 20, 2001; *The Oregonian*.	The Honorable Diane Linn, Chairperson, Multnomah County Board of Commissioners, 501 Southeast Hawthorne Boulevard, Suite 600, Portland, Oregon 97214.	December 19, 2001 ..	410179
South Dakota: Union (FEMA Docket No.: B–7422).	Unincorporated Areas. (99–08–326P)	January 18, 2001; January 25, 2001; *Leader Courier*.	The Honorable Roger Boldenow, Chairman, Union County Board of Commissioners, P.O. Box 519, Elk Point, South Dakota 57025–0519.	December 28, 2000 ..	460242
Texas:					
Bexar (FEMA Docket No.: B–7422).	City of San Antonio. (01–06–1953X) ...	September 27, 2001; October 4, 2001; *San Antonio Express News*.	The Honorable Edward D. Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	January 2, 2002	480045
Collin (FEMA Docket No.: B–7419).	City of Plano ..... (01–06–359P)	July 13, 2001; July 20, 2001; *Plano Star Courier*.	The Honorable Jeran Akers, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	June 20, 2001	480140
Dallas (FEMA Docket No.: B–7422).	City of Carrollton (00–06–1211P) ... (00–06–1214P) ... (00–06–1216P) ...	February 16, 2001; February 23, 2001; *Northwest Morning News (Formerly Metrocrest News)*.	The Honorable Mark Stokes, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, TX 75011–0535.	May 24, 2001	480167
Lubbock (FEMA Docket No.: B–7422).	City of Lubbock ... (00–06–1788P) ...	September 22, 2000; September 29, 2000 *Lubbock Avalanche Journal*.	The Honorable Windy Sitton, Mayor, City of Lubbock, P.O. Box 2000, Lubbock, TX 79457–2000.	December 28, 2000 ...	480452
Lubbock (FEMA Docket No.: B–7422).	City of Wolfforth .. (01–06–1799P) ...	September 27, 2001; Octiber 4, 2001; *Lubbock Avalanche Journal*.	The Honorable Sylvia Preston, Mayor, City of Wolfforth, 382 East Highway 62, Wolfforth, Texas 79382.	September 5, 2001 ...	480918
Utah:					
Washington (FEMA Docket No.: B–7422).	City of Santa Clara. (99–08–278P)	August 10, 2001; August 17, 2001; *The Spectrum*.	The Honorable Fred Rowley, Mayor, City of Santa Clara, 2721 Santa Clara Drive, P.O. Box 699, Santa Clara, Utah 84765.	November 15, 2001 ..	490178
Washington (FEMA Docket No.: B–7422).	City of St. George (99–08–278P)	August 10, 2001; August 17, 2001; *The Spectrum*.	The Honorable Daniel D.McArthur, Mayor, City of St. George, 175 East 200 North, St. George, Utah 84770.	November 15, 2001 ..	490177
Washington: Skamania (FEMA Docket No.: B–7422).	City of North Bonneville. (01–10–488P)	September 19, 2001; September 26, 2001; *Skamania County Pioneer*.	The Honorable John W. Kirk, Mayor, City of North Bonneville, P.O. Box 7, North Bonneville, Washington 98639.	September 13, 2001	530256

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2667 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–B–7426]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified Base Flood Elevations for new buildings and their contents.

DATES: These modified Base Flood Elevations are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director, Federal Insurance and Mitigation Administration, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified Base Flood Elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The modified Base Flood Elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified Base Flood Elevation determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified Base Flood Elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in Base Flood Elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified Base Flood Elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa	Town of Buckeye (01–09–453P)	November 1, 2001; November 8, 2001; *Blackeye Valley News*.	The Honorable Dusty Hull, Mayor, Town of Buckeye, 100 North Apache Road, Suite A, Buckeye, Arizona 85326.	October 9, 2001	040039
Maricopa	Town of Cave Creek. (02–09–241X)	December 27, 2001; January 3, 2002; *Arizona Republic*.	The Honorable Vincent Francia, Mayor, Town of Cave Creek, Cave Creek Town Hall, 37622 North Cave Creek Road, Cave Creek, AZ 85331.	April 3, 2002	040129
Maricopa	City of Phoenix ... (01–09–1003P) ...	September 21, 2001; September 28, 2001; *Arizona Republic*.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	September 10, 2001 ..	040051
Maricopa	City of Phoenix ... (01–09–285P)	November 8, 2001; November 15, 2001; *Arizona Republic*.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	October 15, 2001	040051
Maricopa	Unicorporated Areas of Maricopa. (01–09–453P)	November 1, 2001; November 8, 2001; *Buckeye Valley News*.	The Honorable Janice K. Brewer, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, Arizona 85003.	October 9, 2001	040037

State and county	Location and case No.	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maricopa	Unincorporated Areas of Maricopa. (02–09–241X)	December 27, 2001; January 3, 2002; *Arizona Republic*.	The Honorable Janice Brewer, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	April 3, 2002	040037
California:					
Kern	Unincorporated Areas of Kern. (01–09–804P)	October 22, 2001; October 25, 2001; *Bakersfield California*.	The Honorable Ken Peterson, Chairman, Kern County, Board of Supervisors, 1115 Truxton Avenue, Fifth Floor, Bakersfield, California 93301.	September 27, 2001	060075
Orange	City of Huntington Beach. (00–09–825P)	November 8, 2001; November 15, 2001; *Huntington Beach Independent*.	The Honorable Pam Julien Houchen, Mayor, City of Huntington Beach, 2000 Main Street, Huntington Beach, California 92648.	February 13, 2002	065034
Riverside	City of Norco (02–09–195X)	October 25, 2001; November 1, 2001; *Press Enterprise*.	The Honorable Hal H. Clark, Mayor, City of Norco, 3036 Sierra Avenue, Norco, California 92860.	January 30, 2002	060256
Riverside	Unicorporated Areas of Riverside. (02–09–195X)	October 25, 2001; November 1, 2001; *Press Enterprise*.	The Honorable Jim Venable, Chairperson, Riverside County, Board of Supervisors, 4080 Lemon Street, 14th Floor, Riverside, California 92501.	January 30, 2002	060245
San Diego	City of Carlsbad (01–09–204P)	November 1, 2001; November 8, 2001; *North County Times*.	The Honorable Claude A. Lewis, Mayor, City of Carlsbad, 1200 Carlsbad Village Drive, Carlsbad, California 92008.	October 25, 2001	060285
San Diego	City of Escondido (01–09–835P)	January 3, 2002; January 10, 2002; *North County Times*.	The Honorable Lori Pfeiler, Mayor, City of Escondido, 201 North Broadway, Escondido, California 92025.	April 10, 2002	060290
San Diego	City of Vista (01–09–568P)	November 28, 2001; December 5, 2001; *North County Times*.	The Honorable Gloria E. McClellan, Mayor, City of Vista, P.O. Box 1988, Vista, California 92085.	November 7, 2001	060297
Shasta	City of Redding (01–09–682P)	December 5, 2001; December 12, 2001; *Redding Record Searchlight*.	The Honorable Dave McGeorge, Mayor, City of Redding, 777 Cypress Avenue, Redding, California 96001.	March 12, 2002	060360
Ventura	City of Simi Valley. (01–09–981P)	December 12, 2001; December 19, 2001; *Ventura County Star*.	The Honorable William Davis, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, California 93063–2199.	November 26, 2001	060421
Colorado:					
Adams	City of Aurora (00–08–342P)	November 1, 2001; November 8, 2001; *Aurora Sentinel*.	The Honorable Paul E. Tauer, Mayor, City of Aurora, 1470 South Havana Street, Eighth Floor, Aurora, Colorado 80012–4090.	January 23, 2002	080002
Arapahoe	City of Cherry Hills Village. (01–08–262P)	October 18, 2001; October 25, 2001; *The Villager*.	The Honorable Joan Duncan, Mayor, City of Cherry Hills Village, 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80110.	January 23, 2002	080013
Boulder	City of Broomfield (01–08–339P)	October 31, 2001; November 7, 2001; *Boulder Daily Camera*.	The Honorable William Berens, Mayor, City of Broomfield, One DesCombes Drive, Broomfield, Colorado 80020.	February 5, 2002	085073
Larimer	City of Fort Collins. (01–08–349P)	December 27, 2001; January 3, 2002; *Fort Collins Coloradoan*.	The Honorable Ray Martinez, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, Colorado 80522–0580.	November 29, 2001	080102
Nevada:					
Clark	City of North Las Vegas. (01–09–514P)	November 21, 2001; November 28, 2001; *Las Vegas Review-Journal*.	The Honorable Michael L. Montandon, Mayor, City of North Las Vegas, 2200 Civic Center Drive, North Las Vegas, Nevada 89030.	October 31, 2001	320007
Washoe	Unincorporated Areas of Washoe. (01–09–307P)	December 21, 2001; December 28, 2001; *Reno Gazette-Journal*.	The Honorable Ted Short, Chairman, Washoe County, Board of Commissioners, P.O. Box 11130, Reno, Nevada 89520.	November 26, 2001	320019

State and county	Location and case No.	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas:					
Collin	City of Plano (01–06–1043P)	November 8, 2001; November 15, 2001; *Plano Star Courier*.	The Honorable Jeran Akers, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	October 17, 2001	480140
Dallas	City of Dallas (01–06–1381P)	December 27, 2001; January 3, 2002; *Commercial Recorder*.	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla Street, Dallas, Texas 75201.	December 6, 2001	480171
Dallas	City of Sachse (01–06–309P)	November 7, 2001; November 14, 2001; *Dallas Morning News*.	The Honorable Hugh Cairns, Mayor, City of Sachse, City Hall, 5560 Highway 78, Sachse, Texas 75048.	October 12, 2001	480186
Dallas	Unicorporated Areas of Dallas. (01–06–309P)	November 7, 2001; November 14, 2001; *Dallas Morning News*.	The Honorable Lee F. Jackson, Dallas County Judge, Administration Building, 411 Elm Street, Second Floor, Dallas, Texas 75202.	October 12, 2001	480165
Washington:					
Cowlitz	Unincorporated Areas of Cowlitz. (01–10–401P)	November 8, 2001; November 15, 2001; *Daily News*.	The Honorable Jeff M. Rasmussen, Chairman, Cowlitz County, Board of Commissioners, 207 Fourth Avenue North, Kelso, Washington 98626.	February 13, 2002	530032
Whatcom	Unincorporated Areas of Whatcom. (01–10–534P)	November 29, 2001; December 6, 2001; *Bellingham Herald*.	The Honorable Pete Kremen, County Executive, Whatcom County, 311 Grand Avenue, Suite 108, Bellingham, Washington 98225.	November 13, 2001	530198

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2668 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–D–7519]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Executive Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No

environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Connecticut:					
Fairfield	Town of Greenwich.	December 21, 2001; December 28, 2001; *Greenwich Times*.	Mr. Richard Bergstresser, First Selectman for the Town of Greenwich, 101 Field Point Road, Greenwich, Connecticut 06830.	December 7, 2001	090008 C
New Haven	City of Meriden	November 30, 2001; December 7, 2001; *Record-Journal*.	The Honorable Joseph J. Marinan, Jr., Mayor of the City of Meriden, 142 East Main Street, Meriden, Connecticut 06450–8022.	November 19, 2001	090081 C
Florida: Duval	City of Jacksonville.	August 1, 2001; August 8, 2001; *Financial News and Daily Record*.	The Honorable John A. Delaney, Mayor of the City of Jacksonville, City Hall, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	December 4, 2001	120077 E
Indiana:					
Lake	Town of Dyer	December 14, 2001; December 21, 2001; *Daily Herald*.	Mr. Glen Eberly, President, Town of Dyer Board of Trustees, One Town Square, Dyer, Indiana 46311.	December 6, 2001	180129 D
Noble	Unincorporated Areas.	December 19, 2001; *The News-Sun*.	Mr. Mark Pankap, President, Noble County Board of Commissioners, Noble County Courthouse, 101 North Orange Street, Albion, Indiana 46701.	January 18, 2002	180183 A
Lake	Town of Schererville.	December 14, 2001; December 21, 2001; *Daily Herald*.	Mr. Richard Kramer, Manager of the Town of Schererville, 833 West Lincoln Highway, Suite B20W, Schererville, Indiana 46375.	December 6, 2001	180142 B
Maine:					
Aroostook	Town of Fort Fairfield.	November 28, 2001; December 5, 2001; *Fort Fairfield Press*.	Mr. Dan K. Foster, Manager of the Town of Fort Fairfield, P.O. Box 350, Fort Fairfield, Maine 04742.	November 19, 2001	230018 B
Knox	Town of North Haven.	November 22, 2001; November 29, 2001; *The Courier-Gazette*.	Mr. Dake Collins, Town of North Haven Administrator, P.O. Box 400, North Haven, Maine 04853.	November 13, 2001	230228 B
Pennsylvania: Carbon.	Township of East Penn.	November 2, 2001; November 9, 2001; *Times News*.	Mr. Gordon Scherer, Chairman of the Township of East Penn Board of Supervisors, 167 Municipal Road, Lehighton, Pennsylvania 18253.	October 23, 2001	421013 B

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2669 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Communities affected
KANSAS		
FEMA Docket No. (B–7414)		
Tomahawk Creek:		
Approximately 3,500 feet upstream of confluence with Indian Creek Creek.	*850	Johnson County (Uninc. Areas), City of Leawood, City of Overland Park, City of Olathe.
Approximately 1,600 feet downstream of Roe Avenue	*866	
Just downstream of Pflumm Road	*1,007	
Approximately 4,800 feet upstream of a Pflumm Road		
Towahawk Creek Tributary No. 2:		
At confluence with Tomahawk Creek	*853	Johnson County (Uninc. Areas), City of Leawood.
Approximately 1,200 feet upstream of confluence with Towahawk Creek.	*859	
Tomahawk Creek Tributary No. 3:		
At confluence with Tomahawk Creek	*859	Johnson County (Uninc. Areas), City of Leawood.
Approximately 1,300 feet upstream of confluence with Tomahawk Creek.	*860	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Communities affected
Tomahawk Creek Tributary No. 4:		
At confluence with Tomahawk Creek	*864	Johnson County (Uninc. Areas), City of Leawood.
Approximately 1,500 feet upstream of confluence with Tomahawk Creek.	*866	
Tomahawk Creek Tributary No. 5:		
At confluence with Tomahawk Creek	*872	Johnson County (Uninc. Areas), City of Leawood.
Approximately 1,200 feet upstream of confluence with Tomahawk Creek.	*874	
Tomahawk Creek Tributary No. 6:		
At confluence with Tomahawk Creek	*872	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 1,850 feet upstream of confluence with Tomahawk Creek.	*881	
Tomahawk Creek Tributary No. 7:		
At confluence with Tomahawk Creek	*881	Johnson County (Uninc. Areas), City of Overland Park.
Just downstream of Metcalf Avenue	*929	
Tomahawk Creek Tributary No. 8:		
At confluence with Tomahawk Creek	*885	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 1,000 feet upstream of confluence with Tomahawk Creek.	*888	
Tomahawk Creek Tributary No. 9:		
At confluence with Tomahawk Creek	*890	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 1,360 feet upstream of Tomahawk Creek	900	
Tomahawk Creek Tributary No. 10:		
At confluence with Tomahawk Creek	*900	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 1,100 feet upstream of Foster Street	*935	
Tomahawk Creek Tributary No. 11:		
At confluence with Tomahawk Creek	*906	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 1,380 feet upstream of confluence with Tomahawk Creek.	*912	
Tomahawk Creek Tributary No. 12:		
At confluence with Tomahawk Creek	*912	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 4,700 feet upstream of Antioch Road	*955	
Tomahawk Creek Tributary No. 12B1:		
At confluence with Tomahawk Creek Tributary No. 12	*920	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 2,450 feet upstream of confluence with Tomahawk Creek.	*938	
Tomahawk Creek Tributary No. 13:		
At confluence with Tomahawk Creek	*929	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 900 feet upstream of 148th Street	*984	
Tomahawk Creek Tributary No. 13B1:		
At confluence with Tomahawk Creek Tributary No. 13	*935	Johnson County (Uninc. Areas), City of Overland Park.
Just downstream of Antioch Road	*935	
Tomahawk Creek Tributary No. 13E1:		
At confluence with Tomahawk Creek Tributary No. 13	*964	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 500 feet upstream of Switzer Road	*978	
Tomahawk Creek Tributary No. 13F1:		
At confluence with Tomahawk Creek Tributary No. 13	*979	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 1,100 feet upstream of confluence with Tomahawk Creek Tributary No. 13.	*989	
Tomahawk Creek Tributary No. 17:		
At confluence with Tomahawk Creek	*977	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 610 feet upstream of confluence with Tomahawk Creek.	*981	
Tomahawk Creek Tributary No. 18:		
At confluence with Tomahawk Creek	*989	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 1,100 feet downstream of 143rd Street	*997	
Tomahawk Creek Tributary No. 19:		
At confluence with Tomahawk Creek	*1,000	Johnson County (Uninc. Areas), City of Overland Park.
Approximately 630 feet upstream of confluence with Tomahawk Creek.	*1,003	
Tomahawk Creek Tributary No. 20:		
At confluence with Tomahawk Creek	*1,011	Johnson County (Uninc. Areas), City of Overland Park, City of Olathe.
Approximately 300 feet upstream of confluence with Tomahawk Creek.	*1,011	
Tomahawk Creek Tributary No. 21:		
At confluence with Tomahawk Creek	*1,012	Johnson County (Uninc. Areas), City of Overland Park, City of Olathe.
Approximately 760 feet upstream of confluence with Tomahawk Creek.	*1,014	

ADDRESSES:

Johnson County (Unincorporated Areas): Maps are available for inspection at the Department of Planning, Development and Codes, 111 South Cherry, Suite 3500, Olathe, Kansas.

City of Leawood: Maps are available for inspection at the Planning Services Department, 4800 Town Center Drive, Leawood, Kansas.
City of Olathe: Maps are available for inspection at the Planning Department, 100 West Santa Fe, Olathe, Kansas.
City of Overland Park: Maps are available for inspection at City Hall, 8500 Santa Fe Drive, Overland Park, Kansas.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2665 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Baldwin County (Unincorporated Areas) (FEMA Docket Nos. D–7512 & D–7514)	
Fish River:	
Approximately 420 feet upstream of Threemile Creek	*104
At the upstream side of U.S. Route 51 (State Highway 59)	*196
Perone Branch:	
At confluence with Fish River	*34
At State Highway 59	*145
Styx River:	
At confluence with Perdido River	*9
At Brady Road (Truck Route 17)	*77
Mobile Bay:	
Approximately 200 feet south of intersection of Fort Morgan Road and Dune Drive	*7
Approximately 0.6 mile west of the intersection of Main Street and Bel Air Drive	*19
Bon Secour Bay:	
Southeast corner of intersection of Veterans Road and State Route 180	*9
Approximately 300 feet west of the intersection of Bay Road North and Beach Road	*15
Gulf of Mexico:	
At intersection of Ono Boulevard and Pompano Key Drive	*7

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 500 feet south of the intersection of Ponce de Leon Court and Choctow Road	*15
Perdido Bay:	
Approximately 250 feet northwest of the intersection of Magnolia Street and Mobile Avenue	*4
Approximately 1.1 miles east of the intersection of Boykin Boulevard and Azalea Street	*9
Wolf Bay:	
Approximately 500 feet south of the intersection of State Route 95 and East Quarry Drive	*5
Approximately 0.9 mile north of the intersection of Gulf Bay Road and Wolf Bay Terrace	*9
Weeks Bay:	
Approximately 1,000 feet south of intersection of Yupon Lane and Gavin Lane	*11
Approximately 500 feet west of intersection of Yupon Lane and Gavin Lane	*11
Oyster Bay:	
Approximately 2,750 feet north of intersection of Old Fort Morgan Trail	*10
Approximately 0.6 mile north of intersection of Quail Run and Oyster Bay Lane	*14
Maps available for inspection at the Baldwin County Building Department, 201 East Section Street, Bay Minette, Alabama.	
Bay Minette (City), Baldwin County (FEMA Docket No. D–7512)	
McCurtin Creek Tributary:	
Approximately 1,725 feet upstream of Rock Hill Road	*216
At dam	*221
Maps available for inspection at the City Hall, 301 D'Olive Street, Bay Minette, Alabama.	
Daphne (City), Baldwin County (FEMA Docket No. D–7512)	
D'Olive Creek:	
At the confluence with D'Olive Bay	*13
Approximately 100 feet downstream of Lake Forest Dam	*13
Mobile Bay:	
Approximately 2,500 feet west of the intersection of Main Street and Bel Air Drive	*19
At the intersection of Oak Bluff Drive and Maxwell Avenue	*13
Maps available for inspection at the Building Inspector's Office, 1705 Main Street, Daphne, Alabama.	
Fairhope (City), Baldwin County (FEMA Docket No. D–7512)	
Mobile Bay:	
Approximately 900 feet west of the intersection of Main Street and Chapman Street	*17
At the intersection of Pecan Avenue and Mobile Street	*11
Maps available for inspection at the Building Department, 161 North Section Street, Fairhope, Alabama.	
Gulf Shores (Town), Baldwin County (FEMA Docket No. D–7512)	
Gulf of Mexico:	
Approximately 250 feet south of the intersection of State Park RD 2 and Branyon Loop	*8
Approximately 500 feet southeast of the intersection of West Beach Boulevard and Sand Dollar Lane	*15
Bon Secour Bay:	
Approximately 0.7 mile east of intersection of Galloway Lane and Fort Morgan Road	*10
At most northwest corner of the Gulf Shores corporate limits along the Bon Secour Bay shoreline	*15
Oyster Bay:	
Approximately 250 feet north of intersection of Quail Run West and Oyster Bay Lane	*10
Approximately 0.4 mile north of intersection of Quail Run West and Oyster Bay Lane	*14
Maps available for inspection at the Community Development Department, 1905 West First Avenue, Gulf Shores, Alabama.	
Orange Beach (City), Baldwin County (FEMA Docket No. D–7512)	
Gulf of Mexico:	
Approximately 400 feet south of the intersection of Perdido Beach Boulevard and Polaris Street	*8
Approximately 1,000 feet south of the intersection of East Beach Boulevard and Hocklander Lane	*15
Perdido Bay:	
Intersection of Mobile Avenue and Camey Drive	*6
Approximately 350 feet southeast of intersection of Jackson Avenue and Burkart Drive	*9
Wolf Bay:	
At intersection of Hickory Lane and Canal Road	*6
Approximately 1,250 feet north of the intersection of Magnolia Avenue and Bay Circle	*8
Maps available for inspection at the Building Department, 4099 Orange Beach Boulevard, Orange Beach, Alabama.	
Spanish Fort (City), Baldwin County (FEMA Docket No. D–7512)	
Mobile Bay:	
Approximately 0.4 mile west of the intersection of Spanish Main and Bull Run Road	*15
Approximately 500 feet west of intersection of Caisson Trail and Spanish Main	*13
Maps available for inspection at the City of Spanish Fort Flood Protection Administrator's Office, 7581 Spanish Fort Boulevard, Spanish Fort, Alabama.	
CONNECTICUT	
Enfield (Town), Hartford County (FEMA Docket No. D–7512)	
Waterworks Brook:	
Approximately 140 feet downstream of breached dam	*54
Approximately 500 feet upstream of Elm Street	*124
Terry Brook:	
At the confluence with the Scantic River	*117
Approximately 250 feet upstream of Somers Road	*204
Maps available for inspection at the Enfield Town Engineer's Office, 820 Enfield Street, Enfield, Connecticut.	
Marlborough (Town), Hartford County (FEMA Docket No. D–7512)	
Blackledge River:	
Approximately 2,620 feet upstream of West Road	*352
Approximately 550 feet upstream of Jones Hollow Bridge	*384
Fawn Brook:	
Approximately 210 feet upstream of confluence with Blackledge River	*180
Approximately 2,925 feet upstream of South Main Street	*193
Unnamed Tributary of Dickinson Creek:	
At confluence with Dickinson Creek	*419
A point approximately 660 feet upstream of State Route 2	*423
Maps available for inspection at the Marlborough Town Planner's Office, Town Hall, 26 North Main Street, Marlborough, Connecticut.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
FLORIDA	
Astatula (Town), Lake County (FEMA Docket No. D–7508)	
Little Lake Harris:	
Entire shoreline within community	*64
Maps available for inspection at the Town of Astatula Clerk's Office, 25019 CR 561, Astatula, Florida.	
Clermont (City), Lake County (FEMA Docket No. D–7508)	
Wilma Lake North:	
Entire shoreline within community	*91
Lake Felter:	
Entire shoreline within community	*89
Wilma Lake South:	
Approximately 1,900 feet northeast of intersection of State Route 25 and Steves Road	*90
Maps available for inspection at the City of Clermont Planning & Zoning Department, 1 Westgate Plaza, Clermont, Florida.	
Eustis (City), Lake County (FEMA Docket No. D–7508)	
Ponding Area H5B:	
Entire shoreline within community	*70
Lake Eustis:	
Entire shoreline within community	*64
Maps available for inspection at the City of Eustis Building Department, 10 North Grove Street, Eustis, Florida.	
Franklin County (Unincorporated Areas) (FEMA Docket No. D–7512)	
Apalachicola Bay:	
Approximately 2.6 miles southeast of West Pass	*8
Approximately 4.1 miles southwest of Government Cut in St. George Island	*10
St. George Sound:	
Just east of St. George Island Bridge	*10
Shoreline of St. George Island at (and include) Marsh Island	*12
Gulf of Mexico:	
Approximately 2.6 miles southeast of West Pass	*8
Approximately 1.5 miles southeast of the confluence of Big Claires Creek with Ochlockonee Bay	*23
Alligator Harbor:	
Approximately 1,000 feet north of the intersection of State Route 370 and West Harbor Circle	*16
Approximately 900 feet east of Peninsula Point	*17
Maps available for inspection at the Planning and Engineering Department, 33 Commerce Street, Apalachicola, Florida.	
Fruitland Park (City), Lake County (FEMA Docket No. D–7508)	
Dream Lake:	
Entire shoreline within community	*73
Fountain Lake East:	
Entire shoreline within community	*86
Lake Gem:	
Entire shoreline within community	*91
Lake Eustis:	
Entire shoreline within community	*64
Fountain Lake West:	
Entire shoreline within community	*84
Lake Griffin:	
Approximately 1,000 feet northeast of the intersection of Hamlet Court and Picciola Cutoff	*61
Myrtle Lake:	
Entire shoreline within community	*72
Maps available for inspection at the City of Fruitland Park City Hall, Building Department, 506 West Berckman Street, Fruitland Park, Florida.	
Groveland (City), Lake County (FEMA Docket No. D–7508)	
Stewart Lake:	
Approximately 100 feet northwest of the intersection of Parkwood Road and Gadson Street	*100
Maps available for inspection at the City of Groveland Building Department, 156 South Lake Avenue, Groveland, Florida.	
Howey in the Hills (Town), Lake County (FEMA Docket No. D–7508)	
Ponding Area 455–1:	
Approximately 1,000 feet west of the intersection of Marilyn Avenue and Poinsettia Street	*84
Lake Harris:	
Entire shoreline within community	*64
Little Lake Harris:	
Entire shoreline within community	*64
Maps available for inspection at the Town of Howey in the Hills Town Hall, 101 North Palm Avenue, Howey in the Hills, Florida.	
Lake County (Unincorporated Areas) (FEMA Docket Nos. D-7508 & D–7512)	
Lake Denham:	
Entire shoreline within county	*64
Zephyr Lake:	
Entire shoreline within county	*109
Spring Lake:	
Entire shoreline within county	*74
Unity Lake:	
Entire shoreline within county	*64
Ponding Area 07–3:	
Entire shoreline within county	*74
Ponding Area 07–5:	
Approximately 450 feet northeast of the intersection of Thomas Avenue and U.S. Route 44A	*74
Ponding Area 461–1:	
Entire shoreline within county	*87
Ponding Area Q3–4:	*78
Ponding Area G9–1:	
Entire shoreline within county	*69
Ponding Area G1–4:	
Entire shoreline within county	*65
Ponding Area 725–1:	
Entire shoreline within county	*114
Lake Needham:	
Entire shoreline within county	*106
Ponding Area 650–1:	
Entire shoreline within county	*103
Ponding Area 650–2:	
Entire shoreline within county	*105
Ponding Area 525–1:	
Entire shoreline within county	*98
Ponding Area 525–2:	
Entire shoreline within county	*94
Ponding Area 525–3:	
Entire shoreline within county	*95
Lake Harris:	
Entire shoreline within county	*64
Ponding Area D 2 E 2:	*84
Ponding Area D 2 B:	*69
Lake Alice:	
Entire shoreline within county	*99
Ponding Area E 3 B:	*75
Ponding Area K 1 A:	*74
Ponding Area K 4 1:	*65
Martins Lake:	
Approximately 650 feet northwest from the intersection of Old Highway 50 and Forestwood Drive	*89
Ponding Area J–1–1:	
Approximately 100 feet west of the intersection of Orange Court and Bay Avenue	*74
Sunset Valley Lake:	
Entire shoreline within county	*82
Ponding Area 359–2:	*168
Ponding Area 362–1:	
Entire shoreline within county	*80
Lake Tem:	
Entire shoreline within county	*81
Ponding Area:	
Approximately 250 feet in a southwesterly direction from the intersection of Indianola Drive and Woodland Avenue	*64
Lake Illinois:	
Approximately 1,100 feet southwest from the intersection of Magnolia and Cypress Avenues	*79
Ponding Area K–11–3:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1,900 feet southwest from Magnolia and Cypress Avenues	*84
Emeralda Marsh:	
Entire shoreline within county	*60
Ponding Area 4:	
Entire shoreline within county	*74
Dukes Lake:	
Entire shoreline within county	*99
Lake Catherine:	
Entire shoreline within county	*99
Ponding Area 535–2:	*99
Minneola Annex Pond 1:	*95
Minneola Annex Pond 2:	*97
Ponding Area 395–1:	
Entire area within county	*62
Gallows Lake:	
Entire shoreline within county	*104
Ponding Area 510–1:	
Entire shoreline within county	*95
Little Bluff Lake:	
Entire shoreline within county	*99
Lake Douglas:	
Entire shoreline within county	*97
Wolf Branch Sink:	
Entire area within county	*82
Sorrento Swamp:	
Entire shoreline within county	*80
Lake Eustis:	
Entire shoreline within county	*64
Leesburg Tributary 1:	
Approximately 310 feet downstream of Airport Runway	*64
Approximately 0.61 mile upstream of South Whitney Road	*78
Leesburg Tributary 2:	
Approximately 1,000 feet downstream of Youngs Road	*64
Approximately 0.48 mile upstream of State Route 468	*80
Leesburg Tributary 3:	
Approximately 1,400 feet upstream of El Rancho Drive	*64
Approximately 2,050 feet downstream of El Rancho Drive	*77
Lake Griffin:	
Entire shoreline within county	*61
Lake Woodward:	
Approximately 900 feet north of the intersection of Codding Place and Mt. Mitchell Drive	*74
Park Lake:	
Entire shoreline within county	*74
Ponding Area 380–1:	*69
Ponding Area 380–4:	*71
Ponding Area 378–7:	*80
Ponding Area 380–2:	*70
Ponding Area 380–3:	*70
Lake Gary:	
Entire shoreline within county	*103
Saw Mill Lake:	
Entire shoreline within county	*102
Grassy Lake:	
Entire shoreline within county	*85
Little Grassy Lake:	
Entire shoreline within county	*90
Lake Idamere:	
Entire shoreline within county	*69
Indianhouse Lake West:	
Entire shoreline within county	*87
Indianhouse Lake East:	
Entire shoreline within county	*87
Ponding Area 395–2:	*55
Ponding Area 378–2:	*161
Ponding Area 378–6:	*86
Ponding Area 378–5:	*108
Ponding Area 378–4:	*120
Ponding Area 378–3:	*150
Lake Maggie:	*154
Lake Tavares:	
Entire shoreline within county	*71
Lake Arthur:	
Entire shoreline within county	*84
Big Prairie Lake:	
Entire shoreline within county	*94
Blacks Still Lake:	
Entire shoreline within county	*85
Boggy Marsh:	
Entire shoreline within county	*118
Church Lake:	
Entire shoreline within county	*88
Lake Nellie:	
Entire shoreline within county	*101
Neighborhood Lakes North:	
Entire shoreline within county	*60
Neighborhood Lakes South:	
Entire shoreline within county	*61
Pike Lake:	
Entire shoreline within county	*102
Trout Lake:	
Entire shoreline within county	*98
Pine Island Lake:	
Entire shoreline within county	*108
Plum Lake:	
Entire shoreline within county	*87
Island Road:	
Entire shoreline within county	*70
Lake Seneca:	
Entire shoreline within county	*78
Lake Madge:	
Entire area within county	*80
Sawgrass Bay:	
Entire area within county	*106
Lake Spencer:	
Entire shoreline within county	*85
Horseshoe Lake (East):	
Entire shoreline within county	*89
Horseshoe Lake (West):	
Entire shoreline within county	*85
Dilly Marsh:	
Entire shoreline within county	*87
Dilly Lake:	
Entire shoreline within county	*87
Hancock Bay North:	
Entire shoreline within county	*110
Hancock Bay South:	
Entire shoreline within county	*114
Hancock Lake:	
Entire shoreline within county	*115
Myrtle Lake:	
Entire shoreline within county	*72
Lake Lucie:	
Entire shoreline within county	*64
Crooked Lake:	
Entire shoreline within county	*118
Keene Lake:	
Entire shoreline within county	*111
Hidden Lake:	
Entire shoreline within county	*112
Stewart Lake:	
Entire shoreline within county	*100
Sumner Lake:	
Entire shoreline within county	*97
Olsen Lake:	
Entire shoreline within county	*100
Crescent Lake:	
Entire shoreline within county	*107
Crystal Lake:	
Entire shoreline within county	*79
Lake Felter:	
Entire shoreline within county	*89
Lake Gertrude:	
Entire shoreline within county	*72
Lake Glona:	
Entire shoreline within county	*103
Sawgrass Lake:	
Entire shoreline within county	*106
Shepherd Lake:	
Entire shoreline within county	*86
Square Lake:	
Entire shoreline within county	*110
Wash Lake:	
Entire shoreline within county	*101
Wilma Lake North:	
Entire shoreline within county	*91
Wilma Lake South:	
Entire shoreline within county	*90
Island Lake:	
Entire shoreline within county	*104
Ponding Area 535–1:	
Approximately 500 feet northeast of the intersection of Media Road and County Route 561A	*100
Ponding Area 535–3:	
Approximately 500 feet northeast of the intersection of Media Road and County Route 561A	*100
Ponding Area 535–4:	
Entire shoreline within county	*99
Wash Pond 1:	
Entire shoreline within county	*101
Wash Pond 2:	
Entire shoreline within county	*101
Wash Pond 3:	
Entire shoreline within county	*101
Wash Pond 4:	
Entire shoreline within county	*101
Wash Pond 5:	
Entire shoreline within county	*105
Pond Chain 555–1:	
Entire shoreline within county	*85
Ponding Area 470–1:	
Entire shoreline within county	*88
Ponding Area 345–1:	*82
Ponding Area 455–1:	
Entire area within county	*84
Lake 530–1:	
Entire shoreline within county	*90
Lake Saunders:	
Entire shoreline within county	*78
Wolf Branch:	
Approximately 0.49 mile upstream of State Route 46 ..	*95
At Griffin Lane	*166
Ponding Area 555–1:	*82
Ponding Area 555–2:	*82
Ponding Area 555–3:	
Approximately 1,200 feet southwest of the intersection of Arabian Way and Thoroughbred Lane	*90
Lake Ella:	
Entire shoreline within county	*70
Lake Umatilla:	
Entire shoreline within county	*69
Lake Willie:	
Entire shoreline within county	*104
Jacks Lake:	
Entire shoreline within county	*89
Lake Ella 170:	
Entire shoreline within county	*79
Lake Junietta:	
Entire shoreline within county	*68
Ponding Area Q2–1:	
Entire shoreline within county	*77
Lake Hermosa:	
Entire shoreline within county	*84
Leesburg Unnamed Ponding Area:	
Entire shoreline within county	*70

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Lake County Public Works, 123 North Sinclair Avenue, Tavares, Florida.	
Leesburg (City), Lake County (FEMA Docket No. D–7508)	
Leesburg Tributary 2:	
From approximately 1,325 feet upstream of Youngs Road	*77
Upstream side of State Route 44	*81
Lake Denham:	
Entire shoreline within county	*64
Ponding Area Q2–1:	
Entire shoreline within county	*77
Ponding Area Q–3–4:	
Entire shoreline within county	*78
Leesburg Tributary 1:	
Approximately 300 feet upstream of South Whitney	*78
Approximately 0.80 mile upstream of South Whitney Road	*79
Maps available for inspection at the City of Leesburg Public Works Department, 413 East North Boulevard, Leesburg, Florida.	
Minneola (City), Lake County (FEMA Docket No. D–7516)	
Plum Lake:	
Entire shoreline within county	*87
Ponding Area 535–1:	*100
Ponding Area 535–2:	*99
Little Grassy Lake:	
Approximately 0.55 mile northeast of the intersection of Perl Street and Galena Avenue	*90
Grassy Lake:	
Entire shoreline within county	*85
Maps available for inspection at the Minneola City Hall, 302 West Pearl Street, Minneola, Florida.	
Montverde (Town), Lake County (FEMA Docket No. D–7508)	
Lake Florence:	
Entire shoreline within county	*76
Ponding Area 555–1:	*82
Ponding Area 555–2:	*82
Maps available for inspection at the Montverde Town Hall, 17404 Sixth Street, Montverde, Florida.	
Mount Dora (City), Lake County (FEMA Docket No. D-7508)	
Lake Franklin:	
Entire shoreline within county	*106
Lake Nettie:	
Entire shoreline within county	*89
Lake John:	
Entire shoreline within county	*82
Wolf Branch Sink:	*82
Lake Woodward:	
Approximately 900 feet northeast of the intersection of Codding Place and Mt. Mitchell Drive	*74
Ponding Area 359–1:	*76
Wolf Branch:	
At upstream side of Wooden Driveway Bridge	*127
Approximately 200 feet upstream of Country Club Boulevard	*164
Maps available for inspection at the City of Mount Dora Building & Zoning Department, 900 North Donnelly Street, Mount Dora, Florida.	
Tavares (City), Lake County (FEMA Docket No. D–7508)	
Lake Eustis:	
Entire shoreline within community	*64
Lake Harris:	
Entire shoreline within community	*64
Maps available for inspection at the City of Tavares Planning & Zoning Department, 201 East Main Street, Tavares, Florida.	
ILLINOIS	
Kendall County (Unincorporated Areas) (FEMA Docket No. D–7514)	
Harvey Creek:	
From county boundary	*638
At approximately 775 feet upstream of confluence with Little Rock Creek	*617
Maps available for inspection at the Kendall County Planning and Zoning Department, 111 West Fox Street, Yorkville, Illinois.	
Newark (Village), Kendall County (FEMA Docket No. D–7514)	
Dave-Bob Creek:	
Approximately 175 feet upstream of confluence with Clear Creek	*620
Approximately 560 feet upstream of Chicago Road	*663
Maps available for inspection at the Village of Newark Building Department, 101 West Lions Street, Newark, Illinois.	
Sandwich (City), DeKalb County (FEMA Docket No. D–7514)	
Harvey Creek:	
Approximately 775 feet upstream of Little Rock Creek	*617
At Dayton Street	*640
Maps available for inspection at the City Engineering Office, 144 East Railroad Street, Sandwich, Illinois.	
INDIANA	
Grant County (Unincorporated Areas) (FEMA Docket No. D–7512)	
Lugar Creek:	
At the confluence with Mississinewa River	*794
At confluence with Monroe Ditch and Tippey Ditch	*835
Monroe Ditch:	
At the confluence with Lugar Creek	*835
A point approximately 1.4 miles upstream of State Route 700	*851
Tippey Ditch:	
At the confluence with Lugar Creek	*835
Downstream side of Bradford Pike	*841
Mississinewa River:	
Approximately 0.4 mile downstream of State Routes 9 and 37	*784
Approximately 1,600 feet upstream of confluence of Bean Run	*824
Maps available for inspection at the Grant County Area Planning Office, 401 South Adams Street, Marion, Indiana.	
MAINE	
Lebanon (Town), York County (FEMA Docket No. D–7512)	
Salmon Falls River:	
At downstream corporate limits	*190
At upstream corporate limits	*421
Maps available for inspection at the Lebanon Code Enforcement Office, 655 Upper Guinea Road, Lebanon, Maine.	
York (Town), York County (FEMA Docket No. D–7508)	
Atlantic Ocean:	
Approximately 900 feet southeast of the intersection of Hiram Street and Willard Street	*22
Approximately 1,000 feet southeast of Bayview Avenue and Long Sands Road	*10
Shallow Flooding Area:	
Approximately 150 feet northeast of the intersection of Ocean Avenue and Marietta Avenue	#2
Approximately 300 feet southwest of the #1 intersection of Nubble Road and Long Beach Avenue along the west side of Long Beach Avenue	#1

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Along Shore Road in the vicinity of Phillips Cove	#1
Approximately 1,350 feet southeast of the #1 intersection of Shore Road and Agamenticus Avenue in the vicinity of Pint Cove	#1
Along Bay Haven Road in the vicinity of Cape Neddick Harbor.	
Along York Street, south of Long Sands Road, in the vicinity of Little River	#1
Approximately 1,700 feet south of intersection of Seabreeze Lane and Surf Point Road	#1
Cape Neddick River:	
At Shore Road	*10
Approximately 650 feet downstream of U.S. Route 1	*10
Maps available for inspection at the York Town Planner's Office, 186 York Street, York, Maine.	
MASSACHUSETTS	
Westwood (Town), Norfolk County (FEMA Docket No. D–7512)	
Bubbling Brook:	
Approximately 40 feet upstream of the confluence with Pettee Pond	*144
Approximately 800 feet upstream of North Street	*228
Mill Brook:	
Approximately 40 feet upstream of confluence with Pettee Pond	*144
Approximately 1,000 feet upstream of Hartford Street	*236
Purgatory Brook:	
At Everett Street	*66
Approximately 1.19 miles upstream of Gay Street	*175
South Brook:	
At the confluence with Purgatory Brook	*67
Downstream side of East Street	*76
Maps available for inspection at the Westwood Building Department, 50 Corby Street, Westwood, Massachusetts.	
MINNESOTA	
Blaine (City), Anoka County (FEMA Docket No. D–7512)	
County Ditch 41 (Sand Creek):	
At upstream side of 117th Avenue	*892
Approximately 1,100 feet upstream of State Route 65	*895
County Ditch 60 (Branch 1):	
Approximately 350 feet downstream of Jefferson Street	*894
At State Route 14/downstream side of Polk Street	*895
Pleasure Creek:	
Approximately 450 feet upstream of University Avenue	*892
At 98th lane	*893
Maps available for inspection at the City of Blaine Administrative Office, Engineering Department, 9150 Central Avenue Northeast, Blaine, Minnesota.	
NEW HAMPSHIRE	
Conway (Town), Carroll County (FEMA Docket No. D–7512)	
Kearsarge Brook:	
At the Conway Scenic Railroad bridge	*471
Approximately 0.36 mile upstream of Cranmore Road bridge	*550
Pequawket Pond:	
Entire shoreline within community	*464
Maps available for inspection at the Town Hall, 1634 East Main Street, Center Conway, New Hampshire.	
Nashua (City), Hillsborough County (FEMA Docket No. D–7506)	
Nashua River:	
At the downstream side of B&M Railroad bridge	*114
Approximately 0.75 mile upstream of State Route 111	*176
Bartemus Brook:	
At confluence with Nashua River	*165
At upstream corporate limits	*166
Lyle Reed Brook:	
At confluence with Nashua River	*167
Approximately .075 mile upstream of State Route 111	*167
Maps available for inspection at the Nashua City Hall, 229 Main Street, Nashua, New Hampshire.	
NEW JERSEY	
Berkeley (Township), Ocean County (FEMA Docket No. D–7512)	
Atlantic Ocean:	
At 10th Lane, extended	*16
Approximately 100 feet east of intersection of 10th Lane and East Central Avenue	#1
Barnegat Bay:	
Shoreline at Balsem Drive, extended	*9
Approximately 1 mile northeast of Sedge Islands	*6
Maps available for inspection at the Berkeley Town Hall, 627 Pinewald-Keswick Road, Bayville, New Jersey 08721–0287.	
NEW YORK	
Fort Plain (Village), Montgomery County (FEMA Docket No. D–7514)	
Otsquago Creek:	
Approximately 540 feet upstream of the confluence with the Mohawk River	*306
Approximately 50 feet upstream of State Route 80	*336
Maps available for inspection at the Fort Plain Village Hall, 168 Canal Street, Fort Plain, New York.	
Herkimer (Village), Herkimer County (FEMA Docket No. D–7514)	
West Canada Creek:	
Approximately 600 feet downstream of East State Street (State Route 5)	*387
At the upstream corporate limits with the Town of Herkimer (approximately 1.36 miles upstream of East State Street)	*413
Maps available for inspection at the Herkimer Village Municipal Hall, 120 Green Street, Herkimer, New York.	
Jay (Town), Essex County (FEMA Docket No. D–7514)	
East Branch Ausable River:	
At the confluence with Ausable River	*550
At the upstream corporate limits (approximately 2.24 miles upstream of NYS Route 9N)	*724
Ausable River:	
At the downstream corporate limits	*491
At the confluence of East and West Branches of Ausable River	*550
Tributary to East Branch Ausable River:	
At the confluence with East Branch Ausable River	*589
At NYS Route 9R	*765
West Branch Ausable River:	
At the confluence with the Ausable River and East Branch Ausable River	*550
Approximately 250 feet upstream of the confluence with the Ausable River	*552
Maps available for inspection at the Jay Town Hall, School Street, Ausable Forks, New York.	
PENNSYLVANIA	
Bowmanstown (Borough), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 0.76 mile downstream of State Route 895	*417
Approximately 0.49 mile upstream of State Route 895	*432
Fireline Creek:	
At confluence with Lehigh River	*424
Approximately 1,750 feet downstream of Cherry Hill Road	*545

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Bowmanstown Borough Hall, Mill and Ore Streets, Bowmanstown, Pennsylvania.	
East Penn (Township), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 1.7 miles downstream of Palmerton Dam	*388
Approximately 5,100 feet upstream of State Route 895	*438
Maps available for inspection at the East Penn Township Building, 167 Municipal Road, Lehighton, Pennsylvania.	
Franklin (Township), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 1 mile downstream of U.S. Route 209	*452
Approximately 0.82 mile downstream of Lehigh Valley Railroad	*497
Maps available for inspection at the Franklin Township Hall, 900 Fairyland Road, Lehighton, Pennsylvania.	
Jim Thorpe (Borough), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 0.82 mile downstream of Lehigh Valley Railroad	*497
Approximately 2 miles upstream of State Route 903	*564
Maps available for inspection at the Jim Thorpe Borough Hall, 101 East Tenth Street, Jim Thorpe, Pennsylvania.	
Lehighton (Borough), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 1,160 feet downstream of U.S. Route 209	*464
Approximately 1.3 miles upstream of U.S. Route 209	*482
Mahoning Creek:	
At the confluence with Lehigh River	*464
Approximately 1,600 feet upstream of the confluence with Lehigh River	*464
Maps available for inspection at the Lehighton Borough Hall, 1 Constitution Avenue, Lehighton, Pennsylvania.	
Lower Towamensing (Township), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 1.7 miles downstream of Palmerton Dam	*388
Approximately 620 feet downstream of Pennsylvania Turnpike	*443
Aquashicola Creek:	
At the confluence with Lehigh River	*393
Approximately 2.3 miles upstream of State Route 2009	*468
Fireline Creek:	
Approximately 1,750 feet downstream of Cherry Hill Road	*545
Approximately 1.2 miles upstream of Cherry Hill Road	*687
Maps available for inspection at the Lower Towamensing Township Hall, 595 Hahns Dairy Road, Palmerton, Pennsylvania.	
Mahoning (Township), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 5,100 feet upstream of State Route 895	*438
Approximately 0.58 mile downstream of State Route 903	*526
Mahoning Creek:	
At the confluence with Lehigh River	*464
Approximately 500 feet upstream of confluence with Lehigh River	*464
Maps available for inspection at the Mahoning Township Office, 2685 Mahoning Drive East, Lehighton, Pennsylvania.	
Nesquehoning (Borough), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 1,900 feet upstream of State Route 903	*542
Approximately 2 miles upstream of State Route 903	*564
Nesquehoning Creek:	
At confluence with Lehigh River	*555
Approximately 1,850 feet upstream of Tonolli Corporate Road	*1,014
Maps available for inspection at the Nesquehoning Borough Hall, 114 West Catawissa, Nesquehoning, Pennsylvania.	
Palmerton (Borough), Carbon County (FEMA Docket No. D–7512)	
Lehigh River:	
Approximately 5,070 feet downstream of Palmerton Dam	*395
Approximately 1.37 miles upstream of Palmerton Dam	*417
Aquashicola Creek:	
Approximately 3,710 feet upstream of confluence with Lehigh River	*393
Approximately 1,000 feet downstream of CONRAIL	*418
Maps available for inspection at the Palmerton Borough Hall, 443 Delaware Avenue, Palmerton, Pennsylvania.	
Parryville (Borough), Carbon County (FEMA Docket No. D–7512	
Lehigh River:	
Approximately 850 feet downstream of Pennsylvania Turnpike	*443
Approximately 1 mile downstream of U.S. Route 209	*452
Pohopoco Creek:	
At confluence with Lehigh River	*443
Approximately 1,175 feet upstream of confluence with Lehigh River	*443
Maps available for inspection at the Parryville Borough Hall, 967 Cherryhill Road, Parryville, Pennsylvania.	
Weissport (Borough), Carbon County (FEMA Docket No. D–7512)	
Lehigh River	
Approximately 0.52 mile downstream of U.S. Route 209	*460
Approximately 700 feet upstream Central Railroad	*475
Maps available for inspection at the Weissport Borough Hall, 440 Allen Street, Weissport, Pennsylvania.	
VIRGINIA	
Monterey (Town), Highland County (FEMA Docket No. D–7514)	
West Strait Creek:	
Approximately 650 feet downstream of U.S. Route 220	*2,853
Approximately 630 feet upstream of the west stream crossing of Mill Alley	*2,967
Maps available for inspection at the Monterey Building and Zoning Department, Main Street, Monterey, Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2664 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–160; MM Docket No. 90–189; RM–6904; RM–7114; RM–7186; RM–7415; RM–7298]

Radio Broadcasting Services; Grass Valley and Jackson, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule, application for review.

SUMMARY: This document dismisses an Application for Review filed by Nevada County Broadcasters, Inc. directed against a staff *Memorandum Opinion and Order* in this proceeding. *See* 64 FR 63258, Published November 19, 1999. This action is contingent on the concurrent grants of applications filed by Station KNCO, Grass Valley, California, (File No. BPH–20011025AAB), and Station KNGT, Jackson, California, (File No. BPH–20011024ABE), both proposing operation on Channel 232A. The reference coordinates for the Channel 232A at Grass Valley, California, are 39–14–44 and 120–57–52. The reference coordinates for the Channel 232A allotment at Jackson, California, are 38–24–44 and 120–35–32. With this action, the proceeding is terminated.

DATES: Effective February 5, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 90–189, adopted January 16, 2002, and released January 18, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals ll, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 231A and adding Channel 232A at Grass Valley.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 232B1 and adding Channel 232A at Jackson.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 02–2616 Filed 2–4–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010823216-2020-02; I.D. 071601A]

RIN 0648-AP32

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Delay of the Implementation Date of the Year-4 Default Management Measures for Small-Mesh Multispecies

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

ACTION: Final rule.

SUMMARY: NMFS amends the regulations that implement Amendment 12 to the Northeast Multispecies Fishery Management Plan (FMP) to change the date of the Year-4 default management measures for small-mesh multispecies (silver hake (whiting), red hake and offshore hake), from May 1, 2002, to May 1, 2003. Delaying the implementation date for an additional year is in conformance with the original intent of Amendment 12 to the FMP. As specified in the FMP, this action is necessary to provide at least 2 full years of data on the fishery so that the Whiting Monitoring Committee (WMC) can fully assess the effectiveness of the current management measures and recommend alternative default measures, if appropriate.

DATES: Effective March 7, 2002.

ADDRESSES: Copies of the Amendment 12 document, its Regulatory Impact Review (RIR), final Regulatory Flexibility Analysis (FRFA) and the Final Supplemental Environmental Impact Statement (FSEIS), and other supporting documents for Amendment 12 are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, at 978–281–9272.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) voted at its December 1998 meeting that May 1, 1999, would begin Year 1 of Amendment 12, with the expectation that the Amendment would be implemented by the autumn of 1999. The Council submitted its final version of Amendment 12 in April 1999. Based upon the Council's assumption of an autumn 1999 implementation date, the regulations implementing Amendment 12 specified that the Year-4 default measures would become effective on May 1, 2002. However, due to extensive review and revisions, the Amendment did not actually become effective until April 28, 2000. Thus, Year 1 of Amendment 12 was actually only 3 days in duration (April 28 - April 30, 2000), rather than 8 to 10 months, as originally anticipated by the Council. As a result, under the current regulations, the WMC would have less than 2 years of data to analyze, and only one opportunity to implement an annual adjustment before the default measures are scheduled to be implemented (May 1, 2002). This is not consistent with the Council's intent in Amendment 12. A proposed rule and request for comments was published in the **Federal Register** (66 FR 48020) on September 17, 2001. Details concerning the background of this action are discussed extensively in the preamble to the proposed rule and are not repeated here. In addition, copies of the analytical documents conducted in support of Amendment 12 upon which this action is based are available (see **ADDRESSES**).

Comments and Responses

Comments on the proposed rule for this action were accepted through October 17, 2001. A total of 143 comments were received, all of which were from the commercial fishing industry; 141 were signed form letters. All 143 comments supported this action. This action is also strongly supported by both the New England and

Mid-Atlantic Fishery Management Councils. A summary of the comments are as follows:

Comment: Commentor supports moving the default measures for small-mesh multispecies back one year because it recognizes the abbreviated nature of what was to have been a 4-year period as well as the possibility that current research will negate the need for implementation of the default ruling altogether.

Response: Comment is acknowledged.

Comment: Commentor, writing on behalf of its membership, supports delay of implementation of the year-4 default measures until May 1, 2003, because it will provide the Whiting Monitoring Committee with the additional time necessary to review the effectiveness of the existing plan.

Response: Comment is acknowledged.

Comment: 141 commentors support delay of implementation of the default measures because, they state, NMFS would then have two full years of data on the whiting fishery to gauge the effects of the trip limits and minimum mesh sizes. They add that delay would also allow the Whiting Monitoring Committee to fully assess the current management measures and recommend alternative default measures, if necessary.

Response: Comment is acknowledged.

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding the economic impact of this action. As a result, a regulatory flexibility analysis was not prepared.

This action has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

This final rule does not contain policies with federalism implications under E.O. 13132.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 30, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraph (z)(2) introductory text is revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(z) * * *

(2) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, beginning May 1, 2003, it is unlawful for an owner or operator of a vessel issued a valid Federal multispecies permit to do any of the following:

* * * * *

3. In § 648.80, the first sentence of paragraph (a)(3)(i)(A); paragraphs (a)(3)(i)(B), (a)(4)(i)(B) and (a)(4)(i)(C); the first sentences of paragraphs (a)(7)(i)(B), (a)(8)(i)(A), and (a)(8)(i)(B); paragraph (a)(9)(i)(D)(*1*) and (a)(9)(i)(D)(*2*); the first sentence of paragraphs (a)(14)(i)(B) and (a)(14)(i)(C); paragraph (b)(3)(i)(A); the first sentence of paragraph (b)(3)(i)(B); and paragraph (c)(2)(iii) are revised to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(3) * * *

(i) * * *

(A) Through April 30, 2003, an owner or operator of a vessel fishing in the northern shrimp fishery described in this section under this exemption may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake--up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster--up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. * * *

(B) Beginning May 1, 2003, an owner or operator of a vessel fishing for northern shrimp may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake--up to 100 lb (45.36 kg); and American lobster--up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

* * * * *

(4) * * *

(i) * * *

(B) Through April 30, 2003, an owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined--up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish, and red hake--up to 10 percent each, by weight, of all other species on board; monkfish and monkfish parts--up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster--up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Beginning May 1, 2003, an owner or operator of a vessel fishing in this area is subject to the mesh size restrictions specified in paragraph (a)(4)(i)(D) of this section and may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined--up to a maximum of 10,000 lb (4,536 kg), except for the allowable incidental species listed in paragraph (a)(4)(i)(B) of this section.

* * * * *

(7) * * *

(i) * * *

(B) *Small-mesh multispecies.* Beginning May 1, 2003, an exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of small-mesh multispecies bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of small-mesh multispecies caught as bycatch is, or can be reduced to, less than 10 percent, by weight, of total catch and

that such exemption will not jeopardize fishing mortality objectives. * * *

* * * * *

(8) * * *

(i)(A) Unless otherwise prohibited in § 648.81, through April 30, 2003, a vessel subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(3)(ii) or (a)(8)(ii) of this section and § 648.86(d) from July 15 through November 15, when fishing in Small-mesh Area 1, and from January 1 through June 30, when fishing in Small-mesh Area 2. * * *

(B) Unless otherwise prohibited in § 648.81, beginning May 1, 2003, in addition to the requirements specified in paragraph (a)(8)(i)(A) of this section, nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length. * * *

* * * * *

(9) * * *

(i) * * *

(D)(*1*) Through April 30, 2003, the following species may be retained, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake--up to 200 lb (90.72 kg); monkfish and monkfish parts--up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster--up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts--up to 10 percent, by weight, of all other species on board.

(*2*) Beginning May 1, 2003, all nets must comply with a minimum mesh size of 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length. Vessels may retain the allowable incidental species listed in paragraph (a)(9)(i)(D)(*1*) of this section.

* * * * *

(14) * * *

(i) * * *

(B) Up to and including April 30, 2003, all nets must comply with a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restriction as specified in paragraph (a)(14)(i)(D) of this section. * * *

(C) Beginning May 1, 2003, in addition to the requirements specified in paragraph (a)(14)(i)(B) of this section, all nets must comply with a minimum mesh size of 3-inch (7.62 cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(14)(i)(D) of this section. * * *

* * * * *

(b) * * *

(3) * * *

(i) * * *

(A) Through April 30, 2003, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(B) Beginning May 1, 2003, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may not use nets with mesh size less than 3 in (7.62 cm), unless exempted pursuant to paragraph (b)(4) of this section, and may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake--up to 10,000 lb (4,536 kg), and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the possession limit restrictions specified under § 648.86. * * *

* * * * *

(c) * * *

(2) * * *

(iii) *Small mesh beginning May 1, 2003*. Beginning May 1, 2003, nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length.

* * * * *

4. In § 648.86, the headings to paragraphs (d) and (e) are revised to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(d) *Small-mesh multispecies through April 30, 2003.*

* * * * *

(e) *Small-mesh multispecies beginning on May 1, 2003*--

* * * * *

5. In § 648.90, the last sentence of paragraph (a)(2) is revised to read as follows:

§ 648.90 Multispecies framework specifications.

(a) * * *

(2) * * * In addition, for the 2003 fishing year, the WMC must consider, and recommend as appropriate, management options other than the default measures for small-mesh multispecies management (mesh and possession limit restrictions for small-mesh multispecies beginning May 1, 2003).

* * * * *

[FR Doc. 02–2726 Filed 2–4–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 24
Tuesday, February 5, 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 LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA48

Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of meeting.

SUMMARY: On October 27, 2000, the Department of Labor (the Department) published in the **Federal Register** two proposed rules implementing section 3(40) of the Employee Retirement Income Security Act of 1974 (ERISA). *See* 65 FR 64482 (Oct. 27, 2000). Employee welfare benefit plans that are established or maintained for the purpose of providing benefits to the employees of more than one employer are ''multiple employer welfare arrangements'' (MEWAs) under section 3(40) of ERISA and therefore are subject to certain state regulations, unless they meet one of the exceptions set forth in section 3(40)(A) of ERISA, including an exception for plans or arrangements that are established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements. The proposed rules would establish a process and criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA. The proposed rules also would provide guidance for determining when an employee welfare benefit plan is established or maintained under or pursuant to such an agreement.

The proposed rules published by the Department were based on a report prepared by the Department's ERISA Section 3(40) Negotiated Rulemaking Advisory Committee (the Committee). The Committee was established under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (FACA) to develop a proposed rule implementing section 3(40)(A) of ERISA. The Department has received seven public comments on the proposed rules and has rechartered the Committee to enable the Department to obtain advice from the Committee on the public comments to the proposed rules.

The Department is convening this meeting of the Committee to consider the public comments on the proposed rules preparatory to the Department's development of final rules.

DATES: The Committee will meet from 9:30 a.m. to approximately 4:45 p.m. on Friday, March 1, 2002.

ADDRESSES: This Committee meeting will be held at the offices of the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Conference Room 5, C5525 from 9:30 a.m. to 4:45 p.m. All interested parties are invited to attend this public meeting. Seating is limited and will be available on a first-come, first-serve basis. Individuals with disabilities wishing to attend should contact, at least 4 business days in advance of the meeting, Paul D. Mannina, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: 202–693–5627; fax: 202–693–5610), if special accommodations are needed. The date, location and time for any subsequent Committee meetings will be announced in advance in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Paul D. Mannina, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: 202–693–5627; fax: 202–693–5610). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Minutes of all public meetings and other documents made available to the Committee will be available for public inspection and copying in the public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC from 8:30 a.m. to 4:30 p.m. Any written comments on these minutes should be directed to the ERISA 3(40) Negotiated Rulemaking Advisory Committee, and sent to Paul D. Mannina, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: 202–693–5627; fax: 202–693–5610). These are not toll-free numbers.

Agenda

The Committee will discuss the public comments received by the Department in response to the publication of the proposed rules.

Members of the public may file a written statement pertaining to the subject of this meeting by submitting 15 copies on or before Friday, February 22, 2002, to Paul D. Mannina, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives wishing to address the Committee should forward their request to Mr. Mannina or telephone him at 202–693–5627. During the negotiation session, time permitting, there shall be time for oral public comment. Members of the public are encouraged to keep oral statements brief, but extended written statements may be submitted for the record.

Organizations or individuals may also submit written statements for the record without presenting an oral statement. Fifteen (15) copies of such statements should be sent to Mr. Mannina at the above address. Papers will be accepted and included in the record of the meeting if received on or before Friday, February 22, 2002.

Signed at Washington, DC, this 29th day of January, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–2641 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7136–7]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Lake Linden parcel and Operable Unit 2 of the Torch Lake Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency, (EPA) Region V is issuing a notice of intent to delete the Lake Linden parcel and Operable Unit 2 from the Torch Lake Superfund Site (Site) located in Houghton County, Michigan, from the National Priorities List (NPL) and requests public comments on this notice of intent to delete. Operable Unit 2 includes all submerged tailing, sediments, surface water and groundwater associated with the Torch Lake Superfund Site. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Michigan, through the Michigan Department of Environmental Quality, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund. In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Lake Linden parcel and Operable Unit 2 of the Torch Lake Superfund Site without prior notice of intent to delete because we view this as a non-controversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final notice of deletion. If we receive no adverse comment(s) on the direct final notice of deletion, we will not take further action. If we receive timely adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on adverse comments received on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by March 7, 2002.

ADDRESSES: Written comments should be addressed to: Stuart Hill, Community Involvement Coordinator, U.S. EPA (P–19J), 77 W. Jackson, Chicago, IL 60604, 312–886–0689 or 1–800–621–8431.

FOR FURTHER INFORMATION CONTACT: Steven Padovani, Remedial Project Manager at (312) 353–6755, or Gladys Beard, State NPL Deletion Process Manager at (312) 886–7253 or 1–800–621–8431, Superfund Division, U.S. EPA (SR–6J), 77 W. Jackson, IL 60604.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

Information Repositories

Repositories have been established to provide detailed information concerning this decision at the following address: EPA Region V Library, 77 W. Jackson, Chicago, IL 60604, (312) 353–5821, Monday through Friday 8:00 a.m. to 4:00 p.m.; Lake Linden Public Library, 601 Calumet St., Lake Linden, MI 49945, (906) 296–0698, Monday through Friday 8:00 a.m. to 4:00 p.m., Tuesday and Thursday 6:00 p.m to 8:00 p.m.; Portage Lake District Library, 105 Huron, Houghton, MI 49931 (906) 482–4570, Monday, Tuesday and Thursday 10:00 a.m. to 9:00 p.m., Wednesday and Friday 10:00 a.m. to 5:00 p.m. and Saturday 12:00 p.m to 5:00 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: January 18, 2002.

Gary V. Gulezian,

Acting Regional Administrator, Region V.

[FR Doc. 02–2508 Filed 2–4–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–B–7424]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management

requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § *67.4.*

§ 67.4 Proposed flood elevation determination.

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGDV)	
				Existing	Modified
Colorado	Boulder County (Unincorporated Areas).	Bullhead Gulch	At confluence with Boulder Creek	None	*4,991
			Approximately 50 feet downstream of Burlington Northern Railroad.	None	*5,360
	Boulder County (Unincorporated Areas).	Rock Creek	Approximately 3,500 feet downstream of Burlington Northern Railroad.	None	*5,371
			Approximately 9,700 feet upstream of McCaslin Boulevard.	None	*5,639
	Boulder County (Unincorporated Areas).	Prince Tributary East Branch.	At confluence with Bullhead Gulch	None	*5,026
			At divergrence of East/West branches	None	*5,056
	Boulder County, Town of Superior and City of Louisville.	Coal Creek	Approximately 1,650 feet downstream of Denver Boulder Turnpike.	*5,439	*5,439
			Approximately 5,200 feet upstream of Community Ditch Diversion.	None	*5,689
	Boulder County (Unincorporated Areas).	Prince Tributary West Branch.	At confluence with Bullhead Gulch	None	*5,036
			Approximately 5,750 feet upstream of Isabelle Road.	None	*5,178
Depth in feet above ground					
Boulder County and Unincorporated Areas:					
Maps are available for inspection at Department of Public Works, 1739 Broadway, Suite 300, P.O. Box 791, Boulder, Colorado.					
Send comments to the Honorable Ron Stewart, Chairman, Boulder County Board, 1325 Pearl Street, Boulder, Colorado 80302.					
City of Louisville, Colorado:					
Maps are available for inspection at the City of Louisville, 749 Main Street, Louisville, Colorado.					
Send comments to the Honorable Tom Davidson, Mayor, City of Louisville, 49 Main Street, Louisville, Colorado 80027.					
Town of Superior, Colorado:					
Maps are available for inspection at the Town of Superior, 124 East Coal Creek Drive, Superior, Colorado.					
Send comments to the Honorable Ted Asti, Mayor, Town of Superior, 124 East Coal Creek Drive, Superior, Colorado 80027.					
Hawaii	Kauai County	Hanalei River	Approximately 1,300 feet upstream of the confluence with Hanalei Bay.	*13	*12
			At Kuhio Highway (state route 56)	*15	*16
			Approximately 6,000 feet upstream of the southern end of USFWSs Pond D.	*35	*38

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGDV)	
				Existing	Modified
Depth in feet above ground Maps are available for inspection at the Department of Public Works, 4444 Rice Street, Suite 175, Lihue, Hawaii. Send comments to the Honorable Maryann Kusaka, Mayor, Kauai County, 4444 Rice Street, Suite 235, Lihue, Hawaii 96766.					
Missouri	Greene County	South Creek	Approximately 0.53 miles (2,800 feet) upstream of County Road 160.	*1,192	*1,193
			Approximately 1.16 miles (6,125 feet) upstream of County Road 160.	*1,208	*1,205
		Wilson Creek	Approximately 740 feet downstream of its Confluence with North Branch Wilson Creek.	*1,198	*1,198
			Approximately 0.69 miles (3650 feet) upstream of the U.S. Highway 160 Bypass.	*1,207	*1,206
		South Branch	At its confluence with South Creek	*1,169	*1,169
			Just downstream of Farm Road 141 (Cox Avenue).	None	*1,238
		Ward Branch	Approximately 130 feet downstream of its confluence with Yarbough Creek.	*1,176	*1,176
			Approximately 350 feet upstream of Holland Avenue.	*1,213	*1,207
		Mount Pleasant Branch	Just downstream of U.S. Highway 160	*1,182	*1,207
			Approximately 200 feet upstream of U.S. Highway 160.	*1,184	*1,182
		Farmer Branch	At its confluence with James River	*1,133	*1,1333
			Just downstream of Farm Road 194	None	*1,85
		Pea Ridge Creek	At its confluence with South Dry Sac River.	None	*1,133
			Just downstream of Farm Road 151	None	*1,190
		Dickerson Branch	At its confluence with Pea Ridge Creek	None	*1,113
			Just downstream of Farm Road 151	None	*1,175
		South Dry Sac River	Approximately 300 feet upstream of its confluence with Little Sac River.	None	*1,156
			Approximately 670 feet upstream of Farm Road 151.	None	*1,091
		South Dry Sac River Tributary.	Approximately 800 feet upstream of its confluence with South Dry Sac River.	None	*1,138
			Approximately 1,620 feet upstream of Farm Road 167.	None	*1,200
		Ward Branch Tributary	At its confluence with Ward Branch	None	*1,253
			Approximately 260 feet upstream of Weaver Road (Farm Road 178).	None	*1,118
		Wilson Creek Tributary	At its confluence with Wilson Creek	None	*1,194
			Appoximately 300 feet upstream of Highway M (Republic Road).	None	*1,145
		Wilson Creek Unmanned Tributary.	At its confluence with Wilson Creek	None	*1,241
			Just downstream of the San Francisco Railway.	None	*1,182
		Workman Branch	At its confluence with Ward Branch	None	*1,138
			Just downstream of Farm Road 145	None	*1,195
		Yarborough Creek	Approximately 1,350 feet upstream of its confluence with Ward Branch.	None	*1,204
			Approximately 800 feet upstream of U.S. Highway 160.	None	*1,233
Depth in feet above ground Maps are available for inspection at the Department of Public Works, City Hall, 625 Fifth Street, Spearfish, South Dakota. Send Comments to The Honorable Jerry Krambeck, Mayor, City of Spearfish, Cith Hall, 625 Fifth Street, South Dakota 57783–2311.					
Oregon	City of Salem	Shelton Ditch	At confluence with Pringle Creek	*148	*146
			Approximately 100 feet upstream of Diversion Structure at Mill Creek.	*188	*191
		Pringle Creek	At confluence with Williamette River (location shown as confluence of Shelton Ditch with Williamette River on effective Firm).	*143	*143
			At confluence of Pringle Creek and East Fork Pringle Creek.	*172	*174
		Middle Fork Pringle Creek	At confluence of Pringle Creek and East Fork Pringle Creek.	*172	*174

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGDV)	
				Existing	Modified
			Approximately 150 feet downstream of Interstate 5.	*222	*219
		East Fork Pringle Creek ...	At confluence with Pringle Creek and Middle Fork Pringle Creek.	*172	*174
			Approximately 150 feet downstream of Interstate 5.	*219	*219
		Mill Creek B	At confluence with Williamette River	*141	*141
			Just upstream of Mission Street	*198	*199
			Approximately 3,000 feet upstream of Penitentiary Annex Road.	*253	*254
Depth in feet above ground					
Maps are available for inspection at the City of Salem, 555 Liberty Street SE, Salem, Oregon.					
Send comments to The Honorable Michael Swain, Mayor, City of Salem, 555 Liberty Street SE, Room 230 Salem, Oregon 97301.					
South Dakota	City of Spearfish, Lawrence County.	West Chipmunk Gulch	At confluence with Spearfish Creek	*3,574	*3,574
			At 960 feet upstream of West Oliver Street.	None	*3,663
# Depth in feet above ground					
Maps are available for inspection at Department of Public Works, City Hall, 625 Fifth Street, Spearfish, South Dakota.					
Send comments to The Honorable Jerry Krambeck, Major, City of Spearfish, City Hall, 625 Fifth Street, Spearfish, South Dakota 57783.					
South Dakota	City of Hill City, Pennington County.	Spring Creek	At approximately 50 feet upstream of Hill City power line located at approximately 2,000 feet upstream of U.S. Highway 385 and 16.	None	*4,937
			At approximately 1,400 feet upstream of Poplar Street and Bishop Mountain Avenue Intersection.	None	*5,013
		Newton Fork Creek	At Museum Drive	None	*4,967
			Approximately 1,900 feet upstream of Museum Drive.	None	*4,981
# Depth in feet above ground					
Maps are available for inspection at the City Hall, 324 Main Street, Hill City, South Dakota.					
Send comments to The Honorable Peter Stach, Mayor City of Hill City, City Hall, P.O. Box 395, Hill City, South Dakota 57745.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2660 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7520]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These

proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)		Communities affected
		Existing	Modified	
ILLINOIS (City of Columbia and Monroe County)				
Carr Creek	Approximately 275 feet upstream of of Bluff Road	*421	*422	City of Columbia, Unincorporated Areas of Monroe County
	Approximately 600 feet upstream of Gall Road	None	*449	
Carr Creek Tributary	At the confluence with Carr Creek	None	*446	City of Columbia, Unincorporated Areas of Monroe County
	Approximately 1,620 feet upstream of confluence with Carr Creek.	None	*448	
Palmer Creek	Approximately 0.66 mile downstream of Union Pacific Railroad.	None	*402	City of Columbia, Unincorporated Areas of Monroe County
	At Rueck Road	*455	*454	
Palmer Creek Tributary	At the confluence with Palmer Creek	*435	*431	City of Columbia, Unincorporated Areas of Monroe County
	Approximately 760 feet upstream of abandoned railroad.	*474	*473	
Rueck Creek	At the confluence with Palmer Creek	None	*432	City of Columbia, Unincorporated Areas of Monroe County
	Approximately 0.83 mile upstream of confluence with Palmer Creek.	None	*452	
Wilson Creek	At the confluence with Carr Creek	None	*429	City of Columbia
	Approximately 500 feet upstream of South Main Street.	None	*482	

Monroe County (Unincorporated Areas)
Maps available for inspection at the Monroe County Zoning Office, Monroe County Courthouse, 100 South Main Street, Waterloo, Illinois.
Send comments to Mr. Robert Rippelmeyer, Chairman of the Monroe County Board of Commissioners, Monroe County Courthouse, 100 South Main Street, Waterloo, Illinois 62298.
City of Columbia
Maps available for inspection at the Columbia City Hall, 208 South Rapp Avenue, Columbia, Illinois.
Send comments to The Honorable Lester Schneider, Mayor of the City of Columbia, 208 South Rapp Avenue, Columbia, Illinois 62236.

VIRGINIA Southampton County and Town of Courtland				
Blackwater River	At the confluence with Chowan River	*11	*14	Southampton County

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)		Communities affected
		Existing	Modified	
	Approximately 6,700 feet upstream of State Route 620 (Broadwater Road).	None	*36	(Unincorporated Areas)
Nottoway River	At the confluence with Chowan River	*11	*14	Southampton County (Unincorporated Areas); Courtland (Town)
	Approximately 2,400 feet upstream of Norfolk Franklin & Danville Railroad.	*26	*27	

Southampton County (Unincorporated Areas)
Maps available for inspection at the Southampton County Administrator's Office, 26022 Administration Center Driver, Courtland, Virginia.
Send comments to Mr. Michael W. Johnson, Southampton County Administrator, 26022 Administration Center Drive, Courtland, Virginia 23837.
Town of Courtland
Maps available for inspection at the Courtland Town Office, 22219 Meherrin Road, Courtland, Virginia.
Send comments to The Honorable Lewis H. Davis, Sr., Mayor of the Town of Courtland, P.O. Box 39, Courtland, Virginia 23837.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2663 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7522]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or *(email) matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maine	Orrington (Town), Penobscot County.	Sedgeunkedunk Steam	A point approximately 100 feet downstream of Orrington corporate limits..	None	*42
			A point approximately 420 feet upstream of Fields Pond Road bridge.	None	*102
		Penobscot River	At downstream corporate limits	None	*11
			At upstream corporate limits	None	*16
		Brewer Lake	Entire shoreline within community	None	*112
Maps available for inspection at the Orrington Town Hall, 29 Center Drive, Orrington, Maine.					
Send comments to Mr. Dexter Johnson, Manager of the Town of Orrington, P.O. Box 159, Orrington, Maine 04474.					
New Jersey	Ocean (Township), Monmouth County.	Poplar Brook	Upstream side of Norwood Avenue	*15	*18
			At a point approximately 0.47 mile upstream of Willow Drive.	*53	*51
		Hog Swamp Brook	At a point approximately 130 feet downstream of Monmouth Road.	*12	*11
			At a point approximately 0.26 mile upstream of Route 18.	*64	65
Maps available for inspection at the Ocean Township Office, 399 Monmouth Road, Oakhurst, New Jersey.					
Send comments to Mr. David Kochel, Ocean Township Manager, 399 Monmouth Road, Oakhurst, New Jersey 07755.					
Tennessee	Gallatin (City), Sumner County.	Cumberland River	Approximately 1 mile downstream of the Gallatin Stream Plant gage.	*452	*453
			Approximately 3.0 miles upstream of the Gallatin Stream Plant gage.	*452	*453
		Albright Creek	Approximately 50 feet downstream of Willmore Road.	*452	*454
			Just downstream of Willmore Road	*452	454
Maps available for inspection at the Gallatin City Hall, 132 West Main Street, Gallatin, Tennessee.					
Send comments to The Honorable Don Wright, Mayor of the City of Gallatin, 132 West Main Street, Gallatin, Tennessee 37066.					
Tennessee	Hendersonville (City), Sumner County.	Drakes Creek	Approximately 0.4 mile upstream of U.S. Route 31E.	*451	*452
			Approximately 1,200 feet upstream of Long Hollow Pike.	None	*518
		Unnamed Tributary 5	Approximately 50 feet upstream of Buchanan Circle.	*506	*507
			Approximately 0.4 mile upstream of Buchanan Circle.	None	*523
		Station Camp Creek	Approximately 1,430 feet upstream of Station Camp Creek Road.	None	*456
			Approximately 1,060 feet upstream of Long Hollow Pike.	None	*490
		Cumberland River	At the downstream county boundary	*430	*432
			At the downstream side of Old Hickory Dam.	430	*432
		Center Point Branch	At the confluence with Mansker Creek	*430	*432
			Approximately 1,750 feet upstream of Hickory Lane.	None	*437
		Madison Creek	At the confluence with Mansker Creek	*430	*432
			Approximately 250 feet downstream of Long Hollow Pike.	444	*443
		Mansker Creek	At the confluence with Cumberland River	*430	*432
			At the confluence of Madison Creek	*430	*432
Maps available for inspection at the Hendersonville City Hall, One Executive Park Drive, Hendersonville, Tennessee.					
Send comments to The Honorable Jim Fuqua, Mayor of the City of Hendersonville, One Executive Park Drive, Hendersonville, Tennessee 37075.					
Tennessee	Millersville (City), Sumner County.	Slaters Creek	Just upstream of Long Drive	*470	*471
			Approximately 1,140 feet upstream of the most upstream crossing of Interstate 65.	None	*562
		East Fork Slaters Creek	At the confluence with Slaters Creek	*503	*506
			Approximately 0.81 mile upstream of Pole Hill Road.	*564	563

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Mansker Creek	Approximately 1,450 feet upstream of the most upstream crossing of U.S. Route 41.	*486	*485
			Approximately 1.1 miles upstream of Old Shiloh Road.	None	*584
Maps available for inspection at the Millersville City Hall, 1246 Louisville Highway, Millersville, Tennessee.					
Send comments to The Honorable Robert Mobley, Mayor of the City of Millersville, 1246 Louisville Highway, Millersville, Tennessee 37072.					
Tennessee	Metropolitan Government of Nashville and Davidson County.	Mansker Creek	Upstream side of U.S. Route 41	*455	*452
			At a point approximately 1.14 miles upstream of Old Shiloh Road.	None	*584
		Lumsley Fork	At the confluence with Mansker Creek	*455	*453
			At a point approximately 211 feet upstream of the confluence with Mansker Creek.	*455	*454
Maps available for inspection at Metropolitan Government of Nashville and Davidson County Public Works, 720 South 5th Street, Nashville, Tennessee.					
Send comments to The Honorable William Purcell, Mayor of the Metropolitan Government of Nashville and Davidson County, 107 Metropolitan Courthouse, Nashville, Tennessee 37201.					
Tennessee	Portland (City), Sumner County.	Donoho Branch	Approximately 106 feet downstream of College Street.	None	*794
			Approximately 0.3 mile upstream of State Route 52.	None	*805
		Portland Channel	Approximately 1,900 feet downstream of Victor Reiter Parkway.	None	*787
			Approximately 0.5 mile upstream of Morningside Drive.	None	*794
Maps available for inspection at the Portland City Hall, 100 South Russel Street, Portland, Tennessee.					
Send comments to The Honorable Jim Calloway, Mayor of the City of Portland, City Hall, 100 South Russel Street, Portland, Tennessee 37148.					
Tennessee	Sumner County (Unincorporated Areas).	Arterburn Branch	At the confluence with Honey Run Creek	None	*743
			Approximately 0.8 mile upstream of the confluence with Honey Run Creek.	None	*769
		Jones Branch	Approximately 0.67 mile upstream of Tyree Springs Road.	None	*804
			Approximately 0.69 mile upstream of Tyree Springs Road.	None	*805
		Hogan Branch	At the confluence with Drakes Creek	*546	*545
			Approximately 1.3 miles upstream of Hogan Branch Road.	*621	*620
		Drakes Creek	Approximately 1,200 feet upstream of Old Shiloh Road.	*516	*518
			Approximately 0.5 mile upstream of Shell Road.	*563	*562
		Honey Run Creek	Approximately 180 feet upstream of U.S. Route 31 West and State Route 41.	None	*714
			At the confluence of Jones Branch and Arterburn Branch.	None	*743
		Station Camp Creek	Approximately 840 feet upstream of Long Hollow Pike.	None	*490
			Approximately 1,060 feet upstream of Long Hollow Pike.	None	*490
Maps available for inspection at Sumner County Building Planner's Office, 355 North Belvedere Drive, Room 102, Gallatin, Tennessee.					
Send comments to Mr. Thomas Marlin, Sumner County Executive, 355 North Belvedere Drive, Room 102, Gallatin, Tennessee 37066.					
Tennessee	White House (City), Sumner County.	Arterburn Branch	At the confluence with Honey Run Creek	None	*743
			Approximately 0.8 mile upstream of the confluence with Honey Run Creek.	None	*769
		Honey Run Creek	Approximately 450 feet downstream of U.S. Route 31 West.	None	*712

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			At the confluence of Jones Branch and Arterburn Branch.	None	*743

Maps available for inspection at the White House Codes Department, 105 College Street, White House, Tennessee.

Send comments to The Honorable Billy Hobbs, Mayor of the City of White House, P.O. Drawer 69, White House, Tennessee 37188.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2662 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–P–7603]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator for Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and record keeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD) (NAVD)	
				Existing	Modified
KS	Winfield, City of Cowley County.	Walnut River	At 0.9 mile downstream of 14th Avenue	1129	1126

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD) ◆ (NAVD)	
				Existing	Modified
			At approximately 0.4 mile upstream of Highway 160.	1131	1130
			At approximately 1.5 miles upstream of Highway 160.	1132	1133
		Black Crook Creek	Just upstream of Joel Mack Road	1121	1120
			At approximately 0.7 mile upstream of Joel Mack Road.	1121	1120
Maps are available for inspection at the Public Works Division/Engineering Department, City Hall, 200 East Ninth Avenue, Winfield, KS 67156. Send comments to the Honorable Phillip R. Jarvis, Mayor, City of Winfield, City Hall, 200 East Ninth Avenue, Winfield, Kansas 67156.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2661 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

Proposed Rules

Federal Register
Vol. 67, No. 24
Tuesday, February 5, 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 LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA48

Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of meeting.

SUMMARY: On October 27, 2000, the Department of Labor (the Department) published in the **Federal Register** two proposed rules implementing section 3(40) of the Employee Retirement Income Security Act of 1974 (ERISA). *See* 65 FR 64482 (Oct. 27, 2000). Employee welfare benefit plans that are established or maintained for the purpose of providing benefits to the employees of more than one employer are ''multiple employer welfare arrangements'' (MEWAs) under section 3(40) of ERISA and therefore are subject to certain state regulations, unless they meet one of the exceptions set forth in section 3(40)(A) of ERISA, including an exception for plans or arrangements that are established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements. The proposed rules would establish a process and criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA. The proposed rules also would provide guidance for determining when an employee welfare benefit plan is established or maintained under or pursuant to such an agreement.

The proposed rules published by the Department were based on a report prepared by the Department's ERISA Section 3(40) Negotiated Rulemaking Advisory Committee (the Committee). The Committee was established under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (FACA) to develop a proposed rule implementing section 3(40)(A) of ERISA. The Department has received seven public comments on the proposed rules and has rechartered the Committee to enable the Department to obtain advice from the Committee on the public comments to the proposed rules.

The Department is convening this meeting of the Committee to consider the public comments on the proposed rules preparatory to the Department's development of final rules.

DATES: The Committee will meet from 9:30 a.m. to approximately 4:45 p.m. on Friday, March 1, 2002.

ADDRESSES: This Committee meeting will be held at the offices of the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Conference Room 5, C5525 from 9:30 a.m. to 4:45 p.m. All interested parties are invited to attend this public meeting. Seating is limited and will be available on a first-come, first-serve basis. Individuals with disabilities wishing to attend should contact, at least 4 business days in advance of the meeting, Paul D. Mannina, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: 202–693–5627; fax: 202–693–5610), if special accommodations are needed. The date, location and time for any subsequent Committee meetings will be announced in advance in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Paul D. Mannina, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: 202–693–5627; fax: 202–693–5610). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Minutes of all public meetings and other documents made available to the Committee will be available for public inspection and copying in the public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC from 8:30 a.m. to 4:30 p.m. Any written comments on these minutes should be directed to the ERISA 3(40) Negotiated Rulemaking Advisory Committee, and sent to Paul D. Mannina, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: 202–693–5627; fax: 202–693–5610). These are not toll-free numbers.

Agenda

The Committee will discuss the public comments received by the Department in response to the publication of the proposed rules.

Members of the public may file a written statement pertaining to the subject of this meeting by submitting 15 copies on or before Friday, February 22, 2002, to Paul D. Mannina, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives wishing to address the Committee should forward their request to Mr. Mannina or telephone him at 202–693–5627. During the negotiation session, time permitting, there shall be time for oral public comment. Members of the public are encouraged to keep oral statements brief, but extended written statements may be submitted for the record.

Organizations or individuals may also submit written statements for the record without presenting an oral statement. Fifteen (15) copies of such statements should be sent to Mr. Mannina at the above address. Papers will be accepted and included in the record of the meeting if received on or before Friday, February 22, 2002.

Signed at Washington, DC, this 29th day of January, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–2641 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7136–7]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Lake Linden parcel and Operable Unit 2 of the Torch Lake Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency, (EPA) Region V is issuing a notice of intent to delete the Lake Linden parcel and Operable Unit 2 from the Torch Lake Superfund Site (Site) located in Houghton County, Michigan, from the National Priorities List (NPL) and requests public comments on this notice of intent to delete. Operable Unit 2 includes all submerged tailing, sediments, surface water and groundwater associated with the Torch Lake Superfund Site. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Michigan, through the Michigan Department of Environmental Quality, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund. In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Lake Linden parcel and Operable Unit 2 of the Torch Lake Superfund Site without prior notice of intent to delete because we view this as a non-controversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final notice of deletion. If we receive no adverse comment(s) on the direct final notice of deletion, we will not take further action. If we receive timely adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on adverse comments received on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by March 7, 2002.

ADDRESSES: Written comments should be addressed to: Stuart Hill, Community Involvement Coordinator, U.S. EPA (P–19J), 77 W. Jackson, Chicago, IL 60604, 312–886–0689 or 1–800–621–8431.

FOR FURTHER INFORMATION CONTACT: Steven Padovani, Remedial Project Manager at (312) 353–6755, or Gladys Beard, State NPL Deletion Process Manager at (312) 886–7253 or 1–800–621–8431, Superfund Division, U.S. EPA (SR–6J), 77 W. Jackson, IL 60604.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

Information Repositories

Repositories have been established to provide detailed information concerning this decision at the following address: EPA Region V Library, 77 W. Jackson, Chicago, IL 60604, (312) 353–5821, Monday through Friday 8:00 a.m. to 4:00 p.m.; Lake Linden Public Library, 601 Calumet St., Lake Linden, MI 49945, (906) 296–0698, Monday through Friday 8:00 a.m. to 4:00 p.m., Tuesday and Thursday 6:00 p.m to 8:00 p.m.; Portage Lake District Library, 105 Huron, Houghton, MI 49931 (906) 482–4570, Monday, Tuesday and Thursday 10:00 a.m. to 9:00 p.m., Wednesday and Friday 10:00 a.m. to 5:00 p.m. and Saturday 12:00 p.m to 5:00 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: January 18, 2002.

Gary V. Gulezian,

Acting Regional Administrator, Region V.

[FR Doc. 02–2508 Filed 2–4–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–B–7424]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management

requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § *67.4.*

§ 67.4 Proposed flood elevation determination.

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGDV)	
				Existing	Modified
Colorado	Boulder County (Unincorporated Areas).	Bullhead Gulch	At confluence with Boulder Creek	None	*4,991
			Approximately 50 feet downstream of Burlington Northern Railroad.	None	*5,360
	Boulder County (Unincorporated Areas).	Rock Creek	Approximately 3,500 feet downstream of Burlington Northern Railroad.	None	*5,371
			Approximately 9,700 feet upstream of McCaslin Boulevard.	None	*5,639
	Boulder County (Unincorporated Areas).	Prince Tributary East Branch.	At confluence with Bullhead Gulch	None	*5,026
			At divergrence of East/West branches	None	*5,056
	Boulder County, Town of Superior and City of Louisville.	Coal Creek	Approximately 1,650 feet downstream of Denver Boulder Turnpike.	*5,439	*5,439
			Approximately 5,200 feet upstream of Community Ditch Diversion.	None	*5,689
	Boulder County (Unincorporated Areas).	Prince Tributary West Branch.	At confluence with Bullhead Gulch	None	*5,036
			Approximately 5,750 feet upstream of Isabelle Road.	None	*5,178
Depth in feet above ground					
Boulder County and Unincorporated Areas:					
Maps are available for inspection at Department of Public Works, 1739 Broadway, Suite 300, P.O. Box 791, Boulder, Colorado.					
Send comments to the Honorable Ron Stewart, Chairman, Boulder County Board, 1325 Pearl Street, Boulder, Colorado 80302.					
City of Louisville, Colorado:					
Maps are available for inspection at the City of Louisville, 749 Main Street, Louisville, Colorado.					
Send comments to the Honorable Tom Davidson, Mayor, City of Louisville, 49 Main Street, Louisville, Colorado 80027.					
Town of Superior, Colorado:					
Maps are available for inspection at the Town of Superior, 124 East Coal Creek Drive, Superior, Colorado.					
Send comments to the Honorable Ted Asti, Mayor, Town of Superior, 124 East Coal Creek Drive, Superior, Colorado 80027.					
Hawaii	Kauai County	Hanalei River	Approximately 1,300 feet upstream of the confluence with Hanalei Bay.	*13	*12
			At Kuhio Highway (state route 56)	*15	*16
			Approximately 6,000 feet upstream of the southern end of USFWSs Pond D.	*35	*38

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGDV)	
				Existing	Modified
Depth in feet above ground Maps are available for inspection at the Department of Public Works, 4444 Rice Street, Suite 175, Lihue, Hawaii. Send comments to the Honorable Maryann Kusaka, Mayor, Kauai County, 4444 Rice Street, Suite 235, Lihue, Hawaii 96766.					
Missouri	Greene County	South Creek	Approximately 0.53 miles (2,800 feet) upstream of County Road 160.	*1,192	*1,193
			Approximately 1.16 miles (6,125 feet) upstream of County Road 160.	*1,208	*1,205
		Wilson Creek	Approximately 740 feet downstream of its Confluence with North Branch Wilson Creek.	*1,198	*1,198
			Approximately 0.69 miles (3650 feet) upstream of the U.S. Highway 160 Bypass.	*1,207	*1,206
		South Branch	At its confluence with South Creek	*1,169	*1,169
			Just downstream of Farm Road 141 (Cox Avenue).	None	*1,238
		Ward Branch	Approximately 130 feet downstream of its confluence with Yarbough Creek.	*1,176	*1,176
			Approximately 350 feet upstream of Holland Avenue.	*1,213	*1,207
		Mount Pleasant Branch	Just downstream of U.S. Highway 160	*1,182	*1,207
			Approximately 200 feet upstream of U.S. Highway 160.	*1,184	*1,182
		Farmer Branch	At its confluence with James River	*1,133	*1,1333
			Just downstream of Farm Road 194	None	*1,85
		Pea Ridge Creek	At its confluence with South Dry Sac River.	None	*1,133
			Just downstream of Farm Road 151	None	*1,190
		Dickerson Branch	At its confluence with Pea Ridge Creek	None	*1,113
			Just downstream of Farm Road 151	None	*1,175
		South Dry Sac River	Approximately 300 feet upstream of its confluence with Little Sac River.	None	*1,156
			Approximately 670 feet upstream of Farm Road 151.	None	*1,091
		South Dry Sac River Tributary.	Approximately 800 feet upstream of its confluence with South Dry Sac River.	None	*1,138
			Approximately 1,620 feet upstream of Farm Road 167.	None	*1,200
		Ward Branch Tributary	At its confluence with Ward Branch	None	*1,253
			Approximately 260 feet upstream of Weaver Road (Farm Road 178).	None	*1,118
		Wilson Creek Tributary	At its confluence with Wilson Creek	None	*1,194
			Appoximately 300 feet upstream of Highway M (Republic Road).	None	*1,145
		Wilson Creek Unmanned Tributary.	At its confluence with Wilson Creek	None	*1,241
			Just downstream of the San Francisco Railway.	None	*1,182
		Workman Branch	At its confluence with Ward Branch	None	*1,138
			Just downstream of Farm Road 145	None	*1,195
		Yarborough Creek	Approximately 1,350 feet upstream of its confluence with Ward Branch.	None	*1,204
			Approximately 800 feet upstream of U.S. Highway 160.	None	*1,233
Depth in feet above ground Maps are available for inspection at the Department of Public Works, City Hall, 625 Fifth Street, Spearfish, South Dakota. Send Comments to The Honorable Jerry Krambeck, Mayor, City of Spearfish, Cith Hall, 625 Fifth Street, South Dakota 57783–2311.					
Oregon	City of Salem	Shelton Ditch	At confluence with Pringle Creek	*148	*146
			Approximately 100 feet upstream of Diversion Structure at Mill Creek.	*188	*191
		Pringle Creek	At confluence with Williamette River (location shown as confluence of Shelton Ditch with Williamette River on effective Firm).	*143	*143
			At confluence of Pringle Creek and East Fork Pringle Creek.	*172	*174
		Middle Fork Pringle Creek	At confluence of Pringle Creek and East Fork Pringle Creek.	*172	*174

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGDV)	
				Existing	Modified
			Approximately 150 feet downstream of Interstate 5.	*222	*219
		East Fork Pringle Creek ...	At confluence with Pringle Creek and Middle Fork Pringle Creek.	*172	*174
			Approximately 150 feet downstream of Interstate 5.	*219	*219
		Mill Creek B	At confluence with Williamette River	*141	*141
			Just upstream of Mission Street	*198	*199
			Approximately 3,000 feet upstream of Penitentiary Annex Road.	*253	*254
Depth in feet above ground					
Maps are available for inspection at the City of Salem, 555 Liberty Street SE, Salem, Oregon.					
Send comments to The Honorable Michael Swain, Mayor, City of Salem, 555 Liberty Street SE, Room 230 Salem, Oregon 97301.					
South Dakota	City of Spearfish, Lawrence County.	West Chipmunk Gulch	At confluence with Spearfish Creek	*3,574	*3,574
			At 960 feet upstream of West Oliver Street.	None	*3,663
# Depth in feet above ground					
Maps are available for inspection at Department of Public Works, City Hall, 625 Fifth Street, Spearfish, South Dakota.					
Send comments to The Honorable Jerry Krambeck, Major, City of Spearfish, City Hall, 625 Fifth Street, Spearfish, South Dakota 57783.					
South Dakota	City of Hill City, Pennington County.	Spring Creek	At approximately 50 feet upstream of Hill City power line located at approximately 2,000 feet upstream of U.S. Highway 385 and 16.	None	*4,937
			At approximately 1,400 feet upstream of Poplar Street and Bishop Mountain Avenue Intersection.	None	*5,013
		Newton Fork Creek	At Museum Drive	None	*4,967
			Approximately 1,900 feet upstream of Museum Drive.	None	*4,981
# Depth in feet above ground					
Maps are available for inspection at the City Hall, 324 Main Street, Hill City, South Dakota.					
Send comments to The Honorable Peter Stach, Mayor City of Hill City, City Hall, P.O. Box 395, Hill City, South Dakota 57745.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2660 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7520]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These

proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)		Communities affected
		Existing	Modified	
ILLINOIS (City of Columbia and Monroe County)				
Carr Creek	Approximately 275 feet upstream of of Bluff Road	*421	*422	City of Columbia, Unincorporated Areas of Monroe County
	Approximately 600 feet upstream of Gall Road	None	*449	
Carr Creek Tributary	At the confluence with Carr Creek	None	*446	City of Columbia, Unincorporated Areas of Monroe County
	Approximately 1,620 feet upstream of confluence with Carr Creek.	None	*448	
Palmer Creek	Approximately 0.66 mile downstream of Union Pacific Railroad.	None	*402	City of Columbia, Unincorporated Areas of Monroe County
	At Rueck Road	*455	*454	
Palmer Creek Tributary	At the confluence with Palmer Creek	*435	*431	City of Columbia, Unincorporated Areas of Monroe County
	Approximately 760 feet upstream of abandoned railroad.	*474	*473	
Rueck Creek	At the confluence with Palmer Creek	None	*432	City of Columbia, Unincorporated Areas of Monroe County
	Approximately 0.83 mile upstream of confluence with Palmer Creek.	None	*452	
Wilson Creek	At the confluence with Carr Creek	None	*429	City of Columbia
	Approximately 500 feet upstream of South Main Street.	None	*482	

Monroe County (Unincorporated Areas)
Maps available for inspection at the Monroe County Zoning Office, Monroe County Courthouse, 100 South Main Street, Waterloo, Illinois.
Send comments to Mr. Robert Rippelmeyer, Chairman of the Monroe County Board of Commissioners, Monroe County Courthouse, 100 South Main Street, Waterloo, Illinois 62298.
City of Columbia
Maps available for inspection at the Columbia City Hall, 208 South Rapp Avenue, Columbia, Illinois.
Send comments to The Honorable Lester Schneider, Mayor of the City of Columbia, 208 South Rapp Avenue, Columbia, Illinois 62236.

VIRGINIA Southampton County and Town of Courtland				
Blackwater River	At the confluence with Chowan River	*11	*14	Southampton County

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)		Communities affected
		Existing	Modified	
	Approximately 6,700 feet upstream of State Route 620 (Broadwater Road).	None	*36	(Unincorporated Areas)
Nottoway River	At the confluence with Chowan River	*11	*14	Southampton County (Unincorporated Areas); Courtland (Town)
	Approximately 2,400 feet upstream of Norfolk Franklin & Danville Railroad.	*26	*27	

Southampton County (Unincorporated Areas)
Maps available for inspection at the Southampton County Administrator's Office, 26022 Administration Center Driver, Courtland, Virginia.
Send comments to Mr. Michael W. Johnson, Southampton County Administrator, 26022 Administration Center Drive, Courtland, Virginia 23837.
Town of Courtland
Maps available for inspection at the Courtland Town Office, 22219 Meherrin Road, Courtland, Virginia.
Send comments to The Honorable Lewis H. Davis, Sr., Mayor of the Town of Courtland, P.O. Box 39, Courtland, Virginia 23837.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2663 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7522]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or *(email) matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maine	Orrington (Town), Penobscot County.	Sedgeunkedunk Steam	A point approximately 100 feet downstream of Orrington corporate limits..	None	*42
			A point approximately 420 feet upstream of Fields Pond Road bridge.	None	*102
		Penobscot River	At downstream corporate limits	None	*11
			At upstream corporate limits	None	*16
		Brewer Lake	Entire shoreline within community	None	*112
Maps available for inspection at the Orrington Town Hall, 29 Center Drive, Orrington, Maine.					
Send comments to Mr. Dexter Johnson, Manager of the Town of Orrington, P.O. Box 159, Orrington, Maine 04474.					
New Jersey	Ocean (Township), Monmouth County.	Poplar Brook	Upstream side of Norwood Avenue	*15	*18
			At a point approximately 0.47 mile upstream of Willow Drive.	*53	*51
		Hog Swamp Brook	At a point approximately 130 feet downstream of Monmouth Road.	*12	*11
			At a point approximately 0.26 mile upstream of Route 18.	*64	65
Maps available for inspection at the Ocean Township Office, 399 Monmouth Road, Oakhurst, New Jersey.					
Send comments to Mr. David Kochel, Ocean Township Manager, 399 Monmouth Road, Oakhurst, New Jersey 07755.					
Tennessee	Gallatin (City), Sumner County.	Cumberland River	Approximately 1 mile downstream of the Gallatin Stream Plant gage.	*452	*453
			Approximately 3.0 miles upstream of the Gallatin Stream Plant gage.	*452	*453
		Albright Creek	Approximately 50 feet downstream of Willmore Road.	*452	*454
			Just downstream of Willmore Road	*452	454
Maps available for inspection at the Gallatin City Hall, 132 West Main Street, Gallatin, Tennessee.					
Send comments to The Honorable Don Wright, Mayor of the City of Gallatin, 132 West Main Street, Gallatin, Tennessee 37066.					
Tennessee	Hendersonville (City), Sumner County.	Drakes Creek	Approximately 0.4 mile upstream of U.S. Route 31E.	*451	*452
			Approximately 1,200 feet upstream of Long Hollow Pike.	None	*518
		Unnamed Tributary 5	Approximately 50 feet upstream of Buchanan Circle.	*506	*507
			Approximately 0.4 mile upstream of Buchanan Circle.	None	*523
		Station Camp Creek	Approximately 1,430 feet upstream of Station Camp Creek Road.	None	*456
			Approximately 1,060 feet upstream of Long Hollow Pike.	None	*490
		Cumberland River	At the downstream county boundary	*430	*432
			At the downstream side of Old Hickory Dam.	430	*432
		Center Point Branch	At the confluence with Mansker Creek	*430	*432
			Approximately 1,750 feet upstream of Hickory Lane.	None	*437
		Madison Creek	At the confluence with Mansker Creek	*430	*432
			Approximately 250 feet downstream of Long Hollow Pike.	444	*443
		Mansker Creek	At the confluence with Cumberland River	*430	*432
			At the confluence of Madison Creek	*430	*432
Maps available for inspection at the Hendersonville City Hall, One Executive Park Drive, Hendersonville, Tennessee.					
Send comments to The Honorable Jim Fuqua, Mayor of the City of Hendersonville, One Executive Park Drive, Hendersonville, Tennessee 37075.					
Tennessee	Millersville (City), Sumner County.	Slaters Creek	Just upstream of Long Drive	*470	*471
			Approximately 1,140 feet upstream of the most upstream crossing of Interstate 65.	None	*562
		East Fork Slaters Creek	At the confluence with Slaters Creek	*503	*506
			Approximately 0.81 mile upstream of Pole Hill Road.	*564	563

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Mansker Creek	Approximately 1,450 feet upstream of the most upstream crossing of U.S. Route 41.	*486	*485
			Approximately 1.1 miles upstream of Old Shiloh Road.	None	*584
Maps available for inspection at the Millersville City Hall, 1246 Louisville Highway, Millersville, Tennessee.					
Send comments to The Honorable Robert Mobley, Mayor of the City of Millersville, 1246 Louisville Highway, Millersville, Tennessee 37072.					
Tennessee	Metropolitan Government of Nashville and Davidson County.	Mansker Creek	Upstream side of U.S. Route 41	*455	*452
			At a point approximately 1.14 miles upstream of Old Shiloh Road.	None	*584
		Lumsley Fork	At the confluence with Mansker Creek	*455	*453
			At a point approximately 211 feet upstream of the confluence with Mansker Creek.	*455	*454
Maps available for inspection at Metropolitan Government of Nashville and Davidson County Public Works, 720 South 5th Street, Nashville, Tennessee.					
Send comments to The Honorable William Purcell, Mayor of the Metropolitan Government of Nashville and Davidson County, 107 Metropolitan Courthouse, Nashville, Tennessee 37201.					
Tennessee	Portland (City), Sumner County.	Donoho Branch	Approximately 106 feet downstream of College Street.	None	*794
			Approximately 0.3 mile upstream of State Route 52.	None	*805
		Portland Channel	Approximately 1,900 feet downstream of Victor Reiter Parkway.	None	*787
			Approximately 0.5 mile upstream of Morningside Drive.	None	*794
Maps available for inspection at the Portland City Hall, 100 South Russel Street, Portland, Tennessee.					
Send comments to The Honorable Jim Calloway, Mayor of the City of Portland, City Hall, 100 South Russel Street, Portland, Tennessee 37148.					
Tennessee	Sumner County (Unincorporated Areas).	Arterburn Branch	At the confluence with Honey Run Creek	None	*743
			Approximately 0.8 mile upstream of the confluence with Honey Run Creek.	None	*769
		Jones Branch	Approximately 0.67 mile upstream of Tyree Springs Road.	None	*804
			Approximately 0.69 mile upstream of Tyree Springs Road.	None	*805
		Hogan Branch	At the confluence with Drakes Creek	*546	*545
			Approximately 1.3 miles upstream of Hogan Branch Road.	*621	*620
		Drakes Creek	Approximately 1,200 feet upstream of Old Shiloh Road.	*516	*518
			Approximately 0.5 mile upstream of Shell Road.	*563	*562
		Honey Run Creek	Approximately 180 feet upstream of U.S. Route 31 West and State Route 41.	None	*714
			At the confluence of Jones Branch and Arterburn Branch.	None	*743
		Station Camp Creek	Approximately 840 feet upstream of Long Hollow Pike.	None	*490
			Approximately 1,060 feet upstream of Long Hollow Pike.	None	*490
Maps available for inspection at Sumner County Building Planner's Office, 355 North Belvedere Drive, Room 102, Gallatin, Tennessee.					
Send comments to Mr. Thomas Marlin, Sumner County Executive, 355 North Belvedere Drive, Room 102, Gallatin, Tennessee 37066.					
Tennessee	White House (City), Sumner County.	Arterburn Branch	At the confluence with Honey Run Creek	None	*743
			Approximately 0.8 mile upstream of the confluence with Honey Run Creek.	None	*769
		Honey Run Creek	Approximately 450 feet downstream of U.S. Route 31 West.	None	*712

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			At the confluence of Jones Branch and Arterburn Branch.	None	*743

Maps available for inspection at the White House Codes Department, 105 College Street, White House, Tennessee.

Send comments to The Honorable Billy Hobbs, Mayor of the City of White House, P.O. Drawer 69, White House, Tennessee 37188.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2662 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–P–7603]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator for Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and record keeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD) (NAVD)	
				Existing	Modified
KS	Winfield, City of Cowley County.	Walnut River	At 0.9 mile downstream of 14th Avenue	1129	1126

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD) ◆ (NAVD)	
				Existing	Modified
			At approximately 0.4 mile upstream of Highway 160.	1131	1130
			At approximately 1.5 miles upstream of Highway 160.	1132	1133
		Black Crook Creek	Just upstream of Joel Mack Road	1121	1120
			At approximately 0.7 mile upstream of Joel Mack Road.	1121	1120
Maps are available for inspection at the Public Works Division/Engineering Department, City Hall, 200 East Ninth Avenue, Winfield, KS 67156. Send comments to the Honorable Phillip R. Jarvis, Mayor, City of Winfield, City Hall, 200 East Ninth Avenue, Winfield, Kansas 67156.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: January 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–2661 Filed 2–4–02; 8:45 am]

BILLING CODE 6718–04–P

Notices

Federal Register
Vol. 67, No. 24
Tuesday, February 5, 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

Food Safety and Inspection Service

[Docket No. 01–045N]

Codex Alimentarius Commission: 3rd Session, Ad Hoc Intergovernmental Task Force on Foods Derived From Biotechnology

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice, correction.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA) published a document in the **Federal Register** of January 10, 2002, are sponsoring two public meetings on Wednesday, January 9, 2002, and on Tuesday, February 12, 2002, to present and receive comment on draft United States positions on all issues coming before the 2nd Session of the Ad Hoc Intergovernmental Task Force on Foods Derived From Biotechnology, which will be held in Yokohama, Japan, March 4–8, 2002. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 3rd Session, Ad Hoc Intergovernmental Task Force on Foods Derived From Biotechnology.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250–3700, Telephone (202) 205–7760, Fax (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Clerkin at the above number.

Correction

In the **Federal Register** of January 10, 2002, in FR Docket No. 01–045N, on page 1327, in the first column, under **DATES:**, correct the ''day'' to read Tuesday, February 12, 2002.

Done at Washington, DC on: January 31, 2002.

F. Edward Scharbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 02–2742 Filed 2–4–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lewis Run Project, McKean County, Pennsylvania

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: Reference is made to our notice of intent to prepare an environmental impact statement for the Lewis Run Project (FR Document. 00–18987 filed 7/27/00) published in the **Federal Register**, Volume 65, No. 146, Friday, July 28, 2000, pages 46421–22.

In accordance with Forest Service Environmental Policy and Procedures handbook 1909.15, part 21.2—*Revision of Notices of Intent*, we are revising the date that the Draft Environmental Impact Statement is expected to be filed with the Environmental Protection Agency and be available for public review and comment to March 1, 2002. Subsequently, the date the final EIS is scheduled to be completed is revised to be June 1, 2002.

FOR FURTHER INFORMATION, CONTACT: Andrea Hille, Bradford Ranger District, Star Route 1 Box 88, Bradford, PA 16701 or by telephone at 814–362–4613.

Dated: January 30, 2002.

Kevin B. Elliott,

Forest Supervisor.

[FR Doc. 02–2656 Filed 2–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Grays Harbor Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Grays Harbor Resource Advisory Committee will hold its next meeting on February 25, 2002. The meeting will be held at the Hoquiam Library at 420 Seventh Street, Hoquiam, Washington. The meeting will begin at 7 p.m. and end at approximately 9 p.m. Agenda topics are: (1) Introductions; (2) approval of minutes of previous meetings; (3) bylaw update; (4) review and select process for applications; (5) presentation of project proposals; (6) selection of recommended projects and priorities; (7) public comments; and (8) identify next meeting date and location.

All Grays Harbor Resource Advisory Committee Meetings are open to the public. Interested citizens are encourage to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, RAC Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd., Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor and Designated Federal Official, at (360) 956–2301.

Dated: January 29, 2002.

Dale Hom,

Forest Supervisor, Olympic National Forest.

[FR Doc. 02–2648 Filed 2–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100101A]

Marine Mammals; Pinniped Removal Authority

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

ACTION: Notice of extension of letter of authorization.

SUMMARY: NMFS announces a 5-year extension to the Letter of Authorization

(LOA) to the State of Washington for the lethal removal of individually identifiable California sea lions that are having significant negative impact on the status and recovery of winter steelhead that migrate through the Ballard Locks in Seattle, WA. This action is authorized under the Marine Mammal Protection Act (MMPA).

ADDRESSES: A copy of the LOA may be obtained by writing to Assistant Regional Administrator, Protected Resources Division, NMFS, 525 N.E. Oregon St., Suite 500, Portland, OR 97232–2737, or to Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Garth Griffin (503) 231–2005, or Tom Eagle (301) 713–2322, ext. 105.

SUPPLEMENTARY INFORMATION:

Electronic Access

Information related to this extension, including the state's LOA extension request, Environmental Assessments (EA), and all of the **Federal Register** notices related to issuance, modification and subsequent extension of the original LOA, is available via the Internet at the following address: http://www.nwr.noaa.gov.

Background

Pursuant to Section 120 of the MMPA, NMFS initially issued a 3-year Letter of Authorization (LOA) that was valid through June 30, 1997, to the Washington Department of Fish and Wildlife (WDFW) for the lethal removal of California sea lions that are having significant negative impact on the status and recovery of winter steelhead that migrate through the Ballard Locks in Seattle, WA. The terms and conditions of the LOA were modified following the first year of implementation. The LOA was subsequently extended, for 4 years, through June 30, 2001.

Background information on the sea lion/steelhead conflict at the Ballard Locks and findings on the environmental consequences of issuance of the original LOA, the 1996 modification of its terms and conditions, and this extension are provided in two EAs prepared by NMFS in 1995 and 1996 and an updated EA prepared in 2001 (see Electronic Access).

On September 12, 2001, the State of Washington requested that NMFS extend the LOA for an additional 5 years (with a new expiration date of June 30, 2006) citing severely depressed steelhead run returns and the need for continued authorization to quickly remove any sea lion, if necessary, that meets the criteria outlined in the LOA while the state continues management efforts to recover the run. In addition, the state noted that there are no lethal removals planned at this time and requested the authorization be extended so that, as a last resort, it can respond in a timely manner to uncontrollable sea lion predation and protect steelhead as the run recovers. The state requested no modifications to the terms and conditions of the LOA other than the extension to June 30, 2006.

NMFS published a notice (66 FR 53210, October 19, 2001) that announced the state's request, proposed to extend the LOA, and solicited public comment on the proposed extension. The public comment period closed on November 19, 2001. No comments were received from the public.

NMFS also solicited comment from members of the Pinniped-Fishery Interaction Task Force (Task Force) that had been convened upon receipt of the original application from the State of Washington, regarding the proposed extension. Five written comments were received from Task Force members. Four of the Task Force members supported the extension and one member was opposed. None of the comments contained substantive new information.

Comments supporting the extension were in general agreement that the steelhead run is severely depressed and that the state must be authorized to respond to predatory animals swiftly. One member noted that further extension of the LOA is justified because neither of the 1996 Task Force criteria for determining the success or failure of the authorization had been met.

The comment against the extension also agreed that the status of the steelhead run is precarious but opposed the extension based on the view that sea lion predation is not having a significant negative impact on the status and recovery of the steelhead run. Further, the opposing comment questioned whether the non-lethal measures taken to date to reduce sea lion predation on steelhead have been adequate to meet the threshold for issuance of a lethal removal authorization under Section 120 of the MMPA. This opposing view was raised during Task Force deliberations from 1994 to 1996 and considered by NMFS in issuance and modification of the LOA, and NMFS concluded that any sea lion predation was, and any future predation would be, a significant adverse impact on the steelhead run and that all feasible non-lethal deterrents had been attempted.

NMFS considered the comments received from the Task Force members while conducting its review of the environmental consequences of the proposed extension and when making its decision to extend the LOA. The available information documents that steelhead spawning escapements have remained far below the goal set for the watershed and declined to record lows in 2000 and 2001 indicating a worsening condition that could lead to stock failure. In contrast, the California sea lion population is robust and continuing to grow coastwide. In the index areas of Puget Sound sea lion numbers were lower in 2001 than the peak years of 1986 and 1995 but have remained relatively consistent in Shilshole Bay near the entrance to the Lake Washington Ship Canal. Sea lions continue to forage occasionally at the Locks and have been seen taking salmonids there in spite of non-lethal deterrence measures that are ongoing. The precarious state of the steelhead population and the continuing presence of sea lions in the area heightens the concern that sea lions may enter the Locks area to forage during the steelhead run and threaten stock recovery.

One unidentified sea lion was observed taking a salmonid downstream of the railroad bridge during the 2000 steelhead run. Sea lions were recently observed in the Locks area during the 2001 coho salmon run, and one marked sea lion was observed taking coho salmon in the ensonified zone in September 2001. This raises concerns over the possibility that one of these sea lions may occur during the 2002 steelhead run, and it may have already developed a tolerance to the acoustic devices.

Sea lion presence at the Ballard Locks declined from 5.18 percent of hours observed in 1997 to 0.25 percent of hours observed in 2000. No sea lions were seen during approximately 274 hours of observations conducted from February through May, 2001 (WDFW unpublished data). The observation period overlapped with the smolt out-migration timing in May. The absence of sea lions in May is in contrast to the 1995 migration season when sea lion attendance at the Locks was highest during the smolt out-migration, and predatory sea lions were observed preying on smolt in the ensonified zone 50-60 percent of the time they were present at the Ballard Locks.

An estimated eight steelhead were lost to sea lion predation in 1997, based on observations by biologists monitoring the steelhead run, and two in 1998. From 1999 through 2001, any steelhead

kills that were seen or reported occurred outside of the observation periods and, therefore, could not be used to estimate sea lion predation mortality for those years.

NMFS Action

Section 120 of the MMPA lists 4 factors that NMFS must consider in evaluating an application for approval or denial. These factors are as follows:

1. Population trends, feeding habits, the location of the pinniped interaction, how and when the interactions occurs, and how many individual pinnipeds are involved;

2. Past efforts to nonlethally deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success;

3. The extent to which such pinnipeds are causing undue injury or impact to, or imbalance with, other species in the ecosystem, including fish populations; and

4. The extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

NMFS considered these factors in the initial application and the modification to the initial LOA and a detailed description of these considerations was included in the 1995 and 1996 EAs. The 2001 EA briefly discusses relevant new information in these considerations and concludes that LOA should be extended because there is no substantial change in the system since the initial evaluation. The range-wide pinniped population has increased although the seasonal distribution of animals in Puget Sound has decreased. Steelhead numbers have continued to decline, and any predation continues to have a significant adverse impact on the run. Based on these considerations, the state's request, the available information on the critically depressed steelhead run, the continued presence of sea lions in the Lake Washington Ship Canal and Locks area, and consideration of comments from Task Force members (no public comments were received), NMFS has extended the LOA for 5 years to June 30, 2006. No other changes were made to the terms and conditions of the LOA. As required by the National Environmental Policy Act, NMFS has prepared an EA of the environmental consequences of extending the existing LOA. A copy of the LOA and accompanying EA is available via the Internet (see Electronic Access).

Dated: January 30, 2002.

David Cottingham,

Acting Director, Office of Protected Resources National Marine Fisheries Service

[FR Doc. 02–2727 Filed 2–4–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Wednesday, February 13, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–2833 Filed 2–1–02; 11:56 am]

BILLING CODE 6351–01

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Request for Public Comment

AGENCY: Corporation for National and Community Service.

ACTION: Policy guidance document.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') is republishing for additional public comment policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

DATES: This guidance was effective January 16, 2001. Comments must be submitted on or before March 7, 2002. The Corporation will review all comments and will determine what modifications to the policy guidance, if any, are necessary.

ADDRESSES: Interested persons should submit written comments to Ms. Wilsie Y. Minor; Office of General Counsel, Corporation for National and Community Service, 1201 New York Ave. NW., Washington, DC 20525. Comments may also be submitted by facsimile at 202–565–2796.

FOR FURTHER INFORMATION CONTACT: Ms. Wilsie Y. Minor; Office of General Counsel, Corporation for National and Community Service, 1201 New York Ave. NW., Washington, DC 20525. Telephone 202–606–5000, Ext.129; TDD: 202–565–2799. Arrangements to receive the policy in an alternative format may be made by contacting Wilsie Y. Minor.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance.

The purpose of this policy guidance is to clarify the responsibilities of recipients of federal financial assistance from the Corporation, and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. The policy guidance reiterates the Corporation's longstanding position that in order to avoid discrimination against LEP persons on the grounds of national origin, recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide, free of charge.

This document was originally published on January 16, 2001. See 66 FR 3548. The document was based on the policy guidance issued by the Department of Justice entitled ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency.'' 65 FR 50123 (August 16, 2000).

On October 26, 2001 and January 11, 2002, the Assistant Attorney General for Civil Rights issued to federal departments and agencies guidance memoranda, which reaffirmed the Department of Justice's commitment to ensuring that federally assisted programs and activities fulfill their LEP responsibilities and which clarified and answered certain questions raised regarding the August 16th publication. The Corporation is presently reviewing its original January 16, 2001, publication in light of these clarifications, to determine whether there is a need to clarify or modify the January 16th guidance. In furtherance of those memoranda, the Corporation is republishing its guidance for the purpose of obtaining additional public comment.

The policy guidance includes examples of promising practices that provide access to LEP persons in the various service programs. It also explains further who is covered by this guidance. The text of the complete guidance document appears below.

Providing Access to Limited-English Proficient (LEP) Persons to the Programs and Activities of Grantees of the Corporation for National Service

A. Overview

1. What Does the Document Do?

This policy guidance does not create new obligations but rather clarifies the existing responsibilities of Corporation for National Service (hereinafter Corporation) grantees to take reasonable steps to provide access to their programs and activities for persons with limited English proficiency (LEP). This document:

(a) Discusses the policies, procedures and other steps that Corporation grantees can take to provide access by LEP persons to national service programs and to other programs and activities of our grantees.

(b) Clarifies that failure to take one or more of these steps does not necessarily mean noncompliance with Title VI of the Civil Rights Act of 1964 or with Executive Order 13166.

(c) Provides that the Corporation's Equal Opportunity (EO) Office will determine compliance on a case-by-case basis, and that assessments will take into account:

- Number or proportion of LEP individuals in the service area;
- Frequency of contact with LEP language groups;
- Nature and importance of the program or activity; and
- Total resources available to the recipient.

(d) Provides that small grantees and those with limited resources will have flexibility in achieving compliance.

(e) Applies to all beneficiaries of our grantees' programs or activities.

In this document, ''beneficiary'' refers to:

- Clients, former clients, and client applicants of a grantee's programs or activities;
- Members of the public who receive or are eligible to receive benefits or services from our grantees; and

Participants, former participants, and participant applicants for positions as a service member or volunteer.

Our grantees' programs or activities include:

- Federally assisted programs such as AmeriCorps*State/National;
- Part-time programs such as Foster Grandparents or participants in Learn and Serve America; and
- Part federally-conducted/part federally-assisted programs such as AmeriCorps*VISTA or AmeriCorps*NCCC.

Our grantees' programs or activities include not merely the national service programs operated by the grantees, but in most cases they include all operations of the organization. (See Legal Underpinnings below for an explanation of a grantee's ''programs and activities''.)

2. Why Do Our Grantees Need To Ensure Their Programs or Activities Provide Services to LEP Persons?

Grantees must comply with various civil rights statutes, including Title VI of the Civil Rights Act of 1964 which prohibits denial of services to and other forms of discrimination against persons on the basis of national origin, color, and race. Often, language identifies national origin. Language barriers may be rooted in intentional discrimination. Most frequently, failure to provide language assistance to LEP persons on the basis of national origin leads to actions having the effect of discrimination. Such actions have consistently been held to violate Title VI. (*See* Legal Underpinnings below for more information on Title VI, and on Executive Order 13166 which clarifies Title VI in the LEP context.)

English is the predominant language of the United States. According to the 1990 Census, English is spoken by 95% of its residents. Of the U.S. residents who speak languages other than English at home, the 1990 Census reports that 57% above the age of four speak English ''well to very well.'' However, the U.S. is also home to millions of national origin minority individuals who are ''limited English proficient'' (LEP). That is, they cannot speak, read, write or understand the English language at a level that permits them to interact effectively with teachers and education officials, health care providers, social service agency staff, police and emergency workers, officials of public benefit programs, etc.

Because of these language differences and their inability to speak or understand English, LEP persons are often excluded from programs, experience delays or denials of services, or receive care and services based on inaccurate or incomplete information. Federal agencies have found that persons who lack proficiency in English frequently are unable to obtain basic knowledge of how to access various benefits and services for which they are eligible. Agencies have also found that LEP persons are sometimes exploited by unscrupulous persons or unwittingly are pawns in frauds against benefit programs.

3. What Is Our Policy on Ensuring Our Grantees' Programs or Activities Provide Access to Their Services to LEP Persons?

It is our policy to ensure that our grantees fully comply with the requirements of the various civil rights acts and requirements applicable to federal grantees, including Title VI of the Civil Rights Act of 1964 and Executive Order 13166. One aspect of compliance is to ensure that our grantees take reasonable steps to provide meaningful access for LEP persons to their program or activities, including provision of language interpretive services within the parameters set forth in this policy document.

B. Legal Underpinnings of This Policy

1. What Are the Basic Requirements Under Title VI in the LEP Context?

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000–d) prohibits discrimination on the basis of race, color, or national origin in programs and activities that receive federal financial assistance. Recipients of federal financial assistance (referred to as ''grantees'' in this policy) may not, on the basis of race, color, or national origin:

- Provide services, financial aid, or other benefits that are different or provide them in a different manner;
- Restrict an individual's enjoyment of an advantage or privilege enjoyed by others;
- Deny an individual the right to participate in federally assisted programs; and
- Defeat or substantially impair the objectives of federally assisted programs.

A grantee whose policies, practices or procedures exclude, limit, or have the effect of excluding or limiting, the participation of any LEP person in a federally assisted program or activity on the basis of national origin may be engaged in discrimination in violation of Title VI. In order to ensure compliance with Title VI, grantees must take reasonable steps to ensure that LEP persons who are eligible for their programs or activities have access to the services they provide. The most important step in meeting this obligation is for grantees to provide the language assistance necessary to ensure such access and to do so at no cost to the LEP person.

2. What Does Executive Order 13166 Require in the LEP Context? Does It Impose Requirements Beyond Those of Title VI?

On August 11, 2000, the President issued Executive Order 13166 entitled ''Improving Access to Services for Persons with Limited English Proficiency.'' The purpose of this Executive Order is to eliminate, to the maximum extent possible, limited English proficiency as an artificial barrier to full and meaningful participation by beneficiaries in federally assisted programs and activities. It clarifies existing Title VI responsibilities for grantees regarding access for LEP persons, but does not impose additional requirements. On August 16, 2000, the Department of Justice issued policy guidance which may be found at 65 FR 50123 or www.usdoj.gov/crt/cor.

3. Who Are Grantees? What Is Federal Financial Assistance?

In this document, a grantee is any entity receiving federal financial assistance from us to operate a federally assisted program. Grantees include, but are not limited to, the State Commissions, AmeriCorps*VISTA and Senior Corps sponsors, State Educational Agencies, and AmeriCorps*NCCC projects. Grantees also include other direct recipients, service sites and intermediary service programs (entities between the primary grantee and the service sites).

For example, the Corporation funds a grant to a state agency. The state agency provides funding to non-profits or local governments throughout the state. These organizations place volunteers with local organizations. Each level is a grantee for civil rights purposes.

Federal financial assistance includes funds, property or services, including technical assistance, provided to non-federal organizations to promote activities serving the public interest. For civil rights purposes, it also includes aid that enhances the ability to improve or expand allocation of a grantee's own resources. This may be through the services of, or training by, service members or volunteers or federal personnel at no cost or at less than full market value. Therefore, assignment of service members or volunteers (including VISTA or NCCC)—whether supported, in whole or in part, under a Corporation grant or through an Education Award Program—is a form of federal financial assistance.

The definition of the ''program or activity'' receiving federal financial assistance is quite broad and for most organizations extends beyond their national service program. For example, it includes all operations of a department, agency or district of a State or local government; a college, university, local education agency; and an entire corporation or private organization which is principally engaged in providing education, health care, housing, social services, or parks and recreation when any part of these entities receives federal financial assistance.

A grantee may receive financial assistance directly from us or through another grantee. A grantee may be a Native American tribe. While tribes have sovereign immunity in many respects, when they receive federal financial assistance, by the terms of the grant, they agree to comply with the civil rights requirements in the operation of their national service programs.

4. Who Are Beneficiaries? Why Are They Beneficiaries? What Rights Do They Have?

Service members and volunteers are beneficiaries of federally assisted programs. They receive a stipend, an allowance for living expenses, an education award or post-service stipend, child care or child care allowance, and/or health care coverage, or cost reimbursements paid in whole or in part, directly or indirectly, by the Corporation. Former service members or volunteers and service member and volunteer applicants are also beneficiaries as it relates to their connection to a national service program funded by the Corporation.

The persons served by the service members and volunteers (including AmeriCorps*NCCC members) are beneficiaries of federally assisted programs. They receive benefits, be it tutoring, housing, employment, or substance abuse counseling, immunizations, personal living assistance, etc. which they would not have but for the national service programs funded in whole or in part by the Corporation. Persons previously served or applying to be served by service members and volunteers are also beneficiaries.

The persons served, eligible to be served, or previously served by other programs and activities of the grantee are also beneficiaries of federally assisted programs. They receive benefits from a recipient of federal financial assistance, so by definition they are beneficiaries. Similarly, members of the public who receive or are eligible to receive benefits or services from our grantees are beneficiaries.

All beneficiaries of federal financial assistance have the right not to be subjected to prohibited discrimination. In the LEP context, this means they have the right to have the grantee take reasonable steps to provide meaningful access to its programs and activities to enable LEP persons to participate. All beneficiaries also have the right to file a discrimination complaint with the Corporation if he or she believes discrimination has occurred.

5. Can We Presume That Service Members or Volunteers Must Be Proficient in English?

No. Programs should assess whether individuals with limited English proficiency can effectively serve in their programs with or without language assistance. Programs may not deny access on the basis of lack of English proficiency unless providing language assistance would fundamentally alter the nature of their program or unreasonably burden the organization. There may be programs where the member or volunteer must be proficient in English, but in some of the Corporation's programs such as Senior Companions, limited English proficiency may not hinder the ability to serve. Individuals who speak the language of one of the minority groups within a community, even when they are LEP, may effectively help to serve the community.

6. If a Grantee Is Covered by a State or Local ''English-only'' Law, Must It Still Comply With the Title VI Obligation and Corporation Guidance Interpreting That Obligation?

Yes. State and local laws may provide additional obligations to serve LEP individuals, but cannot compel grantees to violate Title VI. For instance, given our constitutional structure, State or local ''English-only'' laws do not relieve an entity that receives federal funding or other financial assistance from its responsibilities under federal anti-discrimination laws. Entities in States and localities with ''English-only'' laws are certainly not required to accept federal funding—but if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients of federal assistance. Failing to make federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

C. LEP Requirements

1. What Are the Basic Requirements Under Title VI for LEP Persons?

The basic requirement is to provide meaningful access for LEP persons to a grantee's programs and activities. There is no ''one size fits all'' solution for providing meaningful access, and our assessment of a grantee's compliance will be made on a case-by-case basis. A grantee will have considerable flexibility in determining precisely how to fulfill this obligation, and we will focus on the grantee's end result. The key to providing meaningful access is to ensure that the grantee and the LEP person can communicate effectively. Effective communication means the LEP person is:

- Able to understand the services and benefits available;
- Able to receive those benefits for which he or she is eligible; and
- Able to effectively communicate the relevant circumstances of his or her situation to the service provider.
- The type of language assistance provided depends on a variety of factors, including:
- Number or proportion of LEP individuals in the service area;
- Frequency of contact with LEP language groups;
- Nature and importance of the program or activity; and total resources available to the recipient.

2. What Are the Basic Elements of an Effective Language Assistance Program?

Effective language assistance programs usually contain four elements:

- Assessment;
- Comprehensive written policy;
- Staff training; and
- Monitoring.

Failure to incorporate or implement one or more elements does not necessarily mean noncompliance with Title VI, and we will focus on whether meaningful access is achieved. Further, if implementation of one or more accessibility options would be so financially burdensome as to defeat the legitimate objectives of a grantee's program, the grantee will not be found in noncompliance with Title VI.

3. How Does a Grantee Assess the Language Needs of the Affected Population (the First Key for Ensuring Meaningful Access to LEP Persons)?

A grantee assesses language needs by considering a variety of factors, including the total resources and size of the recipient/covered entity, the number or proportion of the eligible LEP population it serves, the nature and importance of the program or service, including the objectives of the program, the total resources available to the recipient/covered entity, and the frequency with which particular languages are encountered and the frequency with which LEP persons come into contact with the program.

Assessing the number or proportion of the eligible LEP population may be done through review of census data, client utilization data from client files, data from local school systems and community agencies and organizations, or other sources. Grantees are encouraged to identify local organizations that serve the LEP populations in their community. Collaborations with these organizations may not only assist in assessing language needs, but may improve outreach to and recruitment from the communities they serve.

4. What Should Be Included in a Comprehensive Written Policy and Procedures on Language Access (the Second Key for Ensuring Meaningful Access to LEP Persons)?

Presuming the assessment reveals more than merely a few LEP persons being served or eligible to be served or likely to be directly affected by the program, a grantee should develop and implement a language assistance policy, including implementation procedures. The policy should be comprehensive and should be in writing. It should address periodic staff training and monitoring the effectiveness of the program. Ideally, a range of oral language assistance options should be included, and it should provide for translation of vital written materials in certain circumstances. (*See* D.2.)

The implementation procedures should be comprehensive, should be in writing, and should include:

- How to identify and assess the language needs of LEP persons, and to record this information in individual client files, as applicable;
- How to notify LEP persons, in a language they can understand, of their right to receive free language assistance;
- Identify where in the program or activity language assistance is likely to be needed;
- Identify what resources are likely to be needed, their location, and their availability;
- How to access these resources to provide language assistance in a timely manner.

5. How Does a Grantee Effectively Train Its Staff Regarding the Policy and Procedures (the Third Key for Ensuring Meaningful Access to LEP Persons)?

A grantee must disseminate its policy to all employees, especially to those likely to have contact with LEP persons. It must also periodically train its employees. Effective training ensures that employees are knowledgeable and aware of LEP policies and procedures, are trained to work effectively with in-person and telephone interpreters, and understand the dynamics of interpretation between clients, providers and interpreters. Training should be part of the orientation for new employees, and all employees in client contact positions need to receive additional training. For AmeriCorps*State/National grantees, State Commissions request Professional Development and Training Funds (PDAT) funds to provide professional development and training for AmeriCorps staff. To support the LEP initiatives, funds might be used for activities that train AmeriCorps staff about best practices for working with LEP members, and for building the language capacity of LEP AmeriCorps members.

6. How Does a Grantee Effectively Monitor and Evaluate Its Language Assistance Program To Ensure It Provides Meaningful Access to LEP Persons (the Fourth Key for Ensuring Meaningful Access to LEP Persons)?

A grantee should monitor its language assistance program at least annually. As part of the monitoring, the grantee should seek feedback from clients and advocates. The monitoring and evaluation should:

- Assess the current LEP makeup of its service area and frequency of contact with LEP language groups;
- Assess the current communication needs of LEP applicants and clients;
- Determine whether existing assistance is meeting the needs of such persons;
- Evaluate whether staff is knowledgeable about the policy and procedures and how to implement them; and
- Determine whether sources of and arrangements for assistance are still current and viable.

D. Specific LEP Implementation Methods, Their Pros and Cons

1. What Does a Grantee Need To Know About Providing Trained and Competent Interpreters?

Meaningful access to programs and activities includes providing trained

and competent interpreters and other oral language assistance services in a timely manner. This may include taking some or all of the following steps:

• Bilingual Staff—Hire bilingual staff for critical direct client contact positions (such as emergency room intake personnel). Bilingual staff must be trained and must demonstrate competence as interpreters.

• Staff Interpreters—Hire paid staff interpreters, especially when there is a frequent and/or regular need for interpreting services. These persons must be competent and readily available.

• Contract Interpreters—Use contract interpreters, especially when there is an infrequent need for interpreting services, when less common LEP language groups are in the service areas, or when there is a need to supplement in-house capabilities on an as-needed basis. Contract interpreters must be readily available and competent.

• Community Volunteers—Use community volunteers. While volunteers may be cost-effective, to use them effectively, grantees must enter into formal arrangements for interpreting services with community organizations so the organizations are not subjected to ad hoc requests for assistance. Volunteers must be competent as interpreters and understand their obligation to maintain client confidentiality. Additional language assistance must be provided where competent volunteers are not readily available during all hours of service. (Note: Except in the conditions explained at the end of this section, use of family member volunteers, especially children, is never appropriate, and, even if a child speaks English, the parent must be able to fully understand in order to provide informed consent for medical services or participation in program activities.)

• Telephone Interpreter Lines—Utilize a telephone interpreter service line, as a supplemental system or when a grantee encounters a language that it cannot otherwise accommodate. Such a service often offers interpreting assistance in many different languages and usually can provide the service in quick response to a request. However, the interpreters may not be familiar with the terminology peculiar to the particular program or service. (Note: this should not be the only language assistance option used, except where other language assistance options are unavailable (e.g., in a rural clinic visited by an LEP patient who speaks a language that is not usually encountered in the area).)

In order to provide effective services to LEP persons, a grantee must ensure that it uses persons who are competent to provide interpreter services. Competency does not necessarily mean formal certification as an interpreter, though certification is helpful, but competency requires more than self-identification as bilingual. The competency requirement contemplates:

• Demonstrated proficiency in both English and the other language;

• Orientation and training that includes the skills and ethics of interpreting (e.g. issues of confidentiality);

• Fundamental knowledge in both languages of any specialized terms or concepts peculiar to the grantee's program or activity;

• Sensitivity to the LEP person's culture; and

• A demonstrated ability to accurately convey information in both languages.

A grantee may expose itself to liability under Title VI if it requires, suggests, or encourages an LEP person to use friends, minor children, or family members as interpreters, as this could compromise the effectiveness of the service. Use of such persons could result in a breach of confidentiality or reluctance on the part of individuals to reveal personal information critical to their situations. In a medical setting, this reluctance could have serious, even life threatening, consequences. In addition, family and friends usually are not competent to act as interpreters, since they are often insufficiently proficient in both languages, unskilled in interpretation, and unfamiliar with specialized terminology.

If, after a grantee informs an LEP person of the right to free interpreter services, the person declines such services and requests the use of a family member or friend, the grantee may use the family member or friend, if the use of such a person would not compromise the effectiveness of services or violate the LEP person's confidentiality. The grantee should document the offer and declination in the LEP person's file. Even if an LEP person elects to use a family member or friend, the grantee should suggest that a trained interpreter sit in on the encounter to ensure accurate interpretation.

2. What Does a Grantee Need to Know About Providing Translation of Written Materials?

An effective language assistance program may include providing translation of certain written materials. For instance, written materials routinely provided in English to applicants, clients and the public should be available in regularly encountered languages other than English. Spanish, Chinese, Vietnamese, Tagalog, and Korean are the major languages spoken by non-English speaking persons in the U.S. It is particularly important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be directly affected by the grantee's program. Examples of vital documents include:

• Applications for benefits or services;

• Consent forms;

• Documents containing important information regarding participation in a program (such as descriptions of eligibility for tutoring, assignment of a Senior Companion, instructions for filing for reimbursement of expenses, application for health care or child care benefits);

• Notices pertaining to the reduction, denial or termination of services or benefits, or to the right to appeal such actions or that require a response from beneficiaries;

• The member contract, job description, and an explanation of the Grievance Procedure;

• Notices advising LEP persons of the availability of free language assistance; and

• Other outreach materials.

In contrast, documents prepared for a selected portion of the public, such as laws, regulations, and detailed policy manuals, may not be a priority for translation and perhaps only short summaries of the contents are needed.

When making decisions about doing written translation of documents, it is important to consider the level of literacy in the ethnic community's first language. If a document is translated in writing for a community with high rates of first language illiteracy, access for LEP individuals may still be denied. Meaningful access may require making the information available in an oral format.

It is important to ensure that the person translating the materials is well qualified. Verbatim translations may not accurately or appropriately convey the substance of what is contained in the written materials. An effective way to address this potential problem is to reach out to community-based organizations to review translated materials to ensure that they are accurate and easily understood by LEP persons. Recent technological advances have made it easier to store translated documents. It is advisable to maintain a data base of translated documents, to

avoid the cost and time of repeated translations of the same document.

3. Is Corporation Funding Available to Assist With the Cost of Translation?

The cost of translation may be an allowable cost of a grant. Grant funds are not available for AmeriCorps*NCCC project sponsors.

4. What Does a Grantee Need To Know About Effectively Notifying LEP Persons of Their Right to Language Assistance and of the Availability of Language Assistance Free of Charge?

For a language assistance program to be effective, LEP persons need to know they have the right to receive language assistance, and that the language assistance will be provided at no charge to them. Effective notification methods include, but are not limited to:

• Posting and maintaining signs in regularly encountered languages other than English in waiting rooms, reception areas and other initial points of entry. In order to be effective, these signs must inform applicants and beneficiaries of their right to free language assistance services and invite them to identify themselves as persons needing such services.

• Including statements about the services available and the right to free language assistance services, in appropriate non-English languages, in brochures, booklets, outreach and recruitment information and other materials that are routinely disseminated to the public.

• Providing this information to advocacy organizations, faith-based organizations, and societies providing services to LEP persons in the community.

5. What Other Innovative Methods Are There To Provide Meaningful Access to LEP Persons?

• Simultaneous Translation—This allows a grantee and client to communicate using wireless remote headsets while a trained competent interpreter, located in a separate room, provides simultaneous interpreting services. The interpreter can be miles away, and thereby reduces delays since the interpreter does not have to travel to the grantee's facility. In addition, a grantee that operates more than one facility can deliver interpreter services to all facilities using this central bank of interpreters, as long as each facility is equipped with the proper technology.

• Language Banks—In several parts of the country, both urban and rural, community organizations and providers have created community language banks that train, hire and dispatch competent interpreters to participating organizations, reducing the need to have on-staff interpreters for low demand languages. These language banks are frequently nonprofit and charge reasonable rates. This approach is particularly appropriate where there is a scarcity of language services or where there is a large variety of language needs.

• Language Support Office—This is an office that tests and certifies all in-house and contract interpreters, provides agency-wide support for translation of forms, client mailings, publications and other written materials into non-English languages, and monitors the policies of the agency and its vendors that affect LEP persons.

• Multicultural Delivery Project—This is a project that finds interpreters for immigrants and other LEP persons. It uses community outreach workers to work with LEP clients and can be used by employees in solving cultural and language issues. A multicultural advisory committee helps to keep the county in touch with community needs.

• Pamphlets—The pamphlets are intended to facilitate basic communication between clients and staff as they await receipt of interpreter services. They are not intended to replace interpreters but may aid in increasing the comfort level of LEP persons as they wait for services.

E. Compliance Monitoring

1. By What Mechanisms Does the Corporation Ensure Its Grantees Comply With These LEP Requirements?

The Corporation uses or may use a variety of mechanisms to monitor compliance with civil rights requirements, including LEP requirements, by its grantees. These include review of grant application submissions, pre-award and/or post-award compliance reviews (desk audit or on-site), discrimination complaint investigations, and information gathered during outreach and technical assistance activities. Other federal agencies often provide far more monetary federal assistance to its grantees than does the Corporation. Each federal agency extending federal financial assistance maintains mechanisms to ensure compliance with Title VI and its implementing regulations. Compliance determinations by larger federal agencies are given great weight by the Corporation, and grantees receiving substantial federal financial assistance from agencies such as the U.S. Department of Health and Human Services, the U.S. Department of Education, the U.S. Department of Veteran's Affairs, the U.S. Department of Justice, and the U.S. Department of Housing and Urban Development should make sure to be familiar with the Title VI enforcement mechanisms of all federal agencies. If the Corporation receives a complaint alleging failure to provide effective access to LEP persons, we may refer it for processing to a larger federal agency who also funds the grantee. However, under these circumstances, we maintain our authority to independently determine a grantee's compliance.

2. What Can Happen to a Grantee if Its Actions Are Determined by the Corporation's EO Office To Be Discriminatory?

The Corporation is obligated to take appropriate action regarding any grantee that does not comply with the civil rights laws, implementing regulations and policies. If the Equal Opportunity Director finds that a grantee has discriminated, it is in noncompliance with the civil rights laws. If the grantee refuses to voluntarily correct the noncompliance, the Corporation may pursue a number of options, including suspension, termination or the discontinuation of aid. The ultimate sanction may be termination of all federal funding to the program or activity.

However, the purpose of the civil rights laws is to achieve compliance with the laws, not to terminate federal funding to programs. Therefore, we make great efforts to encourage our grantees to voluntarily comply with the laws.

3. What Responsibilities and Liabilities Do Primary Grantees Have When a Subgrantee Discriminates?

A primary grantee extends federal financial assistance to subgrantees. A primary grantee has continuing oversight responsibilities for ensuring the operations of each of its subgrantees comply with the civil rights laws. When reviewing grant proposals, the primary grantee should consider whether applicants for subgrants have identified a means for providing access to LEP persons. During the term of the grant, the primary grantee should monitor the provision of meaningful access in the same manner that it monitors compliance with other grant provisions.

When a beneficiary claims a subgrantee has discriminated, the primary grantee should take action to bring the subgrantee into voluntary compliance, and take appropriate action when a subgrantee does not voluntarily comply. In cases of noncompliance,

appropriate action may include but is not limited to:

- Providing relief to the beneficiary;
- Submitting reports of any internal investigation to our EO Director for review;
- Initiating action to terminate, suspend, or refuse to grant federal financial assistance to the discriminatory subgrantee; and
- Notifying our EO Director of the subgrantee's noncompliant status so our EO Office may take appropriate action, including notifying other federal granting agencies.

4. May Our EO Director Restore Compliant Status When a Grantee Remedies Violations?

Yes. Our EO Director may restore a grantee to compliant status if it satisfies terms and conditions established by the Corporation, or if it otherwise brings itself into compliance and provides reasonable assurance of future compliance.

Examples of Promising Practices That Provide Access to LEP Persons

The Association of Farmworker Opportunity Programs AmeriCorps program recruits former farmworkers to serve as AmeriCorps members. Most members are bilingual, and many are LEP. Members are encouraged to take English as a Second Language classes as a part of their member development plan. The program provides pesticide safety training to farmworkers and their families. Members conduct the training in Spanish.

The program uses the following techniques to ensure that members understand their terms of service and benefits:

- Recruiting posters, flyers and the Member Service Contract are provided in Spanish.
- AmeriCorps project staff are bilingual (Spanish/English).
- Orientation training is provided in Spanish and English.
- Conference calls are held in Spanish when all members speak Spanish.
- Two bilingual second-year members led a team of members that communicated about their service projects exclusively in Spanish.
- Members had to be bilingual, but did not require English as the first language.
- Recruitment took place at the local field office level, and candidates were often from the farmworker community.

The Parents Making a Difference AmericCorps program recruits a diverse corps including many bilingual members to provide outreach to parents in low-income school communities. Members translate at parent-teacher conferences, call parents about absent children, and organize a wide variety of parent-oriented outreach and educational activities.

''Classroom in the Kitchen'' gives parents tips on how to support the educational growth of their children in their homes. Diverse language abilities and cultural knowledge is extremely important in this regard. The range of English proficiency is varied, allowing members to help each other, and communication about program activities is largely bilingual.

The program provides English-Second-Language classes for LEP AmericCorps members as part of their Member Development Plan. (This language support is required by the Rhode Island Commission for all AmericCorps programs, in the same vein as the GED training requirement.)

The Temple University Center for Intergenerational Learning, Students Helping in the Naturalization of Elders (SHINE) program. SHINE is a national, multicultural, intergenerational service-learning initiative in five cities. College students provide language, literacy, and citizenship tutoring to elderly immigrants and refugees. Currently, students serve as coaches in ESL/citizenship classes or as tutors in community centers, temples, churches, housing developments, and ethnic organizations.

Northeastern University, San Francisco State University, Loyola University, Florida International University and Temple University are involved with SHINE. Students participate through courses, work study, and campus volunteer organizations. SHINE program coordinators partner with local community organizations; recruit, train, place, and monitor students at community sites; and provide support and technical assistance.

Since 1997, more than 60 faculty from education, social work, anthropology, political science, modern languages, sociology, English, Latino, and Asian studies have offered SHINE as a service-learning option in their courses. Over 1,000 students provided over 25,000 hours of instruction to 3,500 older learners at 37 sites in Boston, San Francisco, Chicago, Miami, and Philadelphia.

The Albuquerque Senior Companion Program (SCP), sponsored by the City of Albuquerque, Department of Senior Affairs, serves a diverse senior population with Native American, Hispanic, and Anglo volunteers. Senior Companions assist the frail elderly with household tasks and companionship.

Ten of its volunteer stations are located on Pueblos. Each Pueblo has its own language. The program works closely with its site managers/supervisors who are bilingual employees of the individual Pueblo governments and generally are residents of the Pueblos. Senior Companions serve on their own Pueblos and walk to the homes of their clients.

Due to language and cultural barriers these supervisors assist with all areas of the program. They are familiar with the population in their individual Pueblos and use this knowledge to assist with recruitment, placement, and training. Each Pueblo celebrates ''Days of Feast'' separately. In order to honor individual feasts, the program has adjusted the ''leave time'' for Pueblo volunteers. Each volunteer is given paid leave to celebrate his or her Pueblo's feast. This is one of the ways the program remains culturally sensitive.

ACCION International, a VISTA project sponsor, is a nonprofit that fights poverty through microlending. ACCION Chicago did outreach to home-based businesses that rarely have access to capital. A VISTA found that many of the women make ends meet through programs such as Mary Kay cosmetics. The VISTA worked with the ACCION loan officer to develop a loan product specifically for these women and has organized bilingual information sessions throughout Chicago neighborhoods.

Bring New Jersey Together is an AmeriCorps program in Jersey City, New Jersey that seeks to bridge the cultural and linguistic barriers separating new Americans from the rest of the community. AmeriCorps members serve LEP community members by translating documents and escorting them to places such as medical appointments, the grocery stores, or anywhere else where a translator may be necessary. The primary languages of the program are Spanish, Russian, and Vietnamese, but also Albanian, Creole, Indian languages, and others depending on the influx of refugees.

The New Jersey Commission built a partnership with the International Institute of New Jersey, which had provided services to the immigrant community for fifty years, to establish an AmeriCorps program that served the needs of the community. The best practice aspect of this example is that program was designed in partnership with an established organization instead of starting a brand new AmeriCorps project to address this issue.

The Honolulu Chinese Citizenship Tutorial Program is a service-learning project site in the Champus Compact National Center for Community Colleges ''2+4=Service on Common Ground''. The University of Hawai'i at Monoa's College of Social Sciences collaborated with the Kapl'olani Community College, Chaminade University, the Chinese Community Action Coalition and Child and Family Service. Local bilingual college students serve as tutors (during a 10-week session) for Chinese immigrants to help them pass their citizenship exams. The immigrants are recruited by visiting adult education classes, through Chinese radio programs, flyers, and Chinese language newspapers. The Chinese Community Action Coalition provides the curriculum and resources such as Scrabble, books, word-picture matching games, and card games for constructing simple English sentences.

The tutorial sessions focus on passing the INS exam and conversational English. Many of the immigrants are senior citizens. The classes are held in Chinatown. Since the project began, about 1,000 immigrants and refugees have enrolled. Over 300 students have participated as tutors and approximately one-third of the Chinese immigrants became citizens.

Transitional House, Santa Barbara, CA., is a facility that primarily serves homeless Hispanic women. The services are tailored to meet the needs of each family to help women and their children move from homelessness and unemployment to employment and permanent housing. The VISTAs assigned to the project are bilingual. The clientele is 60% monolingual Spanish speakers.

The VISTAs are creating a Career Development Curriculum that is fully translated into Spanish and members host seminars about immigration and consumer credit counseling services. There was a need to improve communication with clients. One of the VISTAs developed ''halfsheets'', one side in Spanish, the other in English, that explain the services offered by Transition House.

The VISTAs are responsible for placement of children in daycare to enable parents to work. They accompany families to childcare providers to assist with translation and to help make the families feel at ease with placing their children in childcare.

Dated: January 30, 2002.

Wendy Zenker,

Chief Operating Officer.

[FR Doc. 02–2739 Filed 2–4–02; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–01]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub.L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–01 with attached transmittal, policy justification, Sensitivity of Technology, and Section 620C(d) of the foreign Assistance Act.

Dated: January 29, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

23 JAN 2002
In reply refer to:
I-01/011401

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-01, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Turkey for defense articles and services estimated to cost $110 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

Richard J. Millies
Acting Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-01

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser:** Turkey

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 60 million
Other	$ 50 million
TOTAL	$110 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** Two FFG-7 OLIVER HAZARD PERRY class guided missile frigates ESTOCIN (FFG-15) and SAMUEL E. MORISON (FFG-13), two MK 15 MOD 0 Close-in Weapons Systems, two MK 75 MOD 0 76mm gun mounts, two MK 13 MOD 4 guided missile launch systems, two AN/SLQ-32(V)2 Countermeasures Sets, two AN/SQR-19(V)2 Sonar Receiving Sets, two AN/SQS-56 Sonar Sets, two MK 92 Mode 2 Fire Control Systems, two AN/SPS-49(V)4 Radar Sets, upgrade modification kits for 50 SM-1 STANDARD missiles, four M2 machine guns, 10,000 20mm ammunition, sonobuoys and other related ammunition items, shipyard/port support services and post transfer activities relating to "hot ship" turnover of two PERRY class frigates from the U.S. Navy, U.S. Government and contractor engineering and logistics personnel support services, publications, repair and calibration services for shipboard equipment, publications and technical data/drawings, personnel training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Turkey in a "Safe to Steam" condition with all shipboard and weapon systems operational.

(iv) **Military Department:** Navy (SCV, SCW, AHW, AHV, AHX, AHY, BIW, BIX, and GHS, Amendment 3)

(v) **Prior Related Cases, if any:**
FMS case SCU - $ 23 million - pending acceptance by country
FMS case SCS - $ 28 million - 26May00
FMS case SCP - $ 98 million - 4Jan99

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** 23 JAN 2002

as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Turkey - FFG-7 PERRY Class Guided Missile Frigates

The Government of Turkey has requested a possible sale of two FFG-7 OLIVER HAZARD PERRY class guided missile frigates ESTOCIN (FFG-15) and SAMUEL E. MORISON (FFG-13), two MK 15 MOD 0 Close-in Weapons Systems, two MK 75 MOD 0 76mm gun mounts, two MK 13 MOD 4 guided missile launch systems, two AN/SLQ-32(V)2 Countermeasures Sets, two AN/SQR-19(V)2 Sonar Receiving Sets, two AN/SQS-56 Sonar Sets, two MK 92 Mode 2 Fire Control Systems, two AN/SPS-49(V)4 Radar Sets, upgrade modification kits for 50 SM-1 STANDARD missiles, four M2 machine guns, 10,000 20mm ammunition, sonobuoys and other related ammunition items, shipyard/port support services and post transfer activities relating to "hot ship" turnover of two PERRY class frigates from the U.S. Navy, U.S. Government and contractor engineering and logistics personnel support services, publications, repair and calibration services for shipboard equipment, publications and technical data/drawings, personnel training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Turkey in a "Safe to Steam" condition with all shipboard and weapon systems operational. The estimated cost is $110 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Turkey, while enhancing weapon system standardization and interoperability.

Turkey already has seven U.S. Navy PERRY class frigates in its Navy fleet. Turkey needs these frigates to continue its naval modernization program and enhance its Anti-Submarine Warfare (ASW) capability. The frigates will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The PERRY vessels will be transferred on a "hot ship" basis. The primary effort for transfer will be completed through the Naval Sea Systems Command. There are no prime contractors for provision of the weapon systems applicable to this platform. There are no offset agreements proposed in connection with this potential sale.

The U.S. Government and contractor technical and logistics in-country personnel requirements will be determined following consultations with representatives of the Turkish navy.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-01

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The PHALANX Close-In Weapon System crystals which contain the operating frequencies of the weapon system are considered critical technology and are classified Confidential. Select maintenance and operation publications are also classified Confidential.

2. The guidance and control system and the Target Detecting Device represent technology which if compromised could reveal areas of missile performance and potentially result in the development of countermeasures or equivalent systems capable of reducing weapon system effectiveness. This information could also be used in the development of a system with similar or advanced capabilities.

3. The SM-1 STANDARD missiles will result in the transfer of sensitive technology and information as well as classified and unclassified defense equipment and technical data. The STANDARD missile guidance section, Target Detecting Device (TDD), warhead, rocket motor, steering control section, safety and arming unit, and auto-pilot battery unit are classified Secret. Certain operating frequencies and performance characteristics are classified Secret. STANDARD missile documentation to be provided will include:

a. Parametric documents (C)
b. Missile Handling Procedures (U)
c. General Performance Data (C)
d. Firing Guidance (C)
e. Dynamics Information (C)
f. Flight Analysis Procedures (C)

4. A special tailored software program for the AN/SLQ-32 Countermeasures Set will be developed and will be classified Secret.

5. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

6. A determination has been made that Turkey can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

Certification Under § 620C(d)
Of The Foreign Assistance Act of 1961, As Amended

Pursuant to § 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (§ 1-100) and State Department Delegation of Authority No. 145 (§ 1(a)(1)), I hereby certify that the furnishing to Turkey of two FFG-7 OLIVER HAZARD PERRY-Class guided missile frigates (FFG-15 ESTOCIN and FFG-13 SAMUEL E. MORISON), two MK 15 MOD 0 Close-in Weapons Systems, two MK 75 MOD 0 76mm gun mounts, two MK 13 MOD 4 Guided Missile Launch Systems, two AN/SLQ-32(V)2 Countermeasures Sets, two AN/SQR-19(V)2 Sonar Receiving Sets, two AN/SQS-56 Sonar Sets, two MK 92 Mode 2 Fire Control Systems, two An/SPS-49(V)4 Radar Sets, upgrade modification kits for 50 SM-1 STANDARD missiles, four M2 machine guns, 10,000 rounds of 20mm ammunition, sonobuoys, and other related elements of logistics support necessary to transfer both frigates to Turkey in a "safe to steam" condition with all shipboard and weapons systems operational is consistent with the principles contained in § 620C(b) of the Act.

This certification will be made part of the notification to Congress under § 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John R. Bolton
Under Secretary of State
for Arms Control and
International Security Affairs

[FR Doc. 02–2677 Filed 2–4–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF EDUCATION

[CFDA No. 84.031S]

Office Of Postsecondary Education; Developing Hispanic-Serving Institutions Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: Assists eligible Hispanic-Serving Institutions (HSI) of higher education to expand their capacity to serve Hispanic and low-income students by enabling them to improve their academic quality, institutional management, and fiscal stability and to increase their self-sufficiency. Five-year individual development grants and cooperative arrangement grants will be awarded in FY 2002. Planning grants will not be awarded in FY 2002. For FY 2002 the competition for new awards focuses on projects designed to meet the priorities we describe in the PRIORITIES section of this application notice.

Eligible Applicants: Institutions of higher education that have been designated to receive funding under Parts A or B of Title III or under Title V of the Higher Education Act of 1965, as amended (HEA), are eligible to apply for individual development grants and cooperative arrangement grants. In addition, at the time of application, the institution must provide assurances that it has an enrollment of undergraduate full-time equivalent (FTE) students that is at least 25 percent Hispanic students, and that not less than 50 percent of the enrolled Hispanic students are low-income individuals.

Notes: 1. A grantee under the Developing Hispanic-Serving Institutions (HSI) Program, authorized under Title V of the HEA, may not receive a grant under any Title III, Part A Program. Further, an HSI Program grantee may not give up that grant in order to receive a grant under any Title III, Part A Program. Therefore, a current HSI Program grantee may not apply for a grant under any Title III, Part A Program in FY 2002.

Note: 2. An institution that does not fall within the limitation described in Note 1 may apply for a FY 2002 grant under all Title III, Part A Programs for which it is eligible, as well as under the HSI Program. An applicant may receive only one grant.

Applications Available: February 6, 2002.

Deadline for Transmittal of Applications: March 22, 2002.

Deadline for Intergovernmental Review: May 21, 2002.

Estimated Available Funds: Congress has appropriated $86 million for this program. Approximately, $70.5 million will support continuing grants. Therefore, approximately $15.5 million will be available for the new grant competition.

Estimated Range of Awards: Development Grants: $400,000–$450,000 per year. Cooperative Arrangement Grants: $550,000—$600,000 per year.

Estimated Average Size of Awards: Individual Development Grant: $425,000 per year. Cooperative Arrangement Grant: $600,000 per year.

Estimated Number of Awards: Individual Development Awards: 26. Cooperative Arrangement Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months for individual development and cooperative grants.

Page Limit: We have established mandatory page limits for both the individual development grant and the cooperative arrangement development grant applications. You must limit the application to the equivalent of no more than 100 pages for the individual development and 140 pages for the cooperative arrangement development grant, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins top, bottom, right and left.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles and headings. However, you may single space footnotes, quotations, references, captions, charts, forms, tables, figures and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the application cover sheet (ED 424), the Certification Regarding Collaborative Arrangement (ED 851S–8), Hispanic-Serving Institutions Assurance Form (ED 851S–7) and the Cooperative Arrangement Form (ED 851S–1). The page limit does, however, apply to all remaining parts of the application.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, 86, 97, 98, and 99; and (b) The regulations for this program in 34 CFR part 606.

Applicability of Executive Order 13202: Applicants that apply for construction funds under these programs must comply with the Executive Order 13202 signed by President Bush on February 17, 2001 and amended on April 26, 2001. This Executive order provides that recipients of Federal construction funds may not ''require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)'' or ''otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s).'' However, the Executive order does not prohibit contractors or subcontractors from voluntarily entering into these agreements.

Projects funded under this program that include construction activity will be provided a copy of this Executive order and will be asked to certify that they will adhere to it.

Priorities

This competition focuses on projects designed to meet the priority in section 511(d) of the HEA (29 U.S.C. 1103) (*see* 34 CFR 75.105(b)(2)(iv)).

The Secretary gives priority to an application that contains satisfactory evidence that the HSI has entered into, or will enter into, a collaborative arrangement with at least one local educational agency or community-based organization to provide that agency or organization with assistance (from funds other than funds provided under Title V of the HEA) in reducing dropout rates for Hispanic students, improving rates of academic achievement for Hispanic students, and increasing the rates at which Hispanic secondary school graduates enroll in higher education.

Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This competition also focuses on projects designed to meet the priority in section 514(b) of the HEA (20 U.S.C. 1103c) (see 34 CFR 75.105(b)(2)(iv)).

The Secretary gives priority to grants for cooperative arrangements that are geographically and economically sound or will benefit the applicant HSI.

Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

Invitational Priorities

Within the absolute priorities specified in this notice, we are particularly interested in applications that meet one or more of the following invitational priorities.

Invitational Priority 1

Cooperative arrangements between two-year and four-year institutions of higher education aiming to increase transfer and retention of Hispanic students.

Invitational Priority 2

Cooperative arrangements between institutions of higher education that develop and share technological resources in order to enhance each institution's ability to serve the needs of low-income communities or minority populations.

Invitational Priority 3

Cooperative arrangements between institutions of higher education, at least one of which does not currently have funding under the HSI Program.

Invitational Priority 4

Cooperative arrangements that involve institutional partners from more than one university or college system.

Under 34 CFR 75.105(c)(1) we do not give an application that meets one or more of the invitational priorities a competitive or absolute preference over other applications.

Special Funding Consideration: In tie-breaking situations described in 34 CFR 606.23 of the HSI Program regulations, we award one additional point to an application from an institution that has an endowment fund for which the 1998–1999 market value per full-time equivalent (FTE) student was less than the comparable average per FTE student at similar type institutions. We also award one additional point to an application from an institution that had expenditures for library materials in 1998–1999, per FTE student, that were less than the comparable average per FTE student at similar type institutions.

For the purpose of these funding considerations, an applicant must be able to demonstrate that the market value of its endowment fund per FTE student, and library expenditures per FTE student, were less than the national averages for the year 1998–1999.

If a tie still remains after applying the additional point or points, we will determine the ranking of applicants based on the lowest combined library expenditures per FTE student and endowment values per FTE student.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Developing Hispanic-Serving Institutions program " 84.031S is one of the programs included in the pilot project. If you are an applicant under the HSI, you may submit your application to us in electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is strictly voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all grant documents electronically including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 form from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner ofED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- You may access the electronic grant application for the Title V, HSI program at *http://e-grants.ed.gov*.

We have included additional information about the e-APPLICATION pilot project (*see* Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications and Further Information Contact: Sophia McArdle, Title V–Developing Hispanic-Serving Institutions Program, U.S. Department of Education, Office of Postsecondary Education, Higher Education Programs, 1990 K Street NW., 6th floor, Washington, DC 20006–8501. Telephone: (202)219–7078 or via Internet *title_five@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site, *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1101–1101d, 1103–1103g.

Dated: January 30, 2002.

Kenneth W. Tolo,

Acting Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education.

[FR Doc. 02–2702 Filed 2–4–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.031A, 84.031N, 84.031W]

Office of Postsecondary Education; Strengthening Institutions, and Alaska Native and Native Hawaiian-Serving Institutions Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Programs: The Strengthening Institutions, and Alaska Native and Native Hawaiian-Serving Institutions Programs are authorized under Title III, Part A of the Higher Education Act of 1965, as amended (HEA). These programs will be referred to collectively in this notice as the "Title III, Part A Programs." The FY 2002 competition for new planning, development, and construction grants under another Title III, Part A Program, the American Indian Tribally Controlled Colleges and Universities Program, will be announced in a separate **Federal Register** notice. Each Title III, Part A Program provides grants to eligible institutions of higher education to enable them to improve their academic quality, institutional management, and fiscal stability, and increase their self-sufficiency. The grants thereby support the elements of the National Education Goals that are relevant to these institutions' unique missions.

Eligible Applicants: To qualify as an eligible institution under either of the programs included in this notice, an accredited or preaccredited institution must, among other requirements, have a high enrollment of needy students, and its Educational and General (E&G) expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction. The complete eligibility requirements are found in 34 CFR 607.2–607.5. The regulations may also be accessed by visiting the following Department of Education Web site *http://www.gov.ed.gov/legislation/FedRegister.*

Note 1: A grantee under the Developing Hispanic-Serving Institutions (HSI) Program, authorized under Title V of the HEA, may not receive a grant under any Title III, Part A

Program. Further, an HSI Program grantee may not give up that grant in order to receive a grant under any Title III, Part A Program. Therefore, a current HSI Program grantee may not apply for a grant under any Title III, Part A Program in FY 2002.

Note 2: An institution that does not fall within the limitation described in NOTE 1 may apply for a FY 2002 grant under all Title III, Part A Programs for which it is eligible, as well as under the HSI Program. An applicant may receive only one grant.

Applications Available: February 6, 2002.

Deadline for Transmittal of Applications: March 22, 2002.

Deadline for Intergovernmental Review: May 21, 2002.

Estimated Available Funds: Congress has appropriated $73.625 million for the Strengthening Institutions Program, and $6.5 million for the Alaska Native and Native Hawaiian-Serving Institutions Program for FY 2002.

Estimated Range of Awards: $330,000—$365,000 per year for 5-year development grants under the Strengthening Institutions Program; and $30,000—$35,000 for 1-year planning grants under the Title III, Part A Programs.

Estimated Average Size of Awards: $350,000 per year for 5-year development grants under the Strengthening Institutions Program; and $32,500 for 1-year planning grants under the Title III, Part A Programs.

Estimated Number of Awards: 14 planning grants under the Title III, Part A programs; 16 development grants under the Strengthening Institutions Program; and two development grants under the Alaska Native and Native Hawaiian-Serving Institutions Program.

Project Period: 60 months for development grants and 12 months for planning grants.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the Title III, Part A Web site for further information on these programs. The address is http://www.ed.gov/offices/OPE/HEP/idues/title3a.html.

Page Limit: We have established mandatory page limits for the individual development grant, the cooperative arrangement development grant, and the planning grant applications. You must limit the narrative application to the equivalent of no more than 100 pages for the individual development grant, 140 pages for the cooperative arrangement development grant and 30 pages for the planning grant, using the following standards:

- A ''page'' is 8.5'' x 11'', on one side only, with 1'' margins top, bottom, right and left.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles and headings. However, you may single space footnotes, quotations, references, captions, charts, forms, tables, figures and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the application cover sheet (ED 424) or the assurances and certifications. However, the page limitation applies to all other parts of the application.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Special Funding Considerations: In tie-breaking situations described in 34 CFR 607.23 of the governing regulations, we award one additional point to an applicant institution that has an endowment fund for which the 1998–1999 market value per full-time equivalent (FTE) student was less than the comparable average per FTE student at similar type institutions. We also award one additional point to an applicant institution that had 1998–1999 expenditures for library materials per FTE student that were less than the comparable average per FTE student at similar type institutions.

For the purpose of these funding considerations, an applicant must demonstrate that the market value of its endowment fund per FTE student, and library expenditures per FTE student, were less than the national averages for the year 1998–1999.

If a tie remains, after applying the additional point or points, we will determine the ranking of applicants based on the lowest combined library expenditures per FTE student and endowment values per FTE student.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99; and, (b) The regulations for this program in 34 CFR part 607.

Applicability of Executive Order 13202: Applicants that apply for construction funds under these programs must comply with the Executive order 13202 signed by President Bush on February 17, 2001 and amended on April 26, 2001. This Executive order provides that recipients of Federal construction funds may not ''require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)'' or ''otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s).'' However, the Executive order does not prohibit contractors or subcontractors from voluntarily entering into these agreements.

Projects funded under this program that include construction activity will be provided a copy of this Executive order and will be asked to certify that they will adhere to it.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Title III, Part A Programs (CFDA Nos. 84.031A, 84.031N, and 84.031W) are included in the pilot project. If you are an applicant under the Title III, Part A Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is strictly voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all grant documents electronically including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application

fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Title III, Part A programs at *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications or Further Information Contact: Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW, 6th Floor, Washington, DC 20202–8513. Telephone: (202) 502–7777 or via Internet darlene.collins@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

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Program Authority: 20 U.S.C. 1057–1059d.

Dated: January 30, 2002.

Kenneth W. Tolo,

Acting Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education.

[FR Doc. 02–2703 Filed 2–4–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Commission on Excellence in Special Education

AGENCY: President's Commission on Excellence in Special Education, Department of Education.

ACTION: Notice of public meeting and hearings.

SUMMARY: This notice provides the dates and city locations of each meeting and hearing of the President's Commission on Excellence in Special Education (Commission). Notice of these meetings and hearings is required under section 10(a)(2) of the Federal Advisory Committee Act in order to notify the public of their opportunity to attend. Members of the general public may observe and listen to Commission proceedings at each meeting and hearing. The Commission may choose to provide a public comment period where members of the public may offer comments before the Commission. The agenda of each meeting, including whether members of the general public will have an opportunity to offer comments before the Commission, will be posted on the Commission's website.

Full Commission meetings will be held in Houston, Texas; Miami, Florida; and Washington, DC. Task force hearings will be held in Houston, Texas; Denver, Colorado; Des Moines, Iowa; San Diego, California; Los Angeles, California; Miami, Florida; New York City, New York; and Nashville, Tennessee. Task force meeting may not consist of all members of the Commission.

Date	City
February 25–27	Houston, Texas.
March 6	Denver, Colorado.
March 13	Des Moines, Iowa.
March 20	San Diego, California.
March 21	Los Angeles, California.
April 9 and 10	Miami, Florida.
April 16	New York, New York.
April 18	Nashville Tennessee.
May 30 and 31	Washington, DC.

ADDRESSES: At this time, the exact address where meetings and hearings will be held within each city is not determined. The Commission's Web site will list the location of each meeting and hearing as soon as locations are determined.

FOR FURTHER INFORMATION CONTACT: C. Todd Jones, Executive Director, at 202–208–1312 (telephone) or Troy R. Justesen, Deputy Executive Director, at 202–219–0704 (telephone), (202) 208–1593 (fax), *Troy.justensen@ed.gov* (e-mail) or via the Commission's Web site address at *http://www.ed.gov/inits/commissionsboards/whspecialeducation/sitemap.htm1.*

SUMMARY INFORMATION: The Commission was established under Executive Order 13227 (October 2, 2001) to collect information and study issues related to Federal, State, and local special education programs with the goal of recommending policies for improving the educational performance of students with disabilities. In furtherance of its duties, the Commission shall invite experts and members of the public to provide information and guidance. The Commission shall prepare and submit a report to the President outlining its findings and recommendations.

Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.,* assistive listing devices, materials in alternative formats) should notify Troy R. Justensen, at (202) 219–0704, by no later than two weeks prior to the meeting or hearing in which an accommodation is needed. Sign language interpreter service will be provided at each meeting. We will attempt to meet requests after this deadline, but cannot guarantee availability of the requested accommodation. The meeting site will be accessible to individuals with mobility impairments, including those who use wheelchairs.

Records of all Commission proceedings are available for public inspection at the President's Commission on Excellence in Special Education, 80 F Street, NW., Suite 408; Washington, DC 20208 from 9 a.m. to 5 p.m. (EST). Transcripts of each meeting will be available on the Commission's website as soon as possible after each meeting.

Dated: January 31, 2002.

C. Todd Jones,

Executive Director & Delegated functions of Assistant Secretary for Office for Civil Rights.

[FR Doc. 02–2678 Filed 2–4–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e,.* interpreting services, assistive listening devices, and/or materials in alternative format) should notify Ms. Hope M. Gray at 202–219–2099 or via e-mail at *hope.gray@ed.gov* no later than Thursday, February 28. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with liabilities. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: Thursday, March 7, 2002, beginning at 9 a.m. and ending at approximately 5 p.m.; and Friday, March 8, 2002, beginning at 8:30 a.m. and ending at approximately 12 noon.

ADDRESSES: The Universit7y of Texas at Brownsville in the Science, Engineering, and Technology Building, 80 Fort Brown, Brownville, Texas 78520.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202–7582 (202) 219–2099.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the Committee has been charged with providing technical expertise with regard to systems of need analysis and application forms, making recommendations that result in the maintenance of access to postsecondary education for low- and middle-income students; conducting a study of institutional lending in the Stafford Student Loan Program; assisting with activities related to the 1992 reauthorization of the Higher Education Act of 1965; conducting a third-year evaluation of the Ford Federal Direct Loan Program (FDLP) under the Omnibus Budget Reconciliation Act (OBRA) of 1993; and assisting Congress with the 1998 reauthorization of the Higher Education Act.

The congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. The Committee traditionally approaches its work from a set of fundamental goals: promoting program integrity, eliminating or avoiding program complexity, integrating delivery across the Title IV programs, and minimizing burden on students and institutions.

Reauthorization of the Higher Education Act has provided the Advisory Committee with a significantly expanded agenda in six major areas, such as, Performance-based Organization (PBO); Modernization; Technology; Simplification of Law and Regulation; Distance Education; and Early Information and Needs Assessment. In each of these areas, Congress has asked the Committee to: monitor progress toward implementing the Amendments of 1998; conduct independent, objective assessments; and make recommendations for improvement to the Congress and the Secretary. Each of these responsibilities flows logically from and effectively implements one or more of the Committee's original statutory functions and purposes.

The proposed agenda includes: (a) Round table discussion sessions regarding the findings of Access Denied and related research, in particular, the implications of unmet need on low-income students, (b) the role of academic preparation in access; and (c) the implications of the data and findings for federal and state policy. In addition, the Committee will discuss its plans for the remainder of fiscal year 2002 and address other Committee business. Space is limited and you are encouraged to register early if you plan to attend. You may register through Internet at *ADV.COMSFA@ed.gov* or *Tracy.Deanna.Jones@ed.gov.* Please include your name, title, affiliation, complete address (including Internet and e-mail—if available), and telephone and fax numbers. If you are unable to register electronically, you may mail or fax your registration information to the Advisory Committee staff office at (202) 219–3032. Also, you may contact the Advisory Committee staff at (202) 219–2099. The registration deadline is Tuesday, February 26, 2002.

The Advisory Committee will meet in Brownsville, Texas on Thursday, March 7, 2002, from 9 a.m. until approximately 5 p.m., and on Friday, March 8, from 8:30 a.m. until approximately 12 noon.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: January 30, 2002.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 02–2740 Filed 2–4–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–02NT15378 entitled ''Identification and Demonstration of Preferred Upstream Management Practices III (PUMP III) for the Oil Industry.'' The Department of Energy (DOE) National Energy Technology Laboratory (NETL), on behalf of its National Petroleum Technology Office (NTPO), seeks cost-shared research and development applications for identification of preferred management practices (PMP) addressing a production barrier in a region and the documentation of these practices for use by the oil industry. Applications will either address (1) The solutions to a technical barrier to production in a region through identification, demonstration, and evaluation of suitable PMP's or (2) they will apply research or analysis to overcome an environmental regulatory barrier. The near-term goal is to address regional barriers whose resolution or

removal would result in an increase in near-term oil production from onshore or offshore Federal, State, tribal or private land.

DATES: The solicitation will be available on the ''Industry Interactive Procurement System'' (IIPS) Web page located at *http://e-center.doe.gov* on or about February 4, 2002. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Mary Beth Pearse MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Rd., P.O. Box 10940, Pittsburgh, PA 15236–0940, E-mail Address: *pearse@netl.doe.gov.*

SUPPLEMENTARY INFORMATION: The National Petroleum Technology Office of the Department of Energy (DOE) Office of Fossil Energy (FE) National Energy Technology Lab (NETL) is soliciting cost-shared applications for identification of preferred management practices (PMP) addressing production and data-sharing solutions to a production barrier in a region and the documentation of these practices for use by the industry. The near-term goal is to increase current domestic oil production quickly.

The mission of the Department of Energy's Fossil Energy Oil Program is derived from the National need for increased oil production for national security, requirements for Federal Lands stewardship, and increased protection of the environment. The Oil Program develops unique technologies and processes to locate untapped oil resources; extend the life of domestic energy resources; and reduce well abandonment—all essential to maximizing the production of domestic resources while protecting the environment. The National Energy Policy in providing energy for a new century supports efforts to increase oil and gas recovery from existing wells through new technology (NEP, Chapter 5, May 2001). The Preferred Upstream Management Practices III (PUMP III) Program continues an effort to meet the NEP goal, by encouraging implementation of the most promising and environmentally protective advanced technologies for optimizing the recovery of the Nation's valuable oil resources.

The program will accept proposals for cost-shared research and development applications for identification of preferred management practices (PMP) addressing a production barrier in a region and the documentation of these practices for use by the oil industry. Applications will either address (1) The solutions to a technical barrier to production in a region through identification, demonstration, and evaluation of suitable PMP's or (2) they will apply research or analysis to overcome an environmental regulatory barrier. The near-term goal is to address regional barriers whose resolution or removal would result in an increase in near-term oil production from onshore or offshore Federal, State, tribal or private land.

Barriers can be identified as technical, physical, regulatory, environmental, or economic. The selected projects are expected to employ the following four (4) strategies in order to have a rapid impact on production: (1) Focus on regions that present the biggest potential for additional oil production quickly, (2) integrate solutions to technological, economic, regulatory, and data constraints, (3) demonstrate the validity of these practices either through field demonstration during the project or documentation of well-run successful past demonstration, and (4) use known technology transfer mechanisms.

Using a regional approach where the projects will have a wide applicability, an integrated approach scheduling tasks along parallel paths to facilitate a quicker response, and operating with existing networks, the production results in the field should be accelerated. The documentation and evaluation of the PMP will be a valuable resource to all producers in the applicable area and possibly other regions as well.

Projects will demonstrate practices and/or technologies that can increase production, increase cost savings, or rapid returns on the capital investments of the operators. New technologies/processes or under-used but effective applications of existing technologies/processes critical to a region will be demonstrated. Some proposals will develop data, systems, or methodologies that enable oil permitting agencies to make decisions more quickly and/or that are based on better scientific information about the environmental risks of a given operation.

This program expects near-term results and actions that will create data or technological resources suitable for long-term use. Teaming is encouraged and the proposal partners could include, but not be limited to, producers, producer organizations, universities, service companies, State agencies or organizations, non-Federal research laboratories, and Native American Tribes or Corporations. The DOE will make publicly available over the Internet the data on preferred practices resulting from this program. The resulting publicly available databases of the preferred practices will be interactive, Internet accessible, should include both technologies and practices, and address constraints in the exploration, production, or environmental areas.

DOE anticipates issuing financial assistance (Cooperative Agreement) awards. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how may awards will be made. Multiple awards are anticipated. Approximately $6 million of DOE funding is planned over a 2 year period for this solicitation. The program seeks to sponsor projects for a single budget/project period of 24 months or less. Due to the low risk and near-term nature of the PUMP program and the potential for a process or technology demonstration, all applicants are required to cost share at a minimum of 50% of the project total for projects submitted under Area 1 and 20% of the project total for projects submitted under Area 2. Details of the cost sharing requirement, and the specific funding levels are contained in the solicitation.

Once released, the solicitation will be available for downloading from the IIPS internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751, or e-mail the Help Desk personnel at IIPS *HelpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business.* Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on 28 January 2002.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 02–2711 Filed 2–4–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–17: Fusion 2002 Summer Study, Snowmass Village, CO, Supplemental Travel Funding

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting applications for supplemental travel funding.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Science (SC), U.S. Department of Energy hereby announces its interest in receiving applications for supplemental travel funding for existing grants to allow researchers and graduate students who are members of the fusion energy science community to participate in the Snowmass 2002 Fusion Energy Sciences Summer Study to be held July 8–19, 2002, Snowmass Village, Colorado. Preference will be given to requests to supplement existing grants funded at levels less than $500,000 per year.

DATES: To permit timely consideration for awards in Fiscal Year 2002, formal applications in response to this notice should be received on or before March 14, 2002.

ADDRESSES: Completed formal applications referencing Program Notice 02–17, should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 02–17. The above address must also be used when submitting applications by U.S. Postal Service Express, any other commercial mail delivery service or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold H. Kritz, U.S. Department of Energy, Office of Fusion Energy Sciences, Science Division, SC–55 (GTN), 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–2027. e-mail: *Arnold.Kritz@science.doe.gov.*

SUPPLEMENTARY INFORMATION: The objective of the supplemental travel funding is to encourage broad participation by fusion science researchers in the Snowmass 2002 Fusion Energy Sciences Summer Study. This funding is intended to supplement existing grants funded by the Office of Fusion Energy Sciences. Preference will be given to requests to supplement grants with an annual budget of less than $200,000. Principal Investigators of existing grants may submit requests for supplemental funding to support travel, up to a maximum of $2500 per person, for any researcher or graduate student supported by their grant. Requests for travel funds for both researchers and graduate students can be included in the same application for supplemental funding.

It is expected that $60,000 will be available to support supplemental travel for faculty and research staff. In order to encourage student participation in the meeting, an additional $20,000 is expected to be available to support graduate student travel, with preference given to students nearing completion of their Ph.D. degree.

The request for supplemental funding should include a page for each traveler, not to exceed 300 words, describing how the Summer Study relates to the traveler's research and what the traveler is likely to contribute to the Summer Study. The supplemental travel funding for each proposed traveler will be reviewed competitively with awards based on the applicant's likely level of participation in the Meeting as well as potential benefit to the fusion program resulting from the applicant's attendance at the Fusion 2002 Summer Study Meeting. Additional information about the objectives of the Fusion 2002 Summer Study at Snowmass can be obtained from the Web site at: *http://lithos.gat.com/snowmass/*

The request for each traveler should indicate the Snowmass Working Group, or Groups, in which the traveler expects to participate. Briefly describe how the individual's research will enable him/her to contribute to the topic of the specified Snowmass Working Group(s) and/or how the participation in the program of the Snowmass Working group(s) will benefit the individual's fusion research program. A listing of the Snowmass working groups can be found on the Web at: *http://lithos.gat.com/snowmass/working.html.* The request should also include a vitae for each traveler. The relationship between the traveler's research experience and the goals of the Snowmass meeting will be considered in evaluating the request. In the budget justification specify for each traveler the breakdown for travel, lodging and per diem costs.

Applicants are expected to use the following ordered format to prepare applications.

- Face Page Form (DOE F 4650.2)
- Budget Page Form (DOE F 4620.1)
- Page with Budget Explanation
- One page for each traveler, not to exceed 300 words per traveler, describing how the Summer Study relates to the travelers research and what the traveler is likely to contribute to the Summer Study
- Biographical sketches or vitae, including relevant publications (limit two pages per traveler)

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605 which is available on the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications.

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 January 29, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–2712 Filed 2–4–02; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–338–001, et al.]

Portland General Electric Company, et al.; Electric Rate and Corporate Regulation Filings

January 29, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ER02–338–001]

1. Portland General Electric Company

Take notice that on January 24, 2002, Portland General Electric Company (PGE) filed with the Federal Energy Regulatory Commission (Commission) amendments to its revised tariff sheets to its Open Access Transmission Tariff and certain information requested by the Commission regarding its proposed energy imbalance charge in the above-referenced proceeding.

PGE requests that the Commission make the amended tariff sheets effective as of March 1, 2002.

Comment Date: February 14, 2002.

[Docket No. ER02–698–001]

2. Pleasants Energy, LLC

Take notice that on January 24, 2002, Pleasants Energy, LLC filed an Amended Service Agreement No. 1 with Dominion Nuclear Marketing I, Inc., and Dominion Nuclear Marketing II, Inc., under FERC Electric Tariff, Original Volume No.1.

Pleasants Energy, LLC requests an effective date for the Amended Service Agreement No. 1 of December 5, 2001, the date requested in Docket No. ER02–698–000. Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, and the Public Service Commission of West Virginia.

Comment Date: February14, 2002.

[Docket No. ER02–818–000]

3. LG&E Capital Trimble County LLC

Take notice that on January 24, 2002, LG&E Trimble County LLC, (TCLC) submitted for filing, pursuant to section 205 of the Federal Power Act, and Part 35 of the Federal Energy Regulatory Commission (Commission) regulations, an application for authorization to engage in the sale of electric energy and capacity at market-based rates, waiver of certain Commission regulations, and certain blanket approvals under such regulations. TCLC proposes, among other things, to own, operate and sell the power output from two 152 megawatt combustion turbine electric units located in Trimble County, Kentucky.

Comment Date: February 14, 2002.

[Docket No. ER02–819–000]

4. Entergy Services, Inc.

Take notice that on January 24, 2002, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc (Entergy Arkansas), tendered for filing a First Revised Long-Term Market Rate Sales Agreement between Entergy Arkansas and City of Benton, Arkansas for the sale of power under Entergy Services' Rate Schedule SP.

Comment Date: February 14, 2002.

[Docket No. ER02–820–000]

5. Pedricktown Energy, Inc.

Take notice that on January 24, 2002, Pedricktown Energy, Inc. (Peddricktown) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for an order accepting its FERC Electric Rate Schedule No. 1, granting certain blanket approvals, including the authority to sell electricity at market-based rates, and waiving certain regulations of the Commission. Pedricktown requested expedited Commission consideration. Pedricktown requested that its Rate Schedule No. 1 become effective upon the earlier of the date the Commission authorizes market-based rate authority, or 30-days from the date of this filing. Pedricktwon also filed its FERC Electric Rate Schedule No. 1.

Comment Date: February 14, 2002.

[Docket No. ER02–821–000]

6. Louisville Gas and Electric Company/ Kentucky Utilities Company

Take notice that on January 24, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral transmission service agreement with LG&E Energy Services. This agreement allows LG&E Energy Services to take firm point-to-point transmission service from LG&E/KU.

Comment Date: February 14, 2002.

[Docket No. ER02–822–000]

7. Louisville Gas and Electric Company/ Kentucky Utilities Company

Take notice that on January 24, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral transmission service agreement with LG&E Energy Services. This agreement allows LG&E Energy Services to take firm point-to-point transmission service from LG&E/KU.

Comment Date: February 14, 2002.

[Docket No. ER02–823–000]

8. Louisville Gas and Electric Company/ Kentucky Utilities Company

Take notice that on January 24, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral transmission service agreement with Cincinnati Gas and Electric Company, PSI Energy, Inc. (Cinergy). This agreement allows Cinergy to take firm point-to-point transmission service from LG&E/KU.

Comment Date: February 14, 2002.

[Docket No. ER02–824–000]

9. Louisville Gas and Electric Company/ Kentucky Utilities Company

Take notice that on, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral transmission service agreement with Cincinnati Gas and Electric Company, PSI Energy, Inc. (Cinergy). This agreement allows Cinergy to take firm point-to-point transmission service from LG&E/KU.

Comment Date: February 14, 2002.

[Docket No. ER02–825–000]

10. Louisville Gas and Electric Company/ Kentucky Utilities Company

Take notice that on January 24, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral transmission service agreement with Dynegy Marketing and Trade (Dynegy). This agreement allows Dynegy to take firm point-to-point transmission service from LG&E/KU.

Comment Date: February 14, 2002.

[Docket No. ER02–826–000]

11. Louisville Gas and Electric Company/ Kentucky Utilities Company

Take notice that on January 24, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral transmission service agreement with Dynegy Marketing and Trade (Dynegy). This agreement allows Dynegy to take firm point-to-point transmission service from LG&E/KU.

Comment Date: February 14, 2002.

[Docket No. ER02–827–000]

12. PJM Interconnection, L.L.C.

Take notice that on January 24, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to the currently effective Reliability Assurance Agreement Among Load Serving Entities (RAA) to provide an exception, for the addition of Rockland Electric Company (Rockland) as a party to the RAA, to the RAA requirement to recalculate the Forecast Pool Requirement and RAA parties' capacity obligations which normally is required whenever an entity becomes a party to the RAA such that the boundaries of the PJM control area are expanded.

PJM requests a waiver of the Commissions' regulations to permit an effective date of March 1, 2002 for the amendments. Copies of this filing were served upon all RAA signatories, Rockland, and each state electric utility regulatory commission in the PJM control area.

Comment Date: February 14, 2002.

13. Wellhead Power Gates, LLC

[Docket No. ER02–828–000]

Take notice that on January 24, 2002, Wellhead Power Gates, LLC (Applicant)

tendered for filing under its market-based rate tariff a long-term service agreement with the California Department of Water Resources.

Comment Date: February 14, 2002.

14. Duke Energy Hot Spring, LLC

[Docket No. EG02–78–000]

Take notice that on January 25, 2002, Duke Energy Hot Spring, LLC (Duke Hot Spring) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Duke Hot Spring states that it is a Delaware limited liability company that will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities to be located in Hot Spring County, Arkansas. The eligible facilities will consist of an approximately 620 MW natural gas-fired, combined cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment Date: February 19, 2002.

15. American Transmission Company LLC

[Docket No. ER02–829–000]

Take notice that on January 24, 2002, American Transmission Company LLC (ATCLLC) tendered for filing an executed Distribution-Transmission Interconnection Agreement between ATCLLC and Manitowoc Public Utilities. ATCLLC requests an effective date of June 25, 2001.

Comment Date: February 14, 2002.

16. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–830–000]

Take notice that on January 24, 2002, pursuant to section 205 of the Federal Power Act and Section 35.16 of the Commission's regulations, 18 CFR 35.16 (2001), the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Succession for certain Transmission Service Agreements and Network Transmission Service and Operating Agreements held by the Minnesota Power & Light Company (Minnesota Power).

Copies of this filing were sent to all applicable customers under the Minnesota Power Open Access Transmission Tariff by placing a copy of the same in the United States mail, first-class postage prepaid.

Comment Date: February 14, 2002.

17. Wellhead Power Panoche, LLC

[Docket No. ER02–832–000]

Take notice that on January 24, 2002, Wellhead Power Panoche, LLC (Applicant) tendered for filing under its market-based rate tariff a long-term service agreement with the California Department of Water Resources.

Comment Date: February 14, 2002.

18. California Independent System Operator Corporation

[Docket No. ER02–834–000]

Take notice that on January 24, 2002, the California Independent System Operator Corporation (ISO) tendered for filing Second Revised Service Agreement No. 276 Under ISO Rate Schedule No. 1, which is a Participating Generator Agreement (PGA) between the ISO and Delano Energy Company, Inc. The ISO has revised the PGA to update the list of generating units listed in Schedule 1 of the PGA. The ISO requests that the agreement be made effective as of January 4, 2002.

The ISO states that this filing has been served on Delano Energy Company, Inc. and the California Public Utilities Commission.

Comment Date: February 14, 2002.

19. Entergy Services, Inc.

[Docket No. ER02–839–000]

Take notice that on January 25, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., tendered for filing the Thirtieth Amendment to the Power Coordination, Interchange and Transmission Service Agreement between Entergy Arkansas, Inc., and Arkansas Electric Cooperative Corporation, dated March 1, 2001. The Thirtieth Amendment modifies Exhibit A to Appendix A of Rate Schedule No. 82 by establishing a new point of delivery.

Comment Date: February 15, 2002.

20. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–841–000]

Take notice that on January 25, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral transmission service agreement with LG&E Energy Services This agreement allows LG&E Energy Services to take firm point-to-point transmission service from LG&E/KU.

Comment Date: February 15, 2002.

21. Pinnacle West Capital Corporation

[Docket No. ER02–842–000]

Take notice that on January 25, 2002, Pinnacle West Capital Corporation (PWCC) tendered for filing a Service Agreement, Rate Schedule FERC No. 6, under PWCC's Rate Schedule FERC No. 1 for service to Aha Macav Power Service (AMPS).

A copy of this filing has been served on AMPS.

Comment Date: February 15, 2002.

22. Boston Edison Company

[Docket No. ER02–843–000]

Take notice that on January 25, 2002, Boston Edison Company (Boston Edison) tendered for filing a Related Facilities Agreement between Boston Edison and Mirant Kendall, LLC (Mirant Kendall). Boston Edison requests an effective date of March 26, 2002.

Boston Edison states that it has served a copy of the filing on Mirant Kendall and the Massachusetts Department of Telecommunications and Energy.

Comment Date: February 15, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2728 Filed 2–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project 2342–011, Washington]

PacifiCorp; Notice of Incorporation of 1996 Condit Hydroelectric Project Final Environmental Impact Statement Into the Record of the Proceeding for Project No. 2342–011

January 30, 2002.

Take notice that the Condit Hydroelectric Project Final Environmental Impact Statement issued in the relicensing proceeding for Project No. 2342–005 on October 31, 1996, is incorporated into the record of the proceeding for Project No. 2342–011.

For further information, please contact Nicholas Jayjack at (202) 219–2825.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2730 Filed 2–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11566–000 Maine]

Ridgewood Maine Hydro Partners, L.P.; Notice of Availability of Draft Environmental Assessment

January 30, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486,52 F.R. 47879), the Office of Energy Projects has reviewed the application for license for the Damariscotta Mills project, located on the Damariscotta River, in Lincoln, County, Maine, and has prepared a Draft Environmental Assessment (DEA) for the project. There are no federal lands occupied by the project works or located within the project boundary.

The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link—select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Any comments should be filed within 45 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix the Project No. 11566 to the comments. Comments 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.

For further information, contact Michael Spencer at 202–219–2846.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2732 Filed 2–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2596–004]

Rochester Gas and Electric Corporation; Notice of Availability of Final Environmental Assessment

January 30, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Commission's Division of Hydropower Administration and Compliance, Office of Energy Projects has reviewed an application to surrender the license for the Station 160 Hydroelectric Project. The Station 160 Project is located on the Genesee River in Livingston County, New York.

A Final Environmental Assessment (FEA) has been prepared by staff for the proposed surrender. In the FEA, staff finds that approval of the application, to include certain actions recommended by Commission staff, would not constitute a major federal action significantly affecting the quality of the human environment.

The FEA was written by staff in the Commission's Office of Energy Projects. Copies of the FEA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The FEA 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).

For further information, contact B. Peter Yarrington at (202) 219–2939.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2731 Filed 2–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

January 30, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No.:* P–1494–236.

c. *Date Filed:* June 26, 2001.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola Project.

f. *Location:* The project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. This project does not utilize Federal or Tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Bob Sullivan, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. *FERC Contact:* Shannon Dunn at *shannon.dunn@ferc.gov*, or telephone (202) 208–0853.

j. *Deadline for filing comments, motions, or protests:* March 4, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Please include the project number (P–1494–236) on any comments or motions filed.

k. *Description of Project:* Grand River Dam Authority, licensee for the Pensacola Project, requests approval to grant permission to The Queens, LLC to replace one existing dock with two slips, install 10 new docks with 271 slips, and install two new breakwaters. The proposed project is near Sailboat Bridge on Grand Lake in Section 22, Township 25 North, Range 23 East, Delaware County.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.gov. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2729 Filed 2–4–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7137–8]

Agency Information Collection Activities: Continuing Collection; Comment Request; Water Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Water Quality Standards Regulation, EPA ICR Number 0988.08, OMB Control Number 2040–0049. The current ICR expires July 31, 2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 8, 2002.

ADDRESSES: United States Environmental Protection Agency; Standards and Health Protection Division (4305), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A hard copy of an ICR may be obtained without charge by calling the identified information contact individual for each ICR in the **FOR FURTHER INFORMATION CONTACT** section. An ICR can also be accessed electronically at *http://www.epa.gov/icr.*

FOR FURTHER INFORMATION CONTACT: Robert Van Brunt, (202) 260–2630, fax (202) 260–9830, e-mail *vanbrunt.robert@epa.gov,* and refer to ICR No. 0988.08.

SUPPLEMENTARY INFORMATION: *Affected entities:* States, Territories and Commonwealths (the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) and Tribes that establish and submit to EPA for review new or revised water quality standards pursuant to section 303 of the Clean Water Act (CWA).

Title: Water Quality Standards, EPA ICR Number 0988.08, OMB Control Number 2040–0049. The current ICR expires July 31, 2002.

Abstract: Water Quality Standards are provisions of State, Tribal, and Federal law which consist of designated uses for waters of the United States, numeric or narrative water quality criteria to protect the designated uses, and an antidegradation policy to protect existing uses and high quality waters. State and Tribal water quality standards are the foundation for restoring and maintaining the quality of the Nation's waters under the CWA. They are used in several ways including serving as water quality goals for each waterbody, evaluating water quality to determine attainment of CWA goals, helping Federal, State, Tribal, and local governments develop water quality management plans and objectives, and helping State and local governments plan for and protect water supplies.

States are required by Federal law to establish water quality standards. CWA section 303(c) requires States and certain Indian Tribes (those Tribes that have received EPA authorization to administer the water quality standards program and have had their water quality standards approved by EPA) to review and, if appropriate, revise their water quality standards regulations once every three years and to submit to EPA the results of the review. EPA then reviews each State and Tribal submission of new or revised water quality standards for approval or disapproval.

The Water Quality Standards (WQS) Regulation (40 CFR part 131) is the EPA regulation governing the implementation of the water quality standards program. The WQS Regulation describes requirements and procedures for the States and Tribes to develop, review, and revise their water quality standards and EPA procedures for reviewing new or revised water quality standards or for EPA to establish water quality standards under section 303(c)(4) of the CWA. The regulation requires, in some cases, the development and submission of information to EPA. The following paragraphs describe the information collection requirements in 40 CFR part 131.

Section 131.6 establishes minimum requirements for a State or Tribe to submit any new or revised water quality standards to EPA after conducting the review required every three years by section 303(c) of the CWA. The information to be submitted consists of:

(a) Use designations for water bodies consistent with sections 101(a)(2) and 303(c)(2) of the CWA;

(b) methods used and analyses conducted to support water quality standards revisions;

(c) water quality criteria sufficient to protect the designated uses;

(d) an antidegradation policy consistent with 40 CFR 131.12;

(e) certification by the Attorney General or other appropriate legal authority that the water quality standards were duly adopted pursuant to State or Tribal law; and

(f) information which will aid EPA in determining the adequacy of the scientific basis of the water quality standards and information on general policies that may affect the implementation of the standards.

Section 131.8 specifies information that an Indian Tribe must submit to EPA in order to determine whether a Tribe is qualified to administer the Water Quality Standards Program. The application must include the following information: (a) Evidence that the Tribe is recognized by the Secretary of the

Interior; (b) a statement that the Tribe is currently carrying out substantial governmental duties and powers over a Federal Indian Reservation; (c) a statement of the Tribe's authority to regulate the quality of the reservation's waters; and (d) a narrative statement describing the capability of the Tribe to administer an effective water quality standards program.

Section 131.7 describes a dispute resolution mechanism that will assist in resolving disputes that arise between States and Tribes over water quality standards on common waterbodies. Implementation of this provision includes collection of information by EPA to determine if initiation of a formal EPA dispute resolution action is justified. Although States and Tribes are not required to request formal EPA dispute resolution action, information collection is necessary where a State or Tribe formally requests EPA intervention.

Additionally, § 131.20 establishes public participation requirements during State and Tribal review and revision of water quality standards. States and Tribes shall hold public hearings at least once every three years for the purpose of reviewing water quality standards and, as appropriate, modifying and adopting standards. Proposed water quality standards revisions and supporting analyses shall be made available to the public before the hearing.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Burden Statement: The existing estimated annual public reporting and recordkeeping burden for this collection of information is estimated to average 2,293 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States, Territories and Commonwealths, and Tribes.

Estimated Number of Respondents: 83.

Frequency of Response: Once every three years for water quality standards submittal to EPA; once per Tribal application for the water quality standards program; once per dispute resolution request.

Estimated Total Annual Hour Burden: 190,336 hours.

Estimated Total Annualized Cost Burden (O&M and capital/startup costs only): $0.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: January 28, 2002.

Elizabeth Southerland,

Acting Director, Office of Science and Technology.

[FR Doc. 02–2709 Filed 2–4–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–28]

Fact Sheet Regarding the Implementation of the Nationwide Programmatic Agreement With Respect to Collocating Wireless and Broadcast Facilities on Existing Towers and Structures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this public notice and the attached Fact Sheet (Appendix A), we present guidance for the implementation of the March 16, 2001 Nationwide Programmatic Agreement (Programmatic Agreement) which applies to wireless and broadcast facilities and that streamlines procedures for review of collocations of antennas under the National Historic Preservation Act (NHPA).

FOR FURTHER INFORMATION CONTACT: Ivy Harris, Wireless Telecommunications Bureau, at (202) 418–0621.

SUPPLEMENTARY INFORMATION: The Wireless Telecommunications Bureau previously announced the execution of this Programmatic Agreement by *Public Notice* released March 16, 2001. The Nationwide Programmatic Agreement was executed by the Federal Communications Commission, the National Conference of State Historic Preservation Officers, and the Advisory Council on Historic Preservation. *See* Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with Respect to Co-Locating Wireless Antennas on Existing Structure, *Public Notice,* DA 01–691 (rel. Mar. 16, 2001), 66 FR 17554 (Apr. 2, 2001).

This *Public Notice* (including the Fact Sheet) is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW, Washington DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington DC 20036, (202) 857–3800. The document is also available via the Internet at: *http://www.fcc.gov/wtb/siting.* The Appendix A appears at the end of this document.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix A—January 10, 2002

Table of Contents

Section	Page no.
1. Background, Purpose and Scope of the Agreement	2
2. General Operation of the Agreement	3
3. Definitions	4
4. Collocation on Towers Constructed on or before March 16, 2001	5
5. Collocation on Towers Constructed after March 16, 2001	6
6. Collocation on Buildings and Non-Tower Structures outside Historic Districts	7
7. Tribal Lands and Tribal Consultation	8
8. Federal Property	10
9. Need for Applicants to File Environmental Assessments	10
10. Filing Instructions/ULS	11
11. Disposition of Pending Matters	11
12. Complaints	12

The Federal Communications Commission (FCC or Commission), the Advisory Council on Historic Preservation (ACHP or Council), and the National Conference of State Historic Preservation Officers (NCSHPO) entered into a Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (the ''Agreement'') on March 16, 2001.[1] The Agreement applies to wireless and broadcast facilities and is intended to streamline procedures for review of collocations of wireless and broadcast antennas and associated equipment (herein ''antennas'') on existing towers and other structures under the National Historic Preservation Act (NHPA).[2]

This Fact Sheet provides guidance regarding the implementation of the Agreement for Commission broadcast and wireless service licensees, applicants, tower companies, and tower owners (collectively, ''applicants''). This Fact Sheet also provides guidance to State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), and other interested parties. The guidance set forth in this Fact Sheet does not amend or act as a substitute for the text of the Agreement or the Commission's rules. The guidance also does not amend or act as a substitute for the ACHP's rules (except to the extent the Agreement itself substitutes for the ACHP's rules). The complete text of the Agreement is available on the Wireless Telecommunications Bureau (''WTB'') Web site at *http://wireless.fcc.gov/siting/*, or by contacting the WTB by e-mail at *wtb_towersiting@fcc.gov* or by phoning Ivy Harris at (202) 418–0621 for wireless-related inquiries; or on the Mass Media Bureau (''MMB'') Web site at *http://www.fcc.gov/mmb/mmb_siting.html,* or by contacting the MMB by e-mail at *mmb_siting@fcc.gov*, or by phoning Marva Dyson at (202) 418–2870 for broadcast-related inquiries.

(1) Background, Purpose, and Scope of the Agreement

Under section 106 of the NHPA (16 U.S.C. 470f), federal agencies are required to take into account the effects of federal undertakings on historic properties. The Commission's environmental rules require licensees and applicants to evaluate whether proposed facilities may affect historic properties that are listed or eligible for listing in the National Register of Historic Places (''National Register''). See 47 CFR 1.1307(a)(4). Consistent with section 106, this evaluation process includes consultation with the relevant State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO), as well as compliance with other procedures set out in the ACHP rules, 36 CFR part 800, subpart B. The Commission becomes directly involved in the consultation process when an applicant determines that a proposed facility will have an adverse effect or when there is a dispute between the applicant and the SHPO/THPO regarding whether a proposed facility will have an adverse effect.[3] Where a facility may have an adverse effect on a historic property, the Commission's rules require submission of an Environmental Assessment (EA) prior to construction.[4]

The purpose of the Agreement is to streamline the procedures associated with section 106 review and the Commission's rules in order to facilitate access to advanced telecommunications services by all Americans in a manner that is consistent with the NHPA's goal of preserving the nation's historic properties and with the pro-competitive and deregulatory goals of the Communications Act of 1934, as amended. According to one industry source, the number of wireless cell sites in the United States increased from a total of 913 in 1985 to 104,288 in 2000.[5] This explosive growth in the number of wireless communications facilities has imposed strains on all parties to the historic preservation review process and led to delays in deployment. Additionally, Congress has mandated that all television stations convert to digital transmission by the end of 2006. While television broadcasters will likely attempt to collocate their digital facilities in the interest of economy and expedition, the transition may necessitate the construction of some new towers to support the digital antennas. However, not all facilities construction is alike in its potential to affect adversely historic properties. In particular, the addition of an antenna to a pre-existing tower or other structure that is not itself a historic property (*i.e.,* collocation) ordinarily should not have an adverse effect on historic properties. The Agreement therefore exempts collocated antennas from the review process under the NHPA unless they fall within a set of exceptions designed to encompass potential problematic situations. The Agreement is intended to encourage the collocation of future antennas on existing structures, create an incentive for parties to comply with section 106 on a going-forward basis, and, where reasonably possible from a network and coverage perspective, to encourage applicants to locate their facilities away from historic properties.

The Agreement governs only the review of collocations under the NHPA for effects on historic properties listed, or eligible for listing, in the National Register. New tower construction and the replacement of existing towers are not exempted from review under the Agreement. The Agreement does not affect the review of collocations to determine compliance with other aspects of the FCC's environmental rules or other federal, state, or local laws.

(2) General Operation of the Agreement

Stipulations III, IV, and V form the core of the Agreement's provisions for collocations. The general effect of these provisions is to exempt all collocations of antennas from the section 106 review process, unless an exception stated in Stipulation III, IV, or V applies. *Thus, unless an exception is applicable, collocations shall not be submitted to the SHPO for review.* A more detailed discussion of these three stipulations is included in the fourth, fifth, and sixth sections of this Fact Sheet.

We note that the Agreement governs only section 106 review of the collocation itself. Nothing in the Agreement affects the rights, if any, of the FCC, ACHP, SHPOs, THPOs, tribal governments, or members of the public to challenge any underlying tower that has an adverse effect on a historic property, independent of the collocation process.

A. *Pre-Existing Towers.* Stipulation III governs collocation on all towers constructed on or before the date of the Agreement, March 16, 2001. Stipulation III allows for collocation on those towers without the collocation having to undergo consultation and review under section 106 of the NHPA, whether or not the underlying tower has previously undergone section 106 review, unless the collocation is subject to one of the exceptions listed in Stipulation III (see section 4, below, ''Collocation on Towers Constructed on or before March 16, 2001'').

B. *Newly Constructed Towers.* Stipulation IV covers collocations on towers built after March 16, 2001. Stipulation IV allows for collocation on those towers without the collocation having to undergo section 106 consultation and review, unless the collocation is subject to one of the exceptions listed in Stipulation IV (*see* section 5, below, ''Collocation on Towers Constructed after March 16, 2001''). For towers built after March 16, 2001, one of these exceptions

[1] *Public Notice,* Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with Respect to Collocating Wireless Antennas on Existing Structures, DA 01–691, rel. March 16, 2001.

[2] 16 U.S.C. 470 *et seq.*

[3] *See also* Memorandum from John M. Fowler, Executive Director, Advisory Council on Historic Preservation, to Federal Communications Commission, State Historic Preservation Officers, and Tribal Historic Preservation Officers, dated September 21, 2000 (confirming authority to delegate) (ACHP Delegation Memo).

[4] 47 CFR 1.1307(a)(4). No EA is required for a finding of ''no effect'' or ''no adverse effect.'' *See* Section 9, *infra.*

[5] *Cellular Telecommunications Industry Association Semi-Annual Wireless Survey,* Table (''Cell Sites''), December 31, 2000.

occurs when the underlying tower has not completed section 106 review. If the underlying tower has not gone through section 106 review, an applicant cannot collocate on that tower without a written concurrence with a finding of ''no effect'' or ''no adverse effect'' on historic properties from the relevant SHPO, the ACHP, or the FCC, or an agreement on mitigation of adverse effects and subsequent approval under the FCC's rules.

C. *Buildings and Non-Tower Structures outside Historic Districts.* Stipulation V governs collocations of antennas on buildings and non-tower structures outside historic districts. Stipulation V allows for collocations on buildings and non-tower structures without the collocation having to undergo section 106 review, unless the collocation is subject to one of the exceptions listed in Stipulation V (*see* section 6, below, ''Collocation on Buildings and Non-Tower Structures outside Historic Districts'').

(3) Definitions

Collocation: ''Collocation'' means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. Under the Agreement, the term ''collocation'' includes excavation and the placement of equipment necessarily or reasonably associated with the mounting or installation of an antenna.

Tower: ''Tower'' is any structure built for the sole or primary purpose of supporting antennas and their associated facilities used to provide FCC-licensed services.[6] A water tower, utility tower, or other structure built primarily for a purpose other than supporting FCC-licensed services is not a ''tower'' for purposes of the Agreement, but is a non-tower structure.

Substantial increase in the size of the tower: Although Stipulations III and IV permit collocation on towers without the collocation having to undergo section 106 consultation and review, this authorization is limited by, among other things, the size and scope of the collocation. Thus, if the collocation will result in a ''substantial increase in the size of the tower,'' the collocation must go through section 106 consultation and review. A ''substantial increase in the size of the tower'' occurs under one or more of the following circumstances:

(1) The height of the tower will be increased by more than the greater of: (a) 10% of the height of the tower; or (b) the height extension needed to accommodate one additional antenna array with a separation of 20 feet from the nearest existing antenna. Thus, a 150-foot tower may be increased in height by up to 15 feet without constituting a substantial increase in size. If there is already an antenna at the top of the tower, the tower height may be increased by up to 20 feet plus the height of a new antenna to be located at the new top of the tower.

(2) More than four new equipment cabinets or more than one new equipment shelter will be added.

(3) The width of the tower will be increased by more than the greater of: (a) 20 feet in any direction from the edge of the tower; or (b) the width of the tower structure at the level of the appurtenance. For example, if the width of the tower structure at the level of the appurtenance is 40 feet, the appurtenance can protrude up to 40 feet from the edge of the tower at that point without constituting a substantial increase in the size of the tower.

(4) Excavation will occur outside the current tower site, defined as the area within the boundaries of the leased or owned property surrounding the tower at the time of the proposed collocation, and including any access or utility easements related to the site.

A collocation may exceed the size limits in the first category without requiring section 106 review if the additional height is necessary to avoid radio interference with or from existing antennas. A collocation may exceed the size limits in the third category without requiring section 106 review if the additional width is necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable. If a complaint is filed regarding a specific collocation that exceeds the size limits set out in the Agreement, the Commission may require the applicant to explain why one of these exceptions is applicable to the collocation.

(4) Collocation on Towers Constructed on or Before March 16, 2001 (Stipulation III)

For towers constructed on or before March 16, 2001, the Agreement generally allows collocation without consultation or review under section 106 and subpart B of 36 CFR part 800. There are four situations involving the mounting of antennas on such towers, however, that still require review:

(1) the mounting of the antenna will result in a substantial increase in the size of the tower (see section 3, Definitions, above); or,

(2) prior to the collocation, the tower has been determined by the FCC to have an effect on one or more historic properties, unless such effect has been found to be not adverse through a ''no adverse effect'' finding, or if found to be adverse or potentially adverse, has been resolved, such as through a conditional ''no adverse effect'' determination, a Memorandum of Agreement, a programmatic agreement, or otherwise in compliance with section 106 and subpart B of 36 CFR part 800; or,

(3) the tower is the subject of a pending environmental review or related proceeding before the FCC involving compliance with section 106 of the National Historic Preservation Act; or,

(4) the collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO or the Council supported by substantial evidence that the collocation has an adverse effect on one or more historic properties.

For purposes of the third exception, a ''review or related proceeding'' commences with respect to wireless facilities or tower registration when the FCC's WTB assigns it a file number and contacts the tower owner, tower manager, or the owner's authorized agent (herein collectively the ''tower owner'') in response to a SHPO adverse effect letter, a complaint from a member of the public, or otherwise. Similarly, a ''review or related proceeding'' commences with respect to broadcast facilities when (1) due to the proximity of historic properties, an applicant cannot certify compliance with the FCC's environmental rules and submits an Environmental Assessment with its application to the MMB; or (2) the FCC receives a SHPO adverse effect letter or a complaint from a member of the public. A review is ''pending'' from the time it commences until the FCC dismisses, closes, or otherwise resolves the matter. Simple receipt by the Commission of a letter from a SHPO alleging that its ability to consult about a tower or collocation prior to construction may have been foreclosed does not in itself establish that a review is pending.

To determine whether a review is pending on a particular tower, an interested party should contact the tower owner. In addition, the FCC will soon make available a database listing pending section 106 reviews and related proceedings for both wireless and broadcast services. Potential collocators are encouraged to consult the FCC database in addition to contacting the tower owner; however, parties should not rely solely on the database. Any party that follows these steps in good faith to determine the pendency of a proceeding will be considered to have complied with the intent of the Agreement.

A tower is considered to be constructed on or before March 16, 2001 if the structure reached its initial intended height above ground, or was available for the mounting of collocations, by March 16, 2001. For towers that must be registered with the FCC under part 17 of the Commission's rules,[7] the completion date will be the date reported to the Commission on FCC Form 854 as the date of completion of construction.[8]

(5) Collocation on Towers Constructed After March 16, 2001 (Stipulation IV)

The Agreement generally allows collocation on towers constructed after March 16, 2001, without consultation or review of the collocation under section 106 and subpart B of 36 CFR part 800. There are four situations involving the mounting of antennas on such towers, however, that still require review:

(1) The section 106 review process for the tower and any associated environmental reviews have not been completed; or,

(2) The collocation will result in a substantial increase in the size of the tower (see section 3, Definitions, above); or,

(3) Prior to the collocation, the tower has been determined by the FCC to have an effect

[6] This may include a tower on which no antennas have been located prior to the collocation at issue, if the principal purpose for constructing the tower was to support FCC-licensed antennas.

[7] *See* 47 CFR 17.1 *et seq.* These rules require that antenna structures located close to airports or that are greater than 200 feet in height comply with painting and lighting specifications designed to ensure aircraft navigation safety. The FCC requires certain antenna structure owners to register structures with the Commission.

[8] *See* 47 CFR 17.57.

on one or more historic properties, unless such effect has been found to be not adverse through a ''no adverse effect'' finding, or if found to be adverse or potentially adverse, has been resolved, such as through a conditional ''no adverse effect'' determination, a Memorandum of Agreement, a programmatic agreement, or otherwise in compliance with section 106 and Subpart B of 36 CFR part 800; or,

(4) The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO, or the Council supported by substantial evidence that the collocation has an adverse effect on one or more historic properties.

We emphasize that pursuant to Subsection (1) of Stipulation IV, above, a tower built after March 16, 2001, may benefit from the collocation provisions of the Agreement only if that tower has completed the section 106 review and related historic preservation review under the FCC's NEPA rules.[9] Typical evidence of a completed section 106 review would include a SHPO's written concurrence with a finding of ''no effect'' or ''no adverse effect'' or an executed Memorandum of Agreement. Where a SHPO has an express policy of allowing applicants to presume concurrence if no objection is received within 30 days of receipt of the applicant's finding, a tower owner may document completion of the section 106 review by retaining an appropriate memorandum, together with a copy of the submission to the SHPO and proof of the date of submission, in the company file.

If a tower constructed after March 16, 2001 did not go through section 106 review prior to construction, an applicant cannot collocate on that tower unless the tower owner first either: (1) Obtains written concurrence with a finding of ''no effect'' or ''no adverse effect'' on historic properties from either the relevant SHPO, the ACHP, or the FCC, or (2) executes a Memorandum of Agreement on mitigation of adverse effects and thereafter submits an EA and completes the approval process under the FCC's rules.[10]

(6) Collocation on Buildings and Non-Tower Structures Outside Historic Districts (Stipulation V)

For buildings and non-tower structures, the Agreement allows collocation without consultation or review under Section 106 in some circumstances. Collocation without section 106 review is more limited in these cases to account for the fact that the building or non-tower structure itself could be a historic property. There are four situations involving the mounting of antennas on buildings and non-tower structures that require review:

(1) the building or structure is over 45 years old;[11] or,

(2) the building or structure is (a) inside the boundary of a historic district, or (b) outside (but within 250 feet of) the boundary of a historic district and the antenna is visible from ground level anywhere within the historic district; or

(3) the building or structure is either (a) a designated National Historic Landmark or (b) listed in or eligible for listing in the National Register of Historic Places;[12] or,

(4) the collocation licensee or the owner of the building or structure has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO or the Council supported by substantial evidence that the collocation has an adverse effect on one or more historic properties.

For collocations on buildings and non-tower structures after March 16, 2001, the ACHP or the relevant SHPO or THPO may notify the FCC that it has determined that the collocation of the antenna or its associated equipment has resulted in an adverse effect on historic properties listed or eligible for listing in the National Register. The FCC will then act accordingly.

Subsection A.2. of Stipulation V applies where the building or other non-tower structure on which the antenna is to be mounted is located outside, but within 250 feet of the boundary of, a historic district, and the antenna to be collocated will be clearly visible when viewed from an eye level of five to six feet above the ground from any point within the boundary of the historic district.

(7) Tribal Lands and Tribal Consultations

The terms of the Agreement do not apply on ''tribal lands'' as defined under § 800.16(x) of the Council's regulations, 36 CFR 800.16(x) (''Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.'').[13] Thus, any collocation on tribal lands must be reviewed and approved by the appropriate tribal authorities, which may include a THPO.[14] The FCC recognizes that Indian Tribes, as domestic dependent nations, ''exercise inherent sovereign powers over their members and territory.''[15]

Although the Agreement exempts most collocations outside tribal lands from section 106 review, an Indian Tribe[16] or Native Hawaiian organization[17] may initiate consultation directly with the FCC or with its licensees, tower companies and applicants when a collocation outside tribal lands may affect historic properties that are of religious or cultural significance to that Indian tribe or Native Hawaiian organization. Where a collocation is not exempt from section 106 review under the Agreement, the applicant must make a good faith effort to identify Indian tribes and Native Hawaiian organizations whose historic properties may be affected and involve those entities in the Section 106 process as provided in the ACHP rules.[18]

The excavation of Indian or Native Hawaiian artifacts, burial mounds, or other religious sites has the potential to cause a significant environmental effect and thus requires the preparation of an EA.[19] If an

[9] 47 CFR 1.1307(a)(4).

[10] Where there has been an adverse effect finding, a Memorandum of Agreement (''MOA'') is typically signed by the applicant, the relevant SHPO (and/or the ACHP), and the FCC. *See* 36 CFR 800.6(b)(1),(2). The MOA is then submitted to the Commission with an Environmental Assessment (''EA''), which upon approval by the Commission results in the issuance of a Finding of No Significant Impact (''FONSI''). *See* 47 CFR 1.1308.

[11] Suitable methods for determining the age of a building include, but are not limited to: (1) obtaining the opinion of a consultant who meets the Secretary of Interior's Professional Qualifications Standards (36 CFR part 61); or (2) consulting public records.

[12] The National Register is the Nation's official list of cultural resources officially deemed worthy of preservation. *See* the National Park Service's cultural resources page on the National Register: *http://www.cr.nps.gov/nr/about.htm.* Authorized under the NHPA, the National Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archeological resources. Properties listed in the Register include districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, engineering, and culture. The National Register is administered by the National Park Service, which is part of the U.S. Department of the Interior. Included among the nearly 73,000 listings that make up the National Register are: (1) All historic areas in the National Park System (*http://www.nps.gov/*); (2) over 2,300 National Historic Landmarks (*http://www.cr.nps.gov/nhl*), which have been designated by the Secretary of the Interior because of their importance to all Americans; and, (3) properties across the country that have been nominated by governments, organizations, and individuals because they are significant to the nation, to a state, or to a community. Interested parties may begin their research by using the following National Register Web site: *http://www.cr.nps.gov/nr/research/.* Other useful resources include the ACHP Web site at *http://www.achp.gov;* the various State Historic Preservation Offices, accessible through the ACHP Web site at *http://www.achp.gov/shpo.html;* the various Tribal Historic Preservation Offices, accessible through: *http://www.achp.gov/thpo.html;* and the Bureau of Indian Affairs Web site at *http://www.doi.gov/bia/areas/agency.html.*

[13] For a discussion of the definition of ''dependent Indian communities,'' *see Alaska* v. *Native Village of Venetie Tribal Government,* 522 U.S. 520 (1998).

[14] For an online map of Indian lands in the United States, visit the Bureau of Indian Affairs' Web site, ''US Indian Lands,'' located at: *http://www.gdsc.bia.gov/products/indland.htm.*

[15] In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement,* 16 FCC Rcd. 4078, 4080 (2000)(*FCC Tribal Policy Statement*).

[16] Section 301(4) of the NHPA defines ''Indian tribe'' or ''tribe'' as ''an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act [43 U.S.C. 1602], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' 16 U.S.C. 470w(4).

[17] Section 301(18) of the NHPA defines ''Native Hawaiian organization'' as ''any organization which—(A) serves and represents the interests of Native Hawaiians; (B) has as a primary and stated purpose the provision of services to Native Hawaiians; and (C) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians. The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kupuna O Hawai'i Nei, an organization incorporated under the laws of the State of Hawaii.'' 16 U.S.C. 470w(18).

[18] *See* 36 CFR 800.2(c)(2)(ii).

[19] *See* 47 CFR 1.1307(a)(5)(an EA is required where an undertaking ''may affect Indian religious

Continued

existing tower site is known to contain any Indian or Native Hawaiian archeological, religious, or cultural property that may be significantly affected by excavation or other work undertaken in connection with a collocation otherwise categorically excluded from environmental processing, an EA must be submitted prior to any new excavation or other work within that site. Similarly, if Indian or Native Hawaiian remains or other artifacts are discovered during excavation, the party must immediately cease construction and prepare an EA.[20]

We emphasize that when licensees, tower companies, and other applicants consult with tribal authorities they are acting as delegates of the FCC, which has a government-to-government relationship with tribes. The FCC recognizes ''the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions.'' [21] Thus, tribal authorities may request FCC participation in consultation on any matter at any time. Consistent with the FCC's trust relationship with federally recognized Indian tribes, applicants in undertaking all construction activities should be sensitive to the religious and cultural traditions of Indian peoples, and should endeavor to avoid actions that would adversely affect the preservation of those traditions. In particular, applicants are reminded that any information regarding historic properties or sacred sites to which Indian tribes attach significance may be highly confidential, private, and sensitive, and shall be treated accordingly in conformance with tribal wishes.

(8) Federal Property

The terms of the Agreement do not alter any section 106 responsibilities that federal agencies other than the FCC may have with regard to the collocation of antennas. Thus, licensees and applicants that wish to collocate an antenna on property owned or managed by a federal agency must continue to follow the procedures set forth by that agency for ensuring compliance with section 106.[22]

(9) Need for Applicants To File Environmental Assessments

Section 1.1307 of the Commission's rules sets forth nine categories of facilities that may significantly affect the environment and thus require the preparation of an EA prior to construction.[23] Subsection (4) of § 1.1307(a)(4) sets forth the category related to historic preservation: ''Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places [citation omitted].'' [24]

Section 1.1307(a)(4) is intended to implement the NHPA. Therefore, applicants should not file an EA with the Commission under § 1.1307(a)(4) if a SHPO has concurred in a proposed finding of ''no effect'' or ''no adverse effect'' on a property listed or eligible for listing in the National Register. In addition, if a collocation is exempted by the Agreement from section 106 review, then § 1.1307(a)(4) of the Commission's rules does not apply to the collocation. Therefore, applicants should only file an EA for a collocation under § 1.1307(a)(4) when the collocation falls within one of the Agreement's exceptions (*e.g.,* ''substantial increase in size'') and the collocation will adversely affect a historic property. Failure to file an EA when required to do so is a violation of the Commission's rules and may subject the licensee, applicant, or tower company/owner to a forfeiture or fine assessed pursuant to sections 501 to 503 of the Communications Act, or other sanctions.[25]

Note 1 to § 1.1306 of the Commission's NEPA rules categorically excludes the mounting of antennas on an existing building or antenna tower from the requirement to file an EA unless: (1) the collocation may affect historic properties under §§ 1.1307(a)(4); or (2) under § 1.1307(a)(2) the collocation would result in human exposure to RF emissions in excess of the Commission's RF limits set forth in § 1.1307(b).[26] Note 1 also states that the use of existing buildings or towers is an environmentally desirable alternative to the construction of new facilities. Accordingly, no proposed or constructed wireless facility, including antennas and their supporting towers or other structures, that has completed processing under section 106 or the Commission's environmental rules shall be required to be processed again for a collocation, except: (1) for section 106 review, where the addition of a collocated antenna and its related facilities cause a substantial increase in the size of the tower as defined in the Agreement; or (2) for review under the Commission's environmental rules, where modification of the facility is not categorically excluded from the Commission's NEPA rules.

(10) Filing Instructions/ULS

The instructions for FCC Form 601 (Schedule D & Schedule I (Microwave only)) and FCC Form 854 will be updated to reflect the Agreement's impact on the requirement to file an EA. Likewise, the instructions and worksheets for the FCC Forms used for broadcast construction permits and licenses will be amended to reflect the provisions of the Agreement.[27] Until those changes have been put in effect and approved by the United States Office of Management & Budget, parties that are required to file Forms 601 and 854 or any of the relevant broadcast forms should complete the current versions. Where a collocation is exempt from review under the terms of the Agreement, filers should answer ''No'' to the question whether the action may significantly affect the environment and thus require an EA, unless an EA is required under a provision other than § 1.1307(a)(4). During this interim period, we encourage filers to assist the FCC's WTB and MMB licensing staff by indicating, in a brief statement, that the antenna falls within the terms of the March 16, 2001 Collocation Agreement. Additionally, the MMB anticipates releasing a *Public Notice* advising permittees, licensees, and prospective applicants of their rights and responsibilities under the terms of the Collocation Agreement until the forms and instructions can be amended. Applicants should no longer file Form 601 or 854 solely in order to file an EA under § 1.1307(a)(4) for a facility that is exempted from section 106 review under the Agreement.

(11) Disposition of Pending Matters

The Commission has before it certain pending reviews of collocations that, if undertaken after March 16, 2001, would have fallen within the terms of the Agreement. Consistent with the principles underlying the Agreement, these collocations ordinarily will not have an adverse effect on properties listed or eligible for listing in the National Register. Accordingly, licensees, applicants, and tower companies/owners are invited to inform the Commission of pending reviews of collocations that would be covered by the Agreement, where none of the exceptions in Stipulation III or V applies. If Commission staff agrees that the exceptions in Stipulation III or V do not apply, the licensee, applicant,

sites''); *see also Public Notice,* ''Wireless Telecommunications Bureau Announces that Sprint Spectrum L.P., D/B/A SPRINT PCS Has Voluntarily Relocated a Wireless Telecommunications Tower Constructed on an Indian Burial Mound,'' DA 01–1600 (rel. July 6, 2001).

[20] *See* 47 CFR 1.1312(d) (''If, following the initiation of construction. * * *, [a] licensee or applicant discovers that the proposed facility may have a significant environmental effect, it shall immediately cease construction. * * *''); *see also* 36 CFR 800.13 (procedures for post-review discoveries).

[21] *FCC Tribal Policy Statement,* 16 FCC Rcd. at 4080.

[22] *See* 47 CFR 1.1311(e) (providing that an EA need not be submitted to the Commission if another federal agency has assumed responsibility for environmental review).

[23] *See* 47 CFR 1.1307(a), 1.1307(b).

[24] *See* 47 CFR 1.1307(a)(4). Other categories are wilderness areas, wildlife preserves, endangered species, Indian religious sites, floodplains, surface features, high intensity lights in residential neighborhoods, and excessive radiofrequency exposure.

[25] *See* 47 U.S.C. 501, 502, 503; 47 CFR 1.80; and, The Commission's Forfeiture Policy Statement and Amendment of § 1.80 of the Rules to Incorporate the Forfeiture Guidelines, *Report and Order,* 12 FCC Rcd 17087, 62 FR 43474 (Aug. 14, 1997), *recon. denied* 15 FCC Rcd 303, 65 FR 4891 (Feb. 2, 2000).

[26] Note 1 to § 1.1306 of the Commission's NEPA rules, 47 CFR 1.1306, states in part that: ''[t]he provisions of § 1.1307(a) of this part requiring the preparation of EAs do not encompass the mounting of antenna(s) on an existing building or antenna tower unless § 1.1307(a)(4) of this part is applicable. Such antennas are subject to § 1.1307(b) of this part and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in § 1.1307(b) of this part.''

[27] FCC Forms 301 (Full-service Commercial Broadcast Construction Permit), 302–AM/–FM/–CA/–TV (Full-service Commercial Broadcast License), 318 (Low Power FM Construction Permit), 319 (Low Power FM License), 340 (Noncommercial Educational Broadcast Construction Permit), 346 (Low Power TV, TV Translator, or TV Booster Construction Permit); 345 (Low Power TV, TV Translator, or TV Booster License), 349 (FM Translator or FM Booster Construction Permit) and 350 (FM Translator or FM Booster License).

or tower company/owner will be notified that further processing under the NHPA and § 1.1307(a)(4) is not required.

(12) Complaints

The Agreement notes that persons may file a complaint with the FCC stating that a particular collocation ''has an adverse effect on one or more historic properties.'' The Agreement states that any such complaint must be: (1) In writing; and (2) supported by substantial evidence describing how the effect from the particular collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register. The Commission will promptly review all complaints so labeled, and will promptly open a case and notify the collocating licensee or tower owner if it determines that the complaint has presented substantial evidence that a proposed collocation at a specifically identified site will have an adverse effect on a specifically identified historic property.

The person(s) filing the complaint should provide contact information including name, address, phone number, and an email address (optional but helpful to the staff). All complaints regarding tower registration or wireless services should be mailed to Federal Communications Commission, Wireless Telecommunications Bureau, Commercial Wireless Division, 445 12th Street, SW, Washington, DC 20554. The complaints should be marked: ''ATTENTION: NHPA COLLOCATION COMPLAINT.'' All complaints regarding broadcast facilities should be mailed to Federal Communications Commission, Mass Media Bureau, Chief, Audio Services Division (for radio antennas)/ Chief, Video Services Division (for television antennas), 445 12th Street, SW, Washington, DC 20554. These complaints also should be marked: ''ATTENTION: NHPA COLLOCATION COMPLAINT.'' If a person is filing a complaint electronically, please e-mail the complaint to *wtb_towersiting@fcc.gov* or *mmb_siting@fcc.gov*, as appropriate.

Copies of the Programmatic Agreement and this Fact Sheet are available for inspection and duplication during regular business hours in the Reference Information Center, 445 Twelfth Street, SW, Courtyard Level, Washington, DC 20554. Copies may also be obtained from Qualex International, 445 Twelfth Street, SW, Room CY-B402, Washington, DC 20554; phone number: (202) 863–2893. Copies are also posted on the Commission's Web site at *http://wireless.fcc.gov/siting* and *http://www.fcc.gov/mmb/mmb_siting.html*. For further information, contact Ivy Harris at (202) 418–0621 for inquiries regarding wireless services, or Marva Dyson at (202) 418–2870 for inquiries regarding broadcast services. Send e-mail questions concerning implementation of the Agreement to: *wtb_towersiting@fcc.gov* or *mmb_siting@fcc.gov*, as appropriate.

[FR Doc. 02–2705 Filed 2–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 4:32 p.m. on Thursday, January 31, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director John M. Reich (Appointive), seconded by Director John D. Hawke, Jr. (Comptroller of the Currency), concurred in by Director James E. Gilleran (Director, Office of Thrift Supervision), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: February 1, 2002.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 02–2843 Filed 2–1–02; 12:35 pm]

BILLING CODE 6714–01–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR D–260]

Public Buildings Space

This notice contains GSA Bulletin FPMR D–260 which announces the redesignation of 12 Federal Buildings. The text of the bulletin follows:

To: Heads of Federal Agencies.

Subject: Redesignations of Federal Buildings.

1. *Purpose*. This bulletin announces the redesignations of 12 Federal Buildings.

2. *Expiration date*. This bulletin expires June 14, 2002. However, the building redesignations announced by this bulletin will remain in effect until canceled or superseded.

3. *Redesignations*. The former and new names of the buildings being redesignated are as follows:

Former name	New name
United States Courthouse, 201 West Broad Avenue, Albany, GA 31701..	C.B. King United States Courthouse, 201 West Broad Avenue, Albany, GA 31701.
Federal Building and United States Courthouse, 1300 South Harrison Street, Fort Wayne, IN 46802..	E. Ross Adair Federal Building and United States Courthouse, 1300 South Harrison Street, Fort Wayne, IN 46802.
United States Courthouse, 500 Pearl Street, New York, NY 10007	Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007.
Department of State, 2201 C Street, NW., Washington, DC 20520	Harry S. Truman Federal Building, 2201 C Street, NW., Washington, DC 20520.
United States Courthouse, One Courthouse Way, Boston, MA 02210 ...	John Joseph Moakley United States Courthouse, One Courthouse Way, Boston, MA 02210.
Federal Building and United States Courthouse, 504 West Hamilton Street, Allentown, PA 18101.	Edward N. Cahn Federal Building and United States Courthouse, 504 West Hamilton Street, Allentown, PA 18101.
Federal Building, 6230 Van Nuys Boulevard, Los Angeles, CA 91401 ..	James C. Corman Federal Building, 6230 Van Nuys Boulevard, Los Angeles, CA 91401.
United States Courthouse, 40 Centre Street, New York, NY 10007	Thurgood Marshall United States Courthouse, 40 Centre Street, New York, NY 10007.
Federal Building and United States Courthouse, 121 West Spring Street, New Albany, IN 47150.	Lee H. Hamilton Federal Building and United States Courthouse, 121 West Spring Street, New Albany, IN 47150.
Federal Building and United States Courthouse, 100 1st Street, SW, Minot, ND 58701.	Judge Bruce M. Van Sickle Federal Building and United States Courthouse, 100 1st Street, SW, Minot, ND 58701.

Former name	New name
Federal Building and United States Courthouse, 315 S. McDuffie Street, Anderson, SC 29621.	G. Ross Anderson, Jr. Federal Building and United States Courthouse, 315 S. McDuffie Street, Anderson, SC 29621.
Federal Building and United States Courthouse, 550 West Fort Street, Boise, ID 83724.	James A. McClure Federal Building and United States Courthouse, 550 West Fort Street, Boise, ID 83724.

Dated: January 30, 2002.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02–2659 Filed 2–4–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–02–23]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Use of a Reader Response Form by Workers Notified if Results of Epidemiologic Studies—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). The mission of NIOSH is to promote safety and health at work for all people through research and prevention.

NIOSH routinely notifies subjects about the results of epidemiologic studies and the implications of the results. The overall purpose of the proposed project is to gain insight into the effectiveness of NIOSH worker notification, in order to improve the quality and usefulness of the Institute's worker notification activities. Researchers from the NIOSH Division of Surveillance, Hazard Evaluations and Field Studies (DSHEFS) propose to provide notified workers with a Reader Response Form as an evaluation instrument for routinely assessing individual letter notification materials sent to them by NIOSH.

The results of this ongoing evaluation activity will be used to refine notification activities by standardizing and streamlining written notification materials, and to develop materials which are more readable, understandable, and informative to notified workers, their families, and other stakeholders. The findings from these evaluations may also allow the NIOSH worker notification program to help alleviate any negative impacts and enhance any positive impacts of risk communications.

The objective of the Reader Response Form, therefore, is to provide a structured reporting form which will capture the recipients' responses concerning the effectiveness of the NIOSH notification efforts and their impact on workers and other stakeholders.

The average number of letter-type notifications is estimated at 8,000 per year. Each form is estimated to take less than 10 minutes to complete. There are no cost to respondents other than their time to complete the Reader Response Form.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden per response (in hours)	Total burden (in hours)
Reader Response Form	8000	1	10/60	1,333

Dated: January 29, 2002.

Nancy E. Cheal,

Acting Associate Director for Program, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–2646 Filed 2–4–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Exploratory Developmental Grant (R21) Program, RFA OH–02–001

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Exploratory Developmental Grant (R21) Program, RFA OH–02–001.

Times and Dates: 8 a.m.-8:30 a.m., February 19, 2002 (Open), 8:40 a.m.-5 p.m., February 19, 2002 (Closed), 8 a.m.-5 p.m., February 20, 2002 (Closed).

Place: Loews L'Enfant Plaza Hotel, 480 L'Enfant SW., Washington DC 20024.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the

Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA OH–02–001.

FOR FURTHER INFORMATION CONTACT: Pervis Major, Ph.D., Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, M/S B228, telephone (304) 285–5979.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 30, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–2658 Filed 2–4–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0097]

Determination of Regulatory Review Period for Purposes of Patent Extension; REFACTO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for REFACTO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit written comments and petitions 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: Claudia V. Grillo, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product REFACTO (novel procoagulant proteins). REFACTO is indicated for the control and prevention of hemorrhagic episodes and for short-term routine and surgical prophylaxis in patients with hemophilia A. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for REFACTO (U.S. Patent No. 4,868,112) from the Genetics Institute, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 11, 2001, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of REFACTO represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for REFACTO is 1,751 days. Of this time, 987 days occurred during the testing phase of the regulatory review period, while 764 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: May 23, 1995. The applicant claims March 14, 1994, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 23, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* February 2, 1998. FDA has verified the applicant's claim that the product license application (PLA) for REFACTO (PLA 98–0137) was initially submitted on February 2, 1998.

3. The date the application was approved: March 6, 2000. FDA has verified the applicant's claim that PLA 98–0137 was approved on March 6, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,475 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written or electronic comments and ask for a redetermination by April 8, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 5, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information 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. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 28, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–2671 Filed 2–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

National Park Service

Concessions Management Advisory Board Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting of Concessions Management Advisory Board.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), notice is hereby given that the Concessions Management Advisory Board will hold its next meeting February 27 and 28, 2002 in Washington, DC. The meeting will be held at the Melrose Hotel located at 2430 Pennsylvania Avenue, NW, Washington, DC. The meeting will convene from 8:30 a.m. until 5 p.m. daily.

SUPPLEMENTARY INFORMATION: The Advisory Board was established by Title IV, Section 409 of the National Park Omnibus Management Act of 1998, November 13, 1998 (Public Law 105–391). The purpose of the Board is to advise the Secretary and the National Park Service on matters relating to management of concessions in the National Park System.

The Advisory Board will consider procedural matters and will be briefed and hold discussions on the proposed (Category III) simplified concession contracting procedures. The Board will also discuss its organizational and administrative procedures.

The meeting will be open to the public, however, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least 2 weeks before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however, we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Interested persons may make oral/written presentations to the Advisory Board during the business meeting or file written statements. Such requests should be made to the Director, National Park Service, Attention: Manager, Concession Program, at least 7 days prior to the meeting. Further information concerning the meeting may be obtained from National Park Service, Concession Program, 1849 C Street NW, Room 7313, Washington, DC 20240, Telephone, 202/565–1210.

Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting, in room 7313, Main Interior Building, 1849 C Street, NW, Washington, DC.

Dated: January 22, 2002.

Fran P. Mainella,

Director, National Park Service.

[FR Doc. 02–2713 Filed 2–4–02; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–437]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences with Respect to Certain Products Imported From AGOA Countries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: On January 17, 2002, the Commission received a request from the United States Trade Representative (USTR) for an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of providing advice concerning possible modifications to the Generalized System of Preferences (GSP) with respect to certain products from beneficiary sub-Saharan African countries under the African Growth and Opportunity Act (AGOA). Following receipt of the request, the Commission instituted investigation No. 332–437, *Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences with Respect to Certain Products Imported from AGOA Countries*, for the purpose of providing advice as follows:

(1) With respect to unwrought manganese flake as described by the USTR in its notice published in the **Federal Register** of January 24, 2002 (67 F.R. 3530), advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of United States import duties only for countries designated as beneficiary sub-Saharan African countries under the African Growth and Opportunity Act (AGOA) in general note 16 of the Harmonized Tariff Schedule of the United States (HTS). The USTR requested that the Commission, in providing its advice, assume that the benefits of the GSP would continue to apply to imports that would be normally excluded from receiving such benefits by virtue of the competitive need limits specified in section 503(c)(2)(A) of the Trade Act of 1974 (1974 Act) (19 U.S.C. 2463(c)(2)(A)). The USTR noted that an exemption from the application of the competitive need limits for the beneficiary AGOA countries is provided for in section 503(c)(2)(D) of the 1974 Act (19 U.S.C. 2463(c)(2)(D); and

(2) With respect to prepared or preserved pears as described in HTS subheading 2008.40.00, advice as to the probable economic effect on United States industries producing like or directly competitive articles and on consumers of the removal of the article from eligibility for duty-free treatment under the GSP. The USTR noted that the article is currently eligible for GSP only for countries designated as beneficiary AGOA countries in general note 16 of the HTS. As requested by USTR, the Commission will seek to provide its advice not later than April 25, 2002.

EFFECTIVE DATES: January 29, 2002.

FOR FURTHER INFORMATION CONTACT: Project Manager, Douglas Newman (202–205–3328; *newman@usitc.gov*) in the Commission's Office of Industries. For information on legal aspects of the investigation contact William Gearhart of the Commission's Office of the

General Counsel (202–205–3091; *wgearhart@usitc.gov*). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information about the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS On-Line) at *http://dockets.usitc.gov/eol/public/*.

Public Hearing: A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on March 6, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on February 20, 2002. In addition, persons appearing should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on February 21, 2002. Posthearing briefs should be filed with the Secretary by the close of business on March 13, 2002. In the event that no requests to appear at the hearing are received by the close of business on February 20, 2002, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after February 20, 2002, to determine whether the hearing will be held.

Written Submissions: In lieu of or in addition to appearing at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on March 13, 2002. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). The Commission may include some or all of such confidential business information submitted in its report to the USTR. All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Commission.

Issued: January 31, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–2701 Filed 2–4–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–454]

Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation With Respect to Certain Patent Claims

In the Matter of Certain Set-Top Boxes and Components Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting a motion to terminate the investigation with respect to all allegations contained in the complaint relating to U.S. Letters Patent 5,253,066 (the '066 patent), claims 8 and 10 of U.S. Letters Patent 5,479,268 (the '268 patent), and claims 19 and 35 of U.S. Letters Patent 5,809,204 (the '204 patent).

FOR FURTHER INFORMATION CONTACT: Mary Elizabeth Jones, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3106. Copies of the subject ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TTD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 16, 2001, based on a complaint by Gemstar-TV Guide International, Inc. of Pasadena, California, and StarSight Telecast, Inc. of Fremont, California, alleging violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain set-top boxes and components thereof by reason of infringement of claims 18–24, 26–28, 31–33, 36, 42–43, 48–51, 54, 57–61, and 66 of U.S. Letters Patent 5,253,066 (the '066 patent); claims 1, 3, 8, and 10 of U.S. Letters Patent 5,479,268 (the '268 patent); and claims 14–17, 19, and 31–35 of U.S. Letters Patent 5,809,204 (the '204 patent).

On November 19, 2001, complainants Gemstar-TV Guide International, Inc. and StarSight Telecast, Inc. moved to termination the investigation with respect to all allegations contained in the complaint relating to the '066 patent, claims 8 and 10 of the '268 patent, and claims 19 and 35 of the '204 patent. Respondents EchoStar Communications Corporation and SCI Systems, Inc. opposed termination of the investigation as to the '066 patent.

On November 20, 2001, the presiding ALJ issued an ID (Order No. 44) granting the motion. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

By order of the Commission.

Issued: January 30, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–2647 Filed 2–4–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Management Service Providers Association, Inc.

Notice is hereby given that, on November 20, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Management Service Providers Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Oculan, Raleigh, ND has been added as a party to this venture. Also, Bangalore Labs Ltd., Bangalore, INDIA; CAT Technology, Inc., Los Gatos, CA; Connected, Natick, MA; EMC Corporation, Hopkinton, MA; Freshwater Software, Inc., Boulder, CO; Managed Objects, McLean, VA; Mission Critical Linux, Inc., Lowell, MA; NetSolve, Inc., Austin, TX; NetTasking, Inc., Singapore, *Singapore;* RiverSoft Technologies Ltd., San Francisco, CA; Tally Systems Corporation, Lebanon, NH; and Telenisus Corporation, Rolling Meadows, IL have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Management Service Providers Association, Inc. intends to file additional written notification disclosing all changes in membership.

On October 20, 2000, Management Service Providers Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 24, 2000 (65 FR 70613).

The last notification was filed with the Department on August 16, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 25, 2001 (66 FR 49043).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–2650 Filed 2–4–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2186–02]

Immigration and Naturalization Service; First Meeting of the Data Management Improvement Act of 2000 Task Force

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting

Committee meeting: Immigration and Naturalization Service (INS) Data Management Improvement Act of 2000 (DMIA) Task Force.

Date and time: Wednesday, February 20, 2002, 1 to 5 p.m.

Place: Immigration and Naturalization Service Headquarters, 425 I Street NW., Washington, DC 20536, Shaughnessy Conference Room, Sixth Floor.

Status: Open. First meeting of the INS DMIA Task Force.

Purpose: In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. app. 2 , DMIA, Public Law 106–215, and 41 CFR Part 102–3, the Attorney General in consultation with the Secretary of State, the Secretary of Commerce, and the Secretary of the Treasury established a Task Force to carry out the duties described in section 3(c) of the DMIA. *See* 66 FR 3616–01 (January 16, 2001). Subsequent to the initial filing of the Task Force Charter with Congress in December 2000, Congress amended the DMIA to state that the Attorney General shall also consult with the new Office of Homeland Security in establishing the DMIA Task Force. *See* USA Patriot Act of 2001, Public Law 107–56, section 415 (October 26, 2001)

The Task Force will evaluate and make recommendations on:

(1) How the Attorney General can efficiently and effectively carry out section1 10 of the Illegal Immigration Reform and Immigrant Responsibility act of 1996 (IIRIRA) (8 U.S.C. 1221 note), Public Law 104–208, as amended by DMIA, section 2.

(2) How the United States can improve the flow of traffic at airports, seaports, and land border ports-of-entry through:

(A) Enhancing systems for data collection and data sharing, including the integrated entry and exit data system described in IIRIRA, section 110 (as amended), by better use of technology, resources, and personnel;

(B) Increasing cooperation between the public and private sectors:

(C) Increasing cooperation among Federal agencies and among Federal and State agencies; and

(D) Modifying information technology systems while taking into account the different data systems, infrastructure, and processing procedures at airports, seaports, and land border ports-of-entry; and

(3) The cost of implementing each of the Task Forces recommendations.

Composition of Task Force: in accordance with the DMIA, section 3(b), the task force consists of the attorney general (or his designee) as chairperson and 16 representatives from Federal, State, and local agencies with interests in immigration and naturalization; travel and tourism; transportation; trade; law enforcement; national security; or the environment; and private sector representatives of affected industries and groups.

Summary of Agenda As this is the first meeting of the DMIA Task Force, the principal purpose of the meeting will be to introduce the members to each other and to discuss future activities of the Task Force. There also will be an overview of the requirements of the DMIA and a designated period of time for public comment. The DMIA Task Force will be chaired by Michael D. Cronin, Acting Executive Associate Commissioner, INS Office of Programs, on behalf of the Attorney General.

Public participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating and to arrange for appropriate clearance into the building. 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 the DMIA Task Force. 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: Debbie Hemmes, Immigration and Naturalization Service, 425 I Street NW., Room 7236, Washington, DC 20536; telephone: (202) 305–9863; fax: (202) 616–7612; e-mail: *Deborah.Hemes@usdoj.gov.*

Dated: January 28, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–2800 Filed 2–1–02; 10:33 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

President's Council on the 21st Century Workforce; Notice of Establishment

Establishment of the Council: This notice is published in accordance with the provisions of the Federal Advisory Committee Act and advises of the establishment of the President's Council on the 21st Century Workforce. Section 2 of Executive Order 13218, issued on June 20, 2001, provides for the establishment of the Council. The Council is to terminate 2 years from the date of the executive order unless extended by the President prior to such date.

Purpose of the Council: The Council is to provide information and advice to the President (through the Secretary of Labor), to the Office of the 21st Century Workforce (within the Department of Labor), and to other appropriate Federal officials addressing to issues related to the 21st century workforce. These activities are to include: (1) Assessing the effects of rapid technological changes, demographic trends, globalization, changes in work processes, and the need for new and enhanced skills for workers, employers, and other related sectors of society; (2) examining current and alternate approaches to assisting workers and employers in adjusting to and benefitting from such changes, including opportunities for workplace education, retraining, access to assistive technologies and workplace supports, and skills upgrading; (3) identifying impediments to the adjustment to such changes by workers and employers and recommending approaches and policies that could remove those impediments; (4) assisting the Office of the 21st Century Workforce in reviewing programs carried out by the Department of Labor and identifying changes to such programs that would streamline and update their effectiveness in meeting the needs of the workforce; and (5) analyzing such additional issues relating to the workforce and making such reports as the President or the Secretary of Labor may request.

Composition of the Council: The membership of the Council will consist of the Secretary of Labor and Director of the Office of Personnel Management, serving as *ex officio* members, and not more than thirteen additional members appointed by the President. These additional members are to include individuals who represent the views of business and labor organizations, Federal, State, and local governments, academicians and educators, and such other associations and entities as the President determines are appropriate. The Secretary of Labor is to be the Chairperson of the Council. The Council is to meet at least two times a year.

Federal Advisory Committee Act and Charter: The Council will function solely as an advisory body and in compliance with the Federal Advisory Committee Act. The charter of the Council will be filed in accordance with that Act and copies of the charter will be available upon request.

Comments: Interested persons are invited to submit comments regarding the establishment of the Council. Such comments should be addressed to Shelley Hymes, Director of the Office of the 21st Century Workforce, 200 Constitution Avenue, NW., Room S–2514, Washington, DC 20210.

Signed at Washington, DC, this 29th day of January, 2002.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 02–2644 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,813B and NAFTA–5176]

Greenwood Mills, Lindale Manufacturing Company, Lindale, Georgia; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Greenwood Mills, Lindale Manufacturing Co., Lindale, Georgia. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–39,813B and NAFTA–5176 Greenwood Mills, Lindale Manufacturing Company, Lindale, Georgia (January 4, 2002)

Signed at Washington, DC, this 24th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2680 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,873; Iomega Corp., Ogden, UT
TA–W–40,315; BPB America, Meridian, MS
TA–W–40,546; Midland Steel Products Co., Janesville, WI
TA–W–40,332; Creative Leather and Vinyl, Brookfield, WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,465; Baltic Dyeing and Finishing, Passaic, NJ
TA–W–40,590; Alfa Laval, Inc., Formerly Known as Tri-Clover, Kenosha, WI
TA–W–39,333; Republic Paperboard Co LLC, Denver Mill, Commerce City, CO
TA–W–39,960; B-Way Corp., Elizabeth, NJ
TA–W–40,328; Drexel Heritage Furnishings, Inc., Machine Shop, Morganton, NC

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–40,235; Ericsson, Research Triangle Park, NC

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–40,381; Four Seasons Fashion Manufacturing, New York, NY
TA–W–39,381; Electrolux Home Products, Nashville, AR
TA–W–39,673; Magnolia International Corp., Harlingen, TX

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–39,343; Covenant Mill, Inc., Cherryville, NC: May 14, 2000.
TA–W–39,546; Revere Copper Products, Inc., Rome, New York: June 15, 2000.
TA–W–39,786; Alltrista Zinc Products, LP, Greenville, TN: June 26, 2000.
TA–W–40,175; Bethlehem Steel Corp., Burns Harbor Div., Chesterton, IN: October 9, 2000.
TA–W–40,427; National Ring Traveler Co., d/b/a/ Anchor Clover Chain Co., Pawtucket, RI: November 21, 2000.
TA–W–40,481; Artex International, Inc., Highland, IL: October 20, 2000.
TA–W–40,487; Scientific Atlanta, Inc., Atlanta Manufacturing Div., Norcross, GA: October 22, 2000.
TA–W–40,494; Accuride International, Inc., South Bend, IN: December 17, 2000.
TA–W–40,523; Parallax Power Components LLC, Goodland, IN: December 17, 2000.
TA–W–40,553 & A,B,C,; Aalfs Manufacturing, Glenwood, AR, Mena, AR, Arkadelphia, AR, Malvern, AR: November 14, 2000.
TA–W–40,553D; Aalfs Manufacturing, Sioux City, IA: October 9, 2001.
TA–W–39,024; Premier Circuit Assembly, Springhope, NC: March 31, 2000.
TA–W–39,744; American Steel Foundry, Alliance, OH: June 25, 2000.
TA–W–39,877; Sweetheart Cup Co., Springfield, MO: August 9, 2000.
TA–W–38,951; Findley Industries, Inc., Botkins Div., Botkins, OH: March 20, 2000.
TA–W–39,894; Del-Met Corp., Portland, TN: August 1, 2000.
TA–W–40,041 & A; Magee Apparel Co., Magee, MS and Hawley, PA: August 23, 2000.
TA–W–40,072; Converter Concepts, Memphis, MO: September 11, 2000.
TA–W–40,242; Complex Tooling and Molding, Inc., Boulder, CO: October 9, 2000.
TA–W–40,292; Exolon-ESK Co., Tonawanda, NY: April 13, 2001.
TA–W–40,367; B/E Aerospace, Inc., Litchfield, CT: November 5, 2000.
TA–W–40,373; Siemens Energy and Automation, Inc., Osceola, IA: November 9, 2000.
TA–W–39,452; Athens Furniture Industries, Inc., Athens, TN: June 1, 2000.
TA–W–40,471; FCI USA, Inc., Cypress, CA: October 23, 2000.
TA–W–40,490; Schmalbach-Lubeca Plastic Containers USA, Inc., Erie, PA: November 5, 2000.
TA–W–40,512; Robert Mitchell Co., Inc., Douglas Brothers Div., Portland, ME: December 14, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of January, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05035; Hassell Fabrication, Inc., Ashland, OR
NAFTA–TAA–05395; Superior Uniform Group, Inc., McGehee Industries, McGehee, AR
NAFTA–TAA–05491; Creative Leather and Vinyl, Brookfield, WI
NAFTA–TAA–05549; Western Log Homes, Chiloquin, OR
NAFTA–TAA–05616; Midland Steel Products Co., Janesville, WI
NAFTA–TAA–05023; Magnolia International, Harlingen, TX
NAFTA–TAA–05019; Rivers West Apparel, Manti, UT
NAFTA–TAA–05572; Regal Manufacturing Co., Textured Yarn Department, Hickory, NC
NAFTA–TAA–04838; Republic Paperboard Co LLC, Denver Mill, Commerce City, CO

The workers firm does not produce an article as required for certification under section 250(a), Subchapter D, Chapter 2, Title II, the Trade Act of 1974, as amended.

NAFTA–TAA–05139; Garan Manufacturing Corp., Adamsville, TN

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05160; Alltrista Zinc Products, L.P., Greeneville, TN: August 2, 2000.
NAFTA–TAA–05545; Daniel Woodhead Co., Northbrook, IL: November 16, 2000.
NAFTA–TAA–05667; Accuride International, Inc., South Bend, IN: December 17, 2000.
NAFTA–TAA–05714; Artex International, Inc., Highland, IL: Janaury 4, 2001.
NAFTA–TAA–05245; Eagle Picher Industries, Construction Equipment Div., Lubbock, TX: August 22, 2000.
NAFTA–TAA–05660 & A; Vanity Fair Intimates, LP, Monroeville Distribution, Monroeville Cutting, Monroeville Administration, Monroeville, AL and Atmore Sewing, Atmore, AL: December 10, 2000.
NAFTA–TAA–05662; Robert Mitchell Co., Inc., Douglas Brothers Div., Portland, ME: December 19, 2000.
NAFTA–TAA–05722; Siemens Energy and Automation, Inc., Osceola, IA: January 4, 2001.
NAFTA–TAA–05657; USNR, Woodland Div., Woodland, WA: December 12, 2000.
NAFTA–TAA–05632 & A; VF Jeanswear Limited Partnership, Pine Springs Facility, Rojas Facility, Plaza Facility and Riverside Facility, El Paso, TX and VF Jeanswear Limited Partnership, Fabens Facility, Fabens, TX: November 17, 2000.
NAFTA–TAA–05642; Imperial Home Décor Group, Old Stone Mill, Adams, MA: December 11, 2000.
NAFTA–TAA–05592; VF Jeanswear Limited Partnership, Jackson Facility, Jackson, TN: November 27, 2000.
NAFTA–TAA–05557; Teleflex, Inc., Waterbury, CT: November 14, 2000.
NAFTA–TAA–05343; Corning Cable Systems, Optical Assemblies Plant, Hickory, NC: September 20, 2000.
NAFTA–TAA–05195; Sweetheart Cup Co.,

Springfield, MO: August 13, 2000.
NAFTA–TAA–05472; Design and Cut, Inc., Cartersville, GA: October 18, 2000.
NAFTA–TAA–05411; Schmalbach-Lubeca Plastic Containers USA, Inc., Erie, PA: October 9, 2000.
NAFTA–TAA–04921; Findlay Industries, Inc., Botkins Div., Botkins, OH: May 30, 2000.

I hereby certify that the aforementioned determinations were issued during the month of January, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 25, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2679 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,351]

AG Green Industries, Mexico, Missouri; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at AP Green Industries, Mexico, Missouri. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–39,351; AP Green Industries Mexico, Missouri (January 24, 2002)

Signed at Washington, DC, this 24th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2683 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,453]

The Arnold Engineering Company Ferrite Products Division Sevierville, TN; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 19, 2001, a company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on September 25, 2001, and published in the **Federal Register** on October 11, 2001 (66 FR 51973).

The company supplied an additional list of customers. The company believes these customers reduced their purchases from the subject plant and began importing ceramic hard ferrite magnets during the relevant time period. The Department of Labor will conduct a survey of these additional customers to determine if imports contributed importantly to the declines in employment at the subject plant.

Conclusion

After careful review of the application, I conclude that the claim to sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 8th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2689 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39, 216]

Bon L Campo L.P. El Campo, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 7, 2001, in response to a worker petition which was filed on behalf of workers at Bon L Campo L.P., El Campo, Texas.

During the full period of this investigation, no knowledgeable company official was located and no further information became available regarding the potential eligibility of this worker group. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Dated: Signed in Washington, DC, this 28th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of, Trade Adjustment Assistance.

[FR Doc. 02–2690 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,599]

Dyna-Craft Industries, Inc., Apollo, Pennsylvania; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Dyna-Craft Industries, Inc., Apollo, Pennsylvania. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–39,599; Dyna-Craft Industries, Inc. Apollo, Pennsylvania (January 24, 2002)

Signed at Washington, DC, this 24th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2686 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,329; TA–W–39,329A]

Dystar L.P., Mt. Holly, North Carolina; DyStar L.P., Headquarters Office, Charlotte, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on December 7, 2001, applicable to workers of DyStar L.P., Mt.

Holly, North Carolina. The notice was published in the **Federal Register** on December 26, 2001 (66 FR 66426).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations occurred at the Headquarters Office, Charlotte, North Carolina location of DyStar L.P. The Charlotte, North Carolina workers provide administrative support function services for the subject firm's production facilities including Mt. Holly, North Carolina.

Based on these findings, the Department is amending this certification to include workers of DyStar L.P., Headquarters Office, Charlotte, North Carolina.

The intent of the Department's certification is to include all workers of DyStar L.P. who were adversely affected by increased imports.

The amended notice applicable to TA–W–39,329 is hereby issued as follows:

All workers of DyStar L.P., Mt. Holly, North Carolina (TA–W–39,329) and DyStar L.P. Headquarters Office, Charlotte, North Carolina (TA–W–39,329A) who became totally or partially separated from employment on or after May 15, 2000, through December 7, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 15th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–2688 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,453]

The Arnold Engineering Company, Ferrite Products Division, Sevierville, Tennessee; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 19, 2001, a company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on September 25, 2001, and published in the **Federal Register** on October 11, 2001 (66 FR 51973).

The company supplied an additional list of customers. The company believes these customers reduced their purchases from the subject plant and began importing ceramic hard ferrite magnets during the relevant time period. The Department of Labor will conduct a survey of these additional customers to determine if imports contributed importantly to the declines in employment at the subject plant.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 18th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2689 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,642]

Imerys Pigments and Additives Group, Dry Branch, Georgia; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 28, 2002 in response to a worker petition which was filed on behalf of workers at Imerys Pigments and Additives Group, Dry Branch, Georgia.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA–W–40,509). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 28th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–2693 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,997]

Keokuk Ferro-Sil, Inc. Keokuk, Iowa; Notice of Revised Determination on Reconsideration

By letter of November 14, 2001, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on October 31, 2001, based on the finding that a survey of customers indicated that increased imports did not contribute importantly to worker separations. The denial notice was published in the **Federal Register** on November 9, 2001 (66 FR 56711).

The company alleged that 75% ferrosilicon is competitive with 50% ferrosilicon and therefore imports of 75% ferrosilicon should be considered as impacting the subject plant workers.

The Department upon examination of the data supplied by the company is in agreement that 50% and 75% ferrosilicon are competitive with each other for the bulk of their uses. Upon examination of industry trade statistics pertaining to ferrosilicon it is apparent that 50% and 75% ferrosilicon imports increased significantly, while U.S. production declined during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Keokuk Ferro-Sil, Inc., Keokuk, Iowa contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Keokuk Ferro-Sil, Inc., Keokuk, Iowa who became totally or partially separated from employment on or after August 23, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 18th day of January 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2691 Filed 1–31–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,100, TA–W–39,100A, and TA–W–38,833]

Paper Converting Machine Company, Green Bay, Wisconsin; Packaging Machine Division, a Paper Converting Machine Company, Green Bay, Wisconsin; O & E Machine Corp. a Paper Converting Machine Company, Green Bay, Wisconsin; Notice of Revised Determination on Reconsideration

By letter of August 23, 2001, the U.A.W., Local 1102 requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on July 16, 2001, based on the finding that imports of heavy duty paper converting machinery and parts for the packaging industry did not contribute importantly to worker separations at the subject plan. The denial notice was published in the **Federal Register** on August 6, 2001 (66 FR 41052).

The union supplied additional information concerning foreign competition impacting the plant workers.

Upon contact with the company it became evident that an affiliated foreign company producing like and directly competitive products as the subject plant increased their shipments of heavy duty paper converting machinery for the packaging industry into the United States.

The O & E Machine Company (a machine shop) and Packaging Machine Division (wrapping and packaging) functions are affiliated divisions of Paper Converting Machine Company, and integrated into the production operations of Paper Converting Machine Company's and therefore included in this decision.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Paper Converting Machine Company, Green Bay, Wisconsin (TA–W–39,100) contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Paper Converting Machine Company, Green Bay, Wisconsin (TA–W–39,100) and Packaging Machine Division, a Division of Paper Converting Machine Company, Green Bay, Wisconsin (TA–W–39,100A) who became totally or partially separated from employment on or after April 4, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

All workers of O & E Machine Corp., a Division of Paper Converting Machine Company, Green Bay, Wisconsin (TA–W–38,833) who became totally or partially separated from employment on or after February 17, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 18th day of January 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2692 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,551]

Rohm and Haas Specialty Chemical Division, Paterson, New Jersey; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Rohm and Haas, Specialty Chemical Division, Paterson, New Jersey. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–39,551; Rohm and Haas, Specialty Chemical Division, Paterson, New Jersey (January 24, 2002)

Signed at Washington, DC, this 24th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2684 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,512]

Royce Hosiery, Inc., High Point, North Carolina; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Royce Hosiery, Inc., High Point, North Carolina. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–39, 512; Royce Hosiery, Inc. High Point, North Carolina (January 24, 2002)

Signed at Washington, DC, this 24th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2681 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,524]

Tex Tech Industries, Tempe, Arizona; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Tex Tech Industries, Tempe, Arizona. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–39,524; Tex Tech Industries Tempe, Arizona (January 24, 2002)

Signed at Washington, DC, this 24th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2682 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,345]

Tri-State Plastics, Inc., Gastonia, North Carolina; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Tri-State Plastics, Inc., Gastonia, North Carolina. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–39,345; Tri-State Plastics, Inc., Gastonia, North Carolina (January 24, 2002)

Signed at Washington, DC this 24th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2685 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05193]

Micro Motion, Inc., Boulder, Colorado; Including Temporary Workers of Aorist Enterprises, Inc. and Staffing Solutions Employed at Micro Motion, Inc., Boulder, Colorado; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on October 2, 2001, applicable to workers of Micro Motion, Inc., Boulder, Colorado. The notice published in the **Federal Register** on October 19, 2001 (66 FR 53252).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State shows that some employees of the subject firm were temporary workers from Aorist Enterprises, Inc., Lakewood, Colorado and Staffing Solutions, Longmont, Colorado to produce mass flow meters and electronic transmitters at the Boulder, Colorado location of the subject firm.

Based on these findings, the Department is amending the certification to include temporary workers of Aorist Enterprises, Inc., Lakewood, Colorado and Staffing Solutions, Longmont, Colorado who were engaged in the production of mass flow meters and electronic transmitters at Micro Motion, Inc., Boulder, Colorado.

The intent of the Department's certification is to include all workers of Micro Motion, Inc., Boulder, Colorado adversely affected by a shift in production of mass flow meters and electronic transmitters to Mexico.

The amended notice applicable to NAFTA–05193 is hereby issued as follows:

All workers of Micro Motion, Inc., Boulder, Colorado, including temporary workers of Aorist Enterprises, Inc. and Staffing Solutions engaged in the production of mass flow meters and electronic transmitters at Micro Motion, Inc., Boulder, Colorado, who became totally or partially separated from employment on or after August 7, 2000, through October 2, 2003, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of, Trade Adjustment Assistance.

[FR Doc. 02–2695 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5041]

Seagate Technology, Inc., OKC 1020 Division, Oklahoma City, Oklahoma; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Seagate Technology, Inc., OKC 1020 Division, Oklahoma City, Oklahoma. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA–5041; Seagate Technology, Inc., OKC 1020 Division, Oklahoma City, Oklahoma (January 15, 2002)

Signed at Washington, DC, this 24th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2687 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05190 and NAFTA–05190A]

Sequa Corporation Men's Apparel Group Athens, Georgia; Sequa Corporation Men's Apparel Group Corporate Office Hackensack, New Jersey; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on September 25, 2001, applicable to workers of Sequa Corporation, Men's Apparel Group, Athens, Georgia. The notice published in the **Federal Register** on October 11, 2001 (66 FR 51974).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that worker separations have occurred at the Corporate Office, Hackensack, New Jersey location of the subject firm. The Corporate Office provides administrative support function services including sales and marketing for the Men's Apparel Group of the subject firm.

Based on these findings, the Department is amending the certification to include workers of the Corporate Office, Hackensack, New Jersey location of Sequa Corporation, Men's Apparel Group.

The intent of the Department's certification is to include all workers of Sequa Corporation, Men's Apparel Group adversely affected by an increase of imports from Mexico.

The amended notice applicable to NAFTA–05190 is hereby issued as follows:

All workers of Sequa Corporation, Men's Apparel Group, Athens, Georgia (NAFTA–5190) and Sequa Corporation, Men's Apparel Group, Corporate Office, Hackensack, New Jersey (NAFTA–5190A) who became totally or partially separated from employment on or after August 10, 2000, through September 25, 2003, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–2696 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05163]

Tyco Electronics Fiber Optics Division, Glen Rock, Pennsylvania; Notice of Negative Determination Regarding Application for Reconsideration

By application dated October 12, 2001, a former employee requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement—Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on September 28, 2001, and was published in the **Federal Register** on October 19, 2001 (66 FR 53252).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers engaged in activities related to the production of fiber optic connectors at Tyco Electronics, Fiber Optics Division, Glen Rock, Pennsylvania was based on the finding that criteria (3) and (4) of that group eligibility requirement of paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. There were no company imports of fiber-optic connectors from Mexico or Canada, nor did the company shift plant production from the Glen Rock, Pennsylvania plant to Mexico or Canada. The preponderance in the declines in employment at the subject firm was related to a shift in plant production to another affiliated domestic plant.

The petitioner alleges that plant production was shifted to an affiliated plant located in Mexico.

Information provided by the company shows that a negligible portion of the plant production was shifted to Mexico during the relevant period of the investigation. The overwhelming (over 98%) portion of subject plant production was transferred to Harrisburg, Pennsylvania. No plant machinery was transferred to Mexico during the relevant period.

The petitioners supplied a list of products that they indicated were transferred to Mexico. The overwhelming majority of these products were transferred prior to the relevant time frame of the investigation. Some of these products were produced at the subject firm only when orders required quick turn around time. The majority of these products were procured at a sister facility located in Harrisburg, Pennsylvania when quick turn around times were required. The quick turn around products equivalent to what the Mexican plant produced account for a relatively small portion of products that were produced at the subject plant.

The petitioner also claims that plant workers trained workers from an affiliated Mexican plant.

The workers did train workers from the Mexican plant during the relevant time frame. However, the training relates to only a negligible portion of production performed at the subject plant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error of misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of January 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2694 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL95–F–1]

Nationally Recognized Testing Laboratories, Revised Fee Schedule

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

ACTION: Notice.

SUMMARY: This notice provides the revised schedule of fees to be charged by the Occupational Safety and Health Administration (OSHA) to Nationally Recognized Testing Laboratories (NRTLs). As provided under 29 CFR 1910.7, OSHA charges fees for specific types of services it provides to NRTLs. These services are: Processing applications for the initial recognition of an organization as an NRTL, or for expansion or renewal of an existing NRTL's recognition, and performing audits (post-recognition reviews) of NRTLs to determine whether they continue to meet the requirements for recognition. Annually, OSHA reviews the costs to the Government of providing the services to determine whether any changes to the fees are warranted. If change is warranted, we publish a notice to detail the projected costs of providing those services during the upcoming calendar year and solicit public comment on the revised fees.

The notice to propose the revised fees was published in the **Federal Register** on December 12, 2001 (66 FR 64274), and one comment was received. As stated in that notice, the revised fees would, and in fact did, go into effect on January 1, 2002. The revised fees will remain in effect until superseded by a later fee schedule.

DATES: The Fees Schedule shown in this notice went into effect on January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities at the above address, or phone (202) 693–2110. Our Web page includes information about the NRTL Program (see *http://www.osha-slc.gov/dts/otpca/nrtl/index.html* or see *http://www.osha.gov* and select ''Programs'').

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice that it has revised the fees that the Agency charges to Nationally Recognized Testing Laboratories (NRTLs). OSHA has taken this action as

a result of its annual review of the fees, as provided under 29 CFR 1910.7(f). This review showed that the costs of providing the services covered by the fees had changed sufficiently to warrant revisions to the Fee Schedule.

The notice to propose the revised fees was published in the **Federal Register** on December 12, 2001 (66 FR 64274). The notice requested submission of comments by December 27, 2001 (see correction of due date; 66 FR 65026, 12/17/01). One comment was received, which supported the rationale behind the changes to the fees. For those unfamiliar with OSHA's NRTL Program, we provide a brief overview below.

Many of OSHA's safety standards require equipment or products that are going to be used in the workplace be tested and certified to help ensure they can be used safely. Products or equipment that have been tested and certified must have a certification mark on them. An employer may rely on the certification mark, which shows the equipment or product has been tested and certified in accordance with OSHA requirements. In order to ensure that the testing and certification is done appropriately, OSHA implemented the NRTL Program. The NRTL Program establishes the criteria that an organization must meet in order to be and remain recognized as an NRTL.

The NRTL Program requirements are set forth under 29 CFR 1910.7, ''Definition and requirements for a nationally recognized testing laboratory.'' To be recognized by OSHA, an organization must: (1) Have the appropriate capability to test, evaluate, and approve products to assure their safe use in the workplace; (2) be completely independent of the manufacturers, vendors, and major users of the products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) have effective reporting and complaint handling procedures.

OSHA requires NRTL applicants (*i.e.*, organizations seeking initial recognition as an NRTL) to provide detailed information about their programs, processes, and procedures in writing when they apply for initial recognition. OSHA reviews the written information and conducts an on-site assessment to determine whether the organization meets the requirements of 29 CFR 1910.7. OSHA uses a similar process when an NRTL (*i.e.*, an organization already recognized) applies for expansion or renewal of its recognition. In addition, the Agency conducts annual audits to ensure that the recognized laboratories maintain their programs and continue to meet the recognition requirements.

OSHA promulgated the rule that established the fees on July 31, 2000 (65 FR 46797–46819). The first Fee Schedule, *i.e.*, the fees, went into effect on October 1, 2000. Currently, there are 18 NRTLs operating more than 45 recognized sites in the U.S., Canada, Europe, and the Far East.

Program Costs

In preparing the fee schedule presented in this notice, OSHA evaluated the total resources that it has committed to the NRTL Program overall and then estimated the costs that are involved solely with the application approval and the periodic review (*i.e.*, audit) functions. It is these costs alone that OSHA intends to recover through its fees. Personnel costs are the wages, salary, and fringe benefit costs of the staff positions involved and the number of full time equivalent (FTE) personnel devoted to the NRTL approval and review activities. These estimates also include travel and other costs of these activities. The Agency believes these estimates are fair and reasonable.

Based on the total estimated costs and the total estimated FTE, OSHA calculated an estimated equivalent cost per hour (excluding travel). This equivalent cost per hour includes both the direct and indirect costs per hour for ''direct staff'' members, who are the staff that perform the application, on-site, and legal reviews and the other activities involved in application processing and audits. In Figure 1, direct costs are expenses for direct staff members, and indirect costs are expenses for support and management staff, equipment, and other costs that are involved in the operation of the program. Support and management staff consists of program management and secretarial staff. Equipment and other costs are intended to cover items such as computers, telephones, building space, utilities, and supplies, that are necessary or used in performing the services covered by the proposed fees. Although essential to the services provided, these indirect costs are not readily linked to the specific activities involved in application processing and audits and, as explained later, are therefore allocated to the activities based on direct staff costs.

Figure 1 is an itemization of the estimated costs and the equivalent cost per hour calculated. OSHA believes that the costs shown fairly reflect the full cost of providing services to NRTLs and conducting other program activities. This figure shows how we calculated the estimated equivalent cost per hour (excluding travel).

FIGURE 1.—CURRENT ESTIMATED ANNUAL COSTS OF NRTL PROGRAM

Cost description	Est. FTE	Aver. cost per FTE (including fringe)	Total est. costs
Direct Staff Costs	4.7	$97,830	$459,800
Travel	Na	Na	50,000
Indirect Staff & Other Costs	Na	Na	*73,050
Total Est. Program Costs			582,850
Avg. direct staff cost/hr ($459,800 ÷ 4.7 FTE × 2,080 hours)			47
Equivalent avg. direct staff cost/hr ($532,850 ÷ 4.7 FTE × 2,080 hours) (includes direct & indirect costs)			54.50

*This amount consists of $34,800 of indirect staff costs and $38,250 for equipment and other costs.

The use of an ''equivalent average direct staff cost per hour'' measure is a convenient method of allocating indirect costs to each of the services for which OSHA will charge fees. The same result is obtained if direct staff costs are first calculated and then indirect costs are allocated based on the value, i.e., dollar amount, of the direct staff costs, which is an approach that is consistent with Federal accounting standards. To illustrate, assume a direct staff member spends 10 hours on an activity; the direct staff costs would then be calculated as follows:

Direct staff costs = 10 hours × $47/hour = $470

The $47/hour is the direct staff cost/hour amount shown in Figure 1. The

indirect costs would be allocated by first calculating the ratio of indirect costs to direct staff costs, again using the costs shown in Figure 1. This ratio would be as follows:

Indirect costs/direct staff costs = $73,050/$459,800 = 0.159

Next, the indirect costs would be calculated based on the $470 estimate of direct staff costs:

Indirect costs = $470 × 0.159 = $75

Finally, the total costs of the activity are calculated:

Total costs = direct staff costs + indirect costs = $470 + $75 = $545

Alternatively, the $545 can be derived by multiplying the $54.50 equivalent staff cost per hour rate by the 10 hours, i.e., $54.50 × 10 hours = $545.

After estimating program costs, the Agency estimated the time it spends on specific activities or functions. These estimates reflect the Agency's actual experience in performing the services covered by the fees. OSHA calculated time estimates for each major service category. These categories are: Initial applications, expansion and renewal applications, and audits. OSHA further divided some categories into the major activities performed and estimated the staff time and travel costs for each of these activities. The Agency then calculated the cost of each major activity using the time estimates, the equivalent cost per hour, and the estimate of travel costs. These costs serve as the basis for the fees later shown in the revised fee schedule. Examples of the calculations are shown in Figures 2, 3, 4, and 5.

FIGURE 2.—ESTIMATED COSTS FOR INITIAL APPLICATION

Major activity	Average hours	Average cost*
Initial Application Review		
Staff time: (includes review by office and field staff)	80	$4,360
On-Site Assessment—first day		
Staff time: (includes 16 hours preparation, 4 hours travel, 8 hours at site)	28	1,526
Travel:		670
Total (per site, per assessor)		2,196
On-Site Assessment—addnl. day		
Staff time	8	436
Travel amount: (to cover per diem)		70
Total (per site, per assessor)		506
Final Report & Federal Register notice		
Staff time: (includes work performed by field staff and office staff)	120	6,540

*Average cost for staff time equal average hours × equivalent average direct staff cost/hr ($54.50).

FIGURE 3.—ESTIMATED COSTS FOR EXPANSION APPLICATION (ADDITIONAL SITE)

Major activity	Average hours	Average cost*
Application Review (expansion for site)		
Staff time: (includes review by office and field staff)	16	$870
On-Site Assessment—first day		
Staff time: (includes 8 hours preparation, 4 hours travel, 8 hours at site)	20	1,090
Travel		670
Total (per site, per assessor)		1,760
On-Site Assessment—addnl. day		
Staff time	8	436
Travel amount: (to cover per diem)		70
Total (per site, per assessor)		506
Final Report & Federal Register notice		
Staff time: (includes work performed by field staff and office staff)	48	2,616

*Average cost for staff time equal average hours × equivalent average direct staff cost/hr ($54.50).

FIGURE 4.—ESTIMATED COSTS FOR RENEWAL OR EXPANSION (OTHER THAN ADDITIONAL SITE) APPLICATION

Major activity	Average hours	Average cost*
Application Review (renewal or expansion other than additional site)		
Staff time: (includes review by office and field staff)	2	$109
On-Site Assessment—first day		
Staff time: (includes 8 hours preparation, 4 hours travel, 8 hours at site)	20	1,090
Travel		670
Total (per site, per assessor)		1,760
On-Site Assessment—addnl. day		
Staff time	8	436
Travel amount: (to cover per diem)		70
Total (per site, per assessor)		506

FIGURE 4.—ESTIMATED COSTS FOR RENEWAL OR EXPANSION (OTHER THAN ADDITIONAL SITE) APPLICATION—Continued

Major activity	Average hours	Average cost*
Final Report & Federal Register notice		
Staff time: (includes work performed by field staff and office staff, if there is an on-site assessment)	48	2,616
Final Report & Federal Register notice		
Staff time: (includes work performed by field staff and office staff, if there is NO on-site assessment)	28	1,526

*Average cost for staff time equal average hours × equivalent average direct staff cost/hr ($54.50).

FIGURE 5.—ESTIMATED COSTS FOR ON-SITE AUDIT

Major activity	Average hours	Average cost*
Pre-site Review		
Staff time: (field staff only)	8	$436
On-Site Audit—first day		
Staff time: (includes 4 hours travel)	12	654
Travel		670
Total (per site, per assessor)		1,324
Final report		
Staff time: (includes work performed by field staff)	16	872
Total costs		**2,632

*Average cost for staff time equal average hours × equivalent average direct staff cost/hr ($54.50).
**Based on a one day audit. The costs for any additional days are the same as the per-day costs for an assessment.

In deriving the fee amounts shown in the fee schedule, OSHA has generally rounded the costs shown in Figures 2, 3, 4, and 5, up or down, to the nearest $50 or $100 amount.

OSHA believes that the amounts shown in the fee schedule reflect the Agency's current reasonable estimation of the costs involved for the services rendered to NRTLs. As previously mentioned, OSHA is not attempting to recover the entire cost of the NRTL Program through the fees but only the costs of providing these services.

What Has Changed

The following table shows the major changes that we have made to the fee schedule, comparing the fee amount in the previous fee schedule to the ''revised'' fee in the fee schedule shown later in this notice. Following the table, we explain the major changes.

TABLE OF MAJOR CHANGES TO FEES SCHEDULE

Description of fee	Previous fee amount	Revised fee amount	Change in fee amount (previous minus revised)
Initial Application Fee	$3,900	$4,400	$3,900 − $4,400 = $500 (increase).
Expansion Application Fee (additional site)	$1,550	$850	$1,550 − $850 = $700 (reduction).
Expansion Application Fee (additional test standards)	$1,550	$110	$1,550 − $110 = $1,440 (reduction).
Assessment—Initial Application (per site—SUBMIT WITH APPLICATION)	$5,900	$6,500	$5,900 − $6,500 = $600 (increase).
Review & Evaluation Fee (per 10 standards) (for standards already recognized for NRTLs or not requiring on-site review).	$50 per standard.	$10 per ten standards.	$500 − $10 = $490 per ten standards (reduction).
Final Report/Register Notice Fee—Renewal or Expansion Application (if OSHA performs on-site assessment).	$4,300	$2,600	$4,300 − $2,600 = $1,700 (reduction).
Final Report/Register Notice Fee—Renewal or Expansion Application (if OSHA performs NO on-site assessment).	$4,300	$1,500	$4,300 − $1,500 = $2,800 (reduction).

The previous Expansion Application Fee was based upon an NRTL submitting an application that included adding a site and a set of standards to its recognition. Many past expansion applications that we had received were so structured, and the fees were estimated on the basis of receiving similar such applications. However, more recently, NRTLs have submitted an expansion application covering a limited number of test standards and did not couple this request with an expansion for an additional site. In addition, the previous Expansion Application Fee was estimated on the basis of the NRTL submitting documentation to justify its capabilities for performing testing in an area outside its present scope of recognition. However, if the testing falls within its current capabilities, the application consists of a letter listing the test standards for which it is seeking recognition. The review of this letter is similar to the review we perform for a renewal request. If OSHA must review substantial documentation, e.g., if a standard falls outside the NRTL's current testing capabilities, or if OSHA

has not previously recognized a particular test standard for any NRTL, the previous standard fee of $50, which has now changed to $55, covered the necessary staff work to grant the expansion request for that test standard. If on the other hand OSHA must perform minimal review in determining whether to grant the expansion request for a standard, the rate is $10 for every ten or fewer standards. As a result, we have split the expansion application fee essentially into two fees and adjusted the review and evaluation fee to reflect the work involved for the scenarios just described.

As shown in Figure 1 and later in the proposed fee schedule, the hourly cost charged for staff time is now $54.50, or about 11% higher than the hourly rate of $49 in our previous fee schedule, which is available on our web site. The $49 was based upon staff salary and fringe and other program costs during 1999, whereas the $54.50 is based upon projected costs during 2002. Therefore, the 11% increase reflects changes that have accumulated over a three year period, or about 3.6% compounded annually, which is consistent with annual salary adjustments provided to Federal employees.

Fee Schedule and Description of Fees

OSHA establishes the following fee schedule, which will remain in effect until superseded by a later fee schedule:

TABLE A—FEE SCHEDULE

Nationally Recognized Testing Laboratory Program—(NRTL Program)—Fee Schedule (Effective January 1, 2002) [10]

Type of service	Activity or category (fee charged per application unless noted otherwise)	Fee amount
Application Processing	Initial Application Review [1]	$4,400
	Expansion Application Fee (per additional site) [1]	$850
	Renewal Application Fee or Expansion (other) Application Fee [1]	$110
	Assessment—Initial Application (per site—SUBMIT WITH APPLICATION) [2,4].	$6,500
	Assessment—Initial Application (per person, per site—first day—BILLED AFTER ASSESSMENT) [2,7,8].	$1,500 + travel expenses.
	Assessment—Expansion or Renewal Application (per person, per site—first day) [3,8].	$1,100 + expenses.
	Assessment—each addnl. day (per person, per site) [2,3,8]	$440 + travel expenses.
	Review & Evaluation Fee [5] ($10 per 10 standards if standards already recognized for NRTLs or require minimal review; else $55 per standard).	$10 per 10 standards or $55 per standard.
	Final Report/Register Notice—Initial Application [5]	$6,550
	Final Report/Register Notice Fee—Renewal or Expansion Application (if OSHA performs on-site assessment) [5].	$2,600
	Final Report/Register Notice Fee—Renewal or Expansion Application (if OSHA performs NO on-site assessment) [5].	$1,500
Audits	On-site Audit (per person, per site—first day) [6]	$1,950 + travel expenses.
	On-site Audit (per person, per site—each addnl. day) [6]	$440 + travel expenses.
	Office Audit (per site) [6]	$440
Miscellaneous	Supplemental Travel (per site—for sites located outside the 48 contiguous States, including the District of Columbia) [4].	$1,000
	Late Payment [9]	$55

Notes to OSHA Fee Schedule for NRTLs:

1. Who must pay the Application Review fees, and when must they be paid?

If you are applying for initial recognition as an NRTL, you must pay the Initial Application Review fee and include this fee with your initial application. If you are an NRTL and applying for an expansion or renewal of recognition, you must pay the Expansion Application Review fee or Renewal Application Review fee, as appropriate, and include the fee with your expansion or renewal application.

2. What assessment fees do you submit for an initial application, and when must they be paid?

If you are applying for initial recognition as an NRTL, you must pay $6,500 for each site for which you wish to obtain recognition, and you must include this amount with your initial application. We base this amount on two assessors performing a three day assessment at each site. After we have completed the assessment work, we will calculate our assessment fee based on the actual staff time and travel costs incurred in performing the assessment. We will calculate this fee at the rate of $1,500 for the first day and $440 for each additional day, plus actual travel expenses, for each assessor. Actual travel expenses are based on government per diem and travel fares. We will bill or refund the difference between the amount you pre-paid, $6,500/site, and this fee. We will reflect this difference in the final bill that we will send to you at the time we publish the preliminary **Federal Register** notice announcing the application.

3. What assessment fees do you submit for an expansion or renewal application, and when must they be paid?

If you are an NRTL and applying solely for an expansion or renewal of recognition, you do not submit any assessment fee with your application. If we need to perform an assessment for the expansion or renewal request, we will bill you for the fee after we perform the assessment for the actual staff time and travel costs we incurred in performing the assessment. We will assess this fee at the rate of $1,100 for the first day and $440 for each additional day, plus actual travel expenses, for each assessor. Actual travel expenses are based on government per diem and travel fares.

4. When do I pay the Supplemental Travel fee?

You must include this fee when you submit an initial application for recognition and the site you wish to recognized is located outside the 48 contiguous U.S. states (including the District of Columbia). The current supplemental travel fee is $1,000. We will factor in this prepayment when we bill for the actual costs of the assessment, as described in our note #2 above. See note 7 for possible refund of Assessment fees.

5. When do I pay the Review and Evaluation and the appropriate Final Report/Register Notice fees?

We will bill an applicant or an NRTL for the appropriate fees at the time we publish the preliminary **Federal Register** notice to announce the application. We will bill at the rate of $10 per 10 standards reviewed, or fraction thereof, for those standards that OSHA has previously recognized for any NRTLs and/or that require minimal review in determining whether to grant recognition for the additional test standards. Otherwise, we will bill at the rate of $55 per standard and provide appropriate explanation.

6. When do I pay the Audit fee?

We will bill the NRTL for this fee (on-site or office, as deemed necessary) after completion of the audit. We will calculate our fee based on actual staff time and travel costs incurred in performing the audit. We will calculate this fee at the rate of $1,950 for the first day and $440 for each additional day, plus actual travel expenses for each auditor. Actual travel expenses are based on government per diem and travel fares.

7. When and how can I obtain a refund for the fees that I paid?

If you are applying for initial recognition as an NRTL, we will refund the assessment fees that we have collected if you withdraw your application before we have traveled to your site to perform the on-site assessment. We will also credit your account for any amount we owe you if the assessment fees we have collected are greater than the actual costs of the assessment. Other than these two cases, we will not refund or grant credit for any other fees that are due or that we have collected.

8. What rate does OSHA use to charge for staff time?

OSHA has estimated an equivalent staff cost per hour that it uses for determining the fees that are shown in the Fee Schedule. This hourly rate takes into account the costs for salary, fringe benefits, equipment, supervision and support for each ''direct staff'' member, that is, the staff that perform the main activities identified in the Fee Schedule. The rate is an average of these amounts for each of these direct staff members. The current estimated equivalent staff costs per hour = $54.50.

9. What happens if I do not pay the fees that I am billed?

As explained above, if you are an applicant, we will send you a final bill for the fees at the time we publish the preliminary **Federal Register** notice. If you do not pay the bill by the due date, we will assess the Late Payment fee shown in the Fee Schedule. This late payment fee represents one hour of staff time at the equivalent staff cost per hour (see note 8). If we do not receive payment within 60 days of the bill date, we will cancel your application. As also explained above, if you are an NRTL, we will send you a bill for the audit fee after completion of the audit. If you do not pay the fee by the due date, we will assess the Late Payment Fee shown in the Fee Schedule. If we do not receive payment within 60 days of the bill date, we will publish a **Federal Register** notice stating our intent to revoke recognition.

10. How do I know whether this is the most Current Fee Schedule?

You should contact OSHA's NRTL Program (202–693–2110) or visit the program's web site to determine the effective date of the most current Fee Schedule. Access the site by selecting ''Subject Index'' or ''Programs'' at *www.osha.gov.* Any application processing fees are those in effect on the date you submit your application. Audit fees are those in effect on the date we begin our audit. Any pending application (i.e., an application that OSHA has not yet completed processing) will be subject only to the fees for the activities that OSHA begins on or after the effective date of the initial fee schedule.

The fee schedule shows the current activities for which OSHA charges fees. In evaluating the changes to the fee schedule, OSHA considered the following: (1) Actual expenditures of the 2001 fiscal year, and (2) estimated costs of the 2002 fiscal year.

The following is a description of the tasks and functions currently covered by each type of fee category, *e.g.,* application fees, and the basis used to charge each fee.

Application Fees

This fee reflects the technical work performed by office and field staff in reviewing application documents to determine whether an applicant submitted complete and adequate information. The application review does not include a review of the test standards requested, which is reflected in the review and evaluation fee. Application fees would be based on average costs per type of application. OSHA uses average costs since the amount of time spent on the application review does not vary greatly by type of application. This is based on the premise that the number and type of documents submitted will generally be the same for a given type of application. Experience has shown that most applicants follow the application guide that OSHA provides to them.

Assessment Fees

This fee is different for initial and for expansion or renewal applications. It is based on the number of days for staff preparatory and on-site work and related travel. Three types of fees are shown, and each one would be charged per site and per person. The two fees for the first day reflect time for office preparation, time at the applicant's facility, and an amount to cover travel in the 48 contiguous states. A supplemental travel amount is assessed for travel outside this area. These travel amounts are only estimates for purposes of submitting the initial fees. The applicant or NRTL is billed actual expenses, based on government per diem and travel fares. Any difference between actual travel expenses and the travel amounts in the fee schedule are reflected in the final bill or refund sent to the applicant or NRTL.

Similar to the application fee, the office preparation time generally involves the same types of activities. Actual time at the facility may vary, but the staff devote at least a full day for traveling and for performing the on-site work. The fee for the additional day reflects time spent at the facility and an amount for one day's room and board.

Review and Evaluation Fee: This fee is charged per test standard (which is part of an applicant's proposed scope of recognition). The fee reflects the fact that staff time spent in the office review of an application varies mainly in accordance with the number of test standards requested by the applicant. In general, the fee is based on the estimated time necessary to review test standards to determine whether each one is ''appropriate,'' as defined in 29 CFR 1910.7, and covers equipment for which OSHA mandates certification by an NRTL. The fee also covers time to determine the current designation and status (*i.e.,* active or withdrawn) of a test standard by reviewing current directories of the applicable test standard organization. Furthermore, it includes time spent discussing the results of the application review with the applicant. The actual time spent will vary depending on whether an applicant requests test standards that have previously been approved for other NRTLs. When the review is minimal, these activities take approximately 2 hours for every 10 or fewer standards. When the review is more substantial, the estimated average review time per standard is one hour for each standard, which translates to $55 per standard. Substantial review will occur when the standard has not been previously recognized for any NRTL or when the NRTL is proposing to do testing outside its current scope of recognition.

Final Report/Register Notice Fees

Each of these fees is charged per application. The fee reflects the staff time to prepare the report of the on-site review (i.e., assessment) of an applicant's or an NRTL's facility. The fee also reflects the time spent making the final evaluation of an application, preparing the required **Federal Register** notices, and responding to comments received due to the preliminary finding notice. These fees are based on average costs per type of application, since the type and content of documents prepared are generally the same for each type of applicant. There is a separate fee when OSHA performs no on-site assessment. In these cases, the NRTL Program staff perform an office assessment and prepare a memo to recommend the expansion or renewal.

Audit (Post-Recognition Review) Fees

These fees reflect the time for office preparation, time at the facility and travel, and time to prepare the audit report of the on-site audit. A separate fee is shown for an office audit conducted in lieu of an actual visit. Each fee is per site and does not generally vary for the same reasons

described for the assessment fee and because the audit is generally limited to one day. As previously described, the audit fee would include amounts for travel, and, similar to assessments, OSHA will bill the NRTL for actual travel expenses.

Miscellaneous Fees

The sample fee schedule only shows the average cost for one full day of staff time. OSHA would use this fee primarily in cases of refunding the assessment fee. OSHA will also charge a fee for late payment of the annual audit fee. The amount for the late fee is based on 1 hour of staff time.

Final Decision

OSHA performed its annual review of the fees it currently charges to Nationally Recognized Testing Laboratories, as provided under 29 CFR 1910.7(f). Based on this review, OSHA determined that certain fees warranted change, as detailed in this notice. As a result, OSHA now establishes the revised fees by adopting the Nationally Recognized Testing Laboratory Program Fees Schedule shown as Table A above, which was effective as of January 1, 2002, as provided in the preliminary notice published on December 12, 2001 (66 FR 64274). This fee schedule will remain in effect until superseded by a later fee schedule. OSHA will provide the public an opportunity to comment on any future changes to the fees.

Signed at Washington, DC, this 17 day of January, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 02–2643 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10891, et al.]

Proposed Exemptions; Connecticut Plumbers and Pipefitters Pension Fund (the Pension Fund), Connecticut Pipe Trades Local No. 777 Annuity Fund (the Annuity Fund); Connecticut Pipe Trades Health Fund (the Health Fund) (Collectively the Funds)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: ''*moffittb@pwba.dol.gov*'', or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Connecticut Plumbers and Pipefitters Pension Fund (the Pension Fund), Connecticut Pipe Trades Local No. 777 Annuity Fund (the Annuity Fund); Connecticut Pipe Trades Health Fund (the Health Fund) (Collectively the Funds), Located in Manchester, Massachusetts

[Exemption Application Nos. D–10891; D–10892 and L–10893]

Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the purchase on September 1, 1999 (the Purchase) by the Health Fund of the common stock of Employee Benefit Administrators, Inc. (EBPA Stock) from Michael W. Daly and Virginia S. Daly (the Dalys), parties in interest with respect to the Health Fund, and the subsequent reallocation of the purchase price (the Reallocation) among the Funds, including ''makewhole'' payments (Makewhole Payments) representing lost earnings in connection with the Purchase, provided that the following conditions are satisfied:

(a) The Purchase was a one-time transaction for a lump sum cash payment;

(b) The Purchase price was no more than the fair market value of EBPA Stock as of the date of the Purchase;

(c) The fair market value of the EBPA Stock was determined by an independent, qualified, appraiser;

(d) The Funds paid no commissions or other expenses relating to the Purchase;

(e) The proposed Reallocation will be made in connection with the original payment by the Pension Fund and the Annuity Fund for EBPA Stock resulting from the original allocation (the Original Allocation);

(f) The Makewhole Payments to be made by the Health Fund to the Pension Fund and the Annuity Fund represent an amount to provide the Pension Fund and the Annuity Fund with a rate of return equal to the total accrued but unpaid interest due as of the date of grant of this exemption as a result of the Original Allocation on September 1, 1999; and

(g) An independent fiduciary has negotiated, reviewed, and approved the terms of the Reallocation and will ensure the current and future payments by the Funds in connection with services provided by the administrative affiliate will reflect actual expenditures by the Funds.

Effective Date of Exemption: The effective date of this exemption is September 1, 1999.

Summary of Facts and Representations

1. The Annuity Fund is a defined contribution employee pension plan located in Manchester, Connecticut. It provides for contributions by employers, and permits the participants to invest the contributions in alternatives provided by Putnam Investments, the Annuity Fund's recordkeeper. At the time of the transaction, the Annuity Fund had 1,518 participants and assets as of January 31, 1999 of $21,540,687.33.

The Pension Fund is a non-contributory defined benefit plan located in Manchester, Connecticut. The Pension Fund employs 13 investment managers for the assets. At the time of the transaction, the Pension Fund had 1,587 plan participants and assets as of January 31, 1999 of $209,288,337.71.

The Health Fund is non-contributory and has 2,263 plan participants. The assets are maintained at Salomon Smith Barney, and Olson, Mobeck & Associates, Inc. acts as investment manager. At the time of the transaction, the fair market value of the Health Fund's assets was $20,651,136.78.

At the time of the Purchase, less than approximately 1% of the total assets of each respective plan were involved in the subject transaction. The Funds are multiemployer plans within the meaning of section 3(37)(A) of the Act, and were established and are maintained pursuant to section 302(c)(5) of the Labor Management Relations Act of 1947. The Funds are jointly managed by an equal number of Trustees appointed by management and the union.

2. Prior to September 1, 1999, the Funds employed two outside administrators. One administrator, Insurance Programmers, Inc. (IPI) provided services to the Annuity Fund and the Pension Fund. For the Pension Fund, IPI processed contributions and pension applications, issued monthly pension checks and quarterly statements and provided information for the annual actuarial valuation. Its charges totaled $105,600 in the last year of its retention. For the Annuity Fund, IPI processed contributions, posted receipts to Putnam Investments, performed recordkeeping duties, and processed withdrawal applications. IPI's charges for the Annuity Fund were $84,500. The second administrator, EBPA provided services to the Health Fund. It processed contributions, determined eligibility, paid both health and disability claims, maintained claims records, coordinated pre-admission certifications and utilization reviews and did COBRA administration. Its annual charges were $424,500.

In 1998, the Trustees of the Annuity and Pension Funds decided to explore alternatives for the Funds' administration. Since some of the Trustees of the Annuity and Pension Funds also served as Trustees of the Health Fund, and the Funds collectively served roughly the same group of participants and beneficiaries, the Trustees decided to consider unified administration for the Funds. Accordingly, the Trustees decided to bring the administration in-house. Due to concern about potential disruption to participants and beneficiaries, the Trustees further decided to explore the retention of existing administrative personnel through the purchase of EBPA, which had the most day-to-day contact with participants and beneficiaries.

The Trustees sought advice from the Segal Company (Segal), a nationally known actuarial and benefits consulting firm that represents mutliemployer trust funds. On April 29, 1998, Segal released a feasibility study to the Trustees, which concluded that, from a financial and operational perspective, the purchase of EBPA made good business sense.

3. The Trustees represent that the motivation for the Funds Purchase of EBPA was solely to benefit the Funds' interests. The Trustees further represent that (i) the annual operating expenses with in-house administration would be approximately $454,450 versus the $614,600 paid by the Funds for outside administration in 1998; (ii) in-house administration would give the Funds more direct control over the administrative process and better access to data so that the Trustees could more easily shift priorities or make changes in the administrative processes; and (iii) the in-house staff would be employees of the Funds, customer service should be more sensitive and responsive to the needs of the participants and beneficiaries, problems could be solved more quickly, and the Trustees would not have to coordinate between different vendors.

4. The Trustees obtained the services of Marenna, Pia and Associates, LLC (MPA), to perform an appraisal of the EBPA Stock. The valuation was performed by Kenneth Pia, a principal of MPA. Mr. Pia is the Director of Valuation and Litigation Services at MPA, a certified public accountant, an Accredited Senior Appraiser of the American Society of Appraisers, and a Certified Valuation Analyst of the National Association of Certified Valuation Analysts. Mr. Pia represents that he and his firm are independent of the parties involved the Purchase.

The appraisal sought the fair market value of EBPA, which it defined as the price at which the property would change hands between a willing buyer and willing seller, neither being under a compulsion to transact and both having reasonable knowledge of all relevant facts and circumstances. In arriving at the value, the appraisal considered all of the factors set forth in Revenue Ruling 59–60. As for the primary methodology, Mr. Pia chose the earnings-based approach, specifically the capitalization of forecasted next year earnings method. MPA concluded that the fair market value of 100 percent of the stock of EBPA was $277,000.

5. The Funds and the Dalys reached an agreement on the sale of the EBPA Stock and terms of the Dalys employment on September 1, 1999. The Funds purchased for cash, 100 percent of the EBPA Stock at a price of $250,000. Mr. Dalys annual salary was set at $105,000. The ownership of the EBPA stock also enabled the Funds to acquire the tangible assets, primarily office equipment and fixtures, used by EBPA in the administration of the Health Fund's business. The Funds and the Dalys also agreed upon an employment contract for a term of five years, which provides for termination upon just cause prior to that time.

6. The Trustees represent they were not aware that the Purchase would

constitute a violation of the prohibited transaction provisions of the Act, nor were they advised of the violation at the time of the transaction.[1] The Trustees relied upon the advice of Vincent F. OHara of Holm & O'Hara who was counsel to the Trustees regarding ERISA matters throughout the process of self-administration. Only after the Purchase did the Trustees legal counsel conclude that the trustees needed a prohibited transaction exemption. Subsequently, the Trustees retained outside counsel to file an application for a retroactive exemption with the Department.

7. The Funds allocated the purchase price pursuant to an allocation study based on the projected comparative administrative needs of each of each of the Funds (the Original Allocation) performed by Segal. Specifically, the Health Fund paid $110,000, the Pension Fund paid $97,500 and the Annuity Fund paid $42,500.[2] The Department reviewed the Original Allocation and discovered that Segal's analysis did not include the cost to the Funds of paying the claims.

8. As a result of the Original Allocation's deficiencies, the Trustees engaged Peter D. Graeb, CPA (Mr. Graeb) of Beers, Hamerman & Company, P.C. (BHC) to determine the Reallocation of the Purchase price. BHC determined that the Reallocation should yield the following allocation of the Purchase price: Health Fund 77%; Pension fund 18%; and the Annuity Fund 5%. Applying the Reallocation methodology, the allocation of the purchase price will be: Health Fund paying $192,500; the Pension Fund paying $45,000 and the Annuity Fund paying $12,500.

Furthermore, as a result of the Department's review and determination that the Original Acquisition was not allocated equitably among the Funds, it has been determined that the Makewhole Payment should be made by the Health Fund to the Pension Fund and the Annuity Fund representing lost earnings to the Funds as a result of the Original Allocation. The Makewhole Payment will consist of the Health Fund paying an additional $82,500 of the purchase price of EBPA, with the Pension Fund receiving $52,500 and the Annuity Fund receiving $30,000 of the additional $82,500 paid by the Health Fund. Mr. Graeb also calculated the lost earnings in connection with the Original Acquisition. Mr. Graeb's calculation of the lost earnings or Makewhole Payment concluded that the Health Fund earned a return for the 23-month period between August 1, 1999 through June 30, 2001 of 11.02%. This was based on the net investment return, per audited financial statement for the fiscal year August 1, 1999 through June 30, 2001 and the preliminary accounting for the fiscal year ending June 30, 2001. Applying that return yields the following numbers: the Health Fund earned $9,092 on the $85,000 it underpaid. Sharing that amount in the percentages derived from the Original Allocation study would yield $52,500 and interest of $5,786 to the Pension Fund and $30,000 and $3,306 to the Annuity Fund from the period August 1, 1999 through June 30, 2001. Therefore, the Makewhole Payments will represent an amount that provides the Pension Fund and the Annuity Fund with a rate of return equal to the total accrued but unpaid interest due at the time of grant of this exemption as a result of the Original Allocation.

9. An independent party, Robert Nagle (Mr. Nagle), will serve as the independent fiduciary for the Funds with respect to the purposed Reallocation between the Funds. Mr. Nagle has experience with employee benefit plans and has served as a court ordered fiduciary in several cases, including service at the behest of the Department. Mr. Nagle has no prior connection to the Trustees. Mr. Nagle will assure that the Reallocation accurately reflects the Funds' respective equity interest in the administrative subsidiary and that the Health Fund has reimbursed the Pension Fund and the Annuity Fund for the difference between their original investments and the reallocated amounts, plus the Makewhole Payments. In addition, Mr. Nagle will confirm on an annual basis that the expenses of the administrative subsidiary are being properly allocated to the Funds based on actual expenditures of each Fund.

10. In summary, the Trustees represent that the requested retroactive individual exemption will satisfy the criteria of section 408(a) of the Act for the following reasons:

(a) The Purchase was a one-time transaction for a lump sum cash payment;

(b) The Purchase price was no more than the fair market value of EBPA Stock as of the date of the Purchase;

(c) The fair market value of the EBPA Stock was determined by an independent, qualified, appraiser;

(d) The Funds paid no commissions or other expenses relating to the Purchase;

(e) The proposed Reallocation will be made in connection with the original payment by the Pension Fund and the Annuity Fund for EBPA Stock resulting from the Original Allocation;

(f) The Makewhole Payments to be made by the Health Fund to the Pension Fund and the Annuity Fund represent an amount to provide the Pension Fund and the Annuity Fund with a rate of return equal to the total accrued but unpaid interest due as of the date of grant of this exemption as a result of the Original Allocation on September 1, 1999; and

(g) An independent fiduciary has negotiated, reviewed, and approved the terms of the Reallocation and will ensure the current and future payments by the Funds in connection with services provided by the administrative affiliate will reflect actual expenditures by the Funds.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Trustees and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif Ilias Ford of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Pacific Investment Management Company, LLC (PIMCO), Located in Newport Beach, CA

[Application No. D–11005]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[3]

Section I. Proposed Exemption for the Purchase of Fund Shares With Assets Transferred in Kind From a Plan Account

If the exemption is granted, the restrictions of section 406(a) and section

[1] The Department wishes to note that ERISA's general standards of fiduciary conduct would apply to the Purchase by the Funds. In this regard, section 404(a) of the Act requires, among other things, that a plan fiduciary discharge his duties with respect to a plan solely in the interest of the plans's participants and beneficiaries in a prudent fashion.

[2] The Dalys made certain representations concerning the business and the Funds withheld $20,000 from the sale proceeds in order to assure that the representations were accurate. The escrow was released in four annual installments, which began May 1, 2000, and will end May 1, 2003.

[3] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

406(b) 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 (F) of the Code, shall not apply, effective February 5, 2002, to the purchase of shares of one or more open-end management investment companies (the PIMCO Mutual Funds) registered under the Investment Company Act of 1940 (the ICA), to which PIMCO or any affiliate of PIMCO (the PIMCO Affiliate) [4] serves as investment adviser and may provide other services, by an employee benefit plan (the Plan or Plans), whose assets are held by PIMCO, as trustee, investment manager or discretionary fiduciary, in exchange for securities held by the Plan in an account (the Account) or sub-Account with PIMCO (the Purchase Transaction), provided that the following conditions are met:

(a) A fiduciary who is acting on behalf of each affected Plan and who is independent of and unrelated to PIMCO, as defined in paragraph (g) of Section III below (the Second Fiduciary), provides, prior to the first Purchase Transaction, the written approval described in paragraph (b) or (c) of this Section I, as applicable, following the disclosure of written information concerning the PIMCO Mutual Funds, which includes the following:

(1) A current prospectus or offering memorandum for each PIMCO Mutual Fund which has been approved by the Second Fiduciary for that Plan's Account; [5]

(2) A statement describing the fees to be charged to, or paid by, the Plan and the PIMCO Mutual Funds to PIMCO, including the nature and extent of any differential between the rates of the fees paid by the PIMCO Mutual Fund and the rates of the fees otherwise payable by the Plan to PIMCO;

(3) A statement of the reasons why PIMCO considers Purchase Transactions to be appropriate for the Plan;

(4) A statement on whether there are any limitations on PIMCO with respect to which Plan assets may be invested in the PIMCO Funds, and if so, the nature of such limitations;

(5) In the case of a Plan having total assets that are less than $200 million, the identity of all securities that are deemed suitable by PIMCO for transfer to the PIMCO Mutual Funds; and

(6) Upon such Second Fiduciary's request, copies of the proposed and final exemptions pertaining to the exemptive relief provided herein for Purchase Transactions occurring after the date of the final exemption.

(b) On the basis of the foregoing information, in paragraph (a) of this Section I, the Second Fiduciary of a Plan having total assets that are at least $200 million, gives PIMCO a standing written approval (subject to unilateral revocation by the Second Fiduciary at any time) for—

(1) The Purchase Transactions, consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(2) The investment guidelines for the Account (the Strategy) and the management, by PIMCO, of client Plan assets in separate Accounts in the implementation of the Strategy;

(3) The investment of a certain portion (or portions) of the Accounts in specified PIMCO Mutual Funds, as part of PIMCO's ongoing implementation of the Strategy;

(4) The acquisition of shares of PIMCO Mutual Funds in cash or in kind, from time to time; and

(5) The receipt of confirmation statements with respect to the Purchase Transactions in the form of written reports to the Second Fiduciary.

(c) On the basis of the foregoing information in paragraph (a) of this Section I, the Second Fiduciary of a Plan having total assets that are less than $200 million, gives PIMCO—

(1) A standing written approval (subject to unilateral revocation by the Second Fiduciary at any time) for—

(i) The Strategy and the management, by PIMCO, of client Plan assets in separate Accounts in the implementation of the Strategy;

(ii) The investment of a certain portion (or portions) of the Accounts in specified PIMCO Mutual Funds, as part of PIMCO's ongoing implementation of the Strategy; and

(iii) The acquisition of shares of PIMCO Mutual Funds in cash or in kind, from time to time.

(2) Advance written approval for—

(i) Each Purchase Transaction, consistent with the responsibilities, obligations and duties imposed on fiduciaries by Part 4 of Title I of the Act; and

(ii) The receipt of confirmation statements with respect to Purchase Transactions in the form of written reports to the Second Fiduciary.

(d) No sales commissions or other fees are paid by a Plan in connection with a Purchase Transaction.

(e) All transferred assets are securities for which market quotations are readily available.

(f) The transferred assets consist of assets transferred to the Plan's Account at the direction of the Second Fiduciary.

(g) With respect to assets transferred in kind, each Plan receives shares of a PIMCO Mutual Fund which have a total net asset value that is equal to the value of the assets of the Plan exchanged for such shares, based on the current market value of such assets at the close of the business day on which such Purchase Transaction occurs, using independent sources in accordance with the procedures set forth in Rule 17a–7b under the ICA (Rule 17a–7), as amended from time to time or any successor rule, regulation or similar pronouncement, and the procedures established by the PIMCO Mutual Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the day of the Purchase Transaction determined on the basis of reasonable inquiry from at least two sources that are market makers or pricing services independent of PIMCO.

(h) PIMCO sends by regular mail, express mail or personal delivery or, if applicable, by facsimile or electronic mail to the Second Fiduciary of each Plan that engages in a Purchase Transaction, a report containing the following information about each Purchase Transaction:

(1) A list (or lists, if there are multiple Purchase Transactions) identifying each of the securities that has been valued for purposes of the Purchase Transaction in accordance with Rule 17a–7(b)(4) of the ICA;

(2) The current market price, as of the date of the Purchase Transaction, of each of the securities involved in the Purchase Transaction;

(3) The identity of each pricing service or market maker consulted in determining the value of such securities;

(4) The aggregate dollar value of the securities held in the Plan Account immediately before the Purchase Transaction; and

(5) The number of shares of the PIMCO Mutual Funds that are held by

[4] Unless otherwise noted, ''PIMCO'' refers to ''PIMCO'' and to any ''PIMCO Affiliates'' and the term ''PIMCO Mutual Funds'' refers to any registered investment funds that are managed or advised by PIMCO or a PIMCO Affiliate.

[5] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Exchange Act of 1933 (the 1933 Act). In the Department's view, the private placement memorandum must contain sufficient information to permit Second Fiduciaries to make informed investment decisions.

the Account following the Purchase Transaction (and the related per share net asset value and the aggregate dollar value of the shares received) immediately following the Purchase Transaction.

(Such report is disseminated by PIMCO to the Second Fiduciary by regular mail, express mail or personal delivery, or if applicable, by facsimile or electronic mail, no later than 30 business days after the Purchase Transaction.)

(i) With respect to each of the PIMCO Mutual Funds in which a Plan continues to hold shares acquired in connection with a Purchase Transaction, PIMCO provides the Second Fiduciary with—

(1) A copy of an updated prospectus or offering memorandum for such PIMCO Mutual Fund, at least annually; and

(2) Upon request of the Second Fiduciary, a report or statement (which may take the form of the most recent financial report, the current Statement of Additional Information, or some other statement) containing a description of all fees paid by the PIMCO Mutual Fund to PIMCO.

(j) As to each Plan, the combined total of all fees received by PIMCO for the provision of services to the Plan, and in connection with the provision of services to a PIMCO Mutual Fund in which the Plan holds shares acquired in connection with a Purchase Transaction, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(k) All dealings in connection with a Purchase Transaction between a Plan and a PIMCO Mutual Fund are on a basis no less favorable to the Plan than dealings between the PIMCO Mutual Fund and other shareholders.

(l) No Plan may enter into Purchase Transaction with the PIMCO Mutual Funds prior to the date the proposed exemption is published in the **Federal Register**.

(m) PIMCO maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons, as described in paragraph (n) of this Section I, to determine whether the conditions of this proposed 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 PIMCO, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than PIMCO, 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 (m) of this Section I.

(n)(1) Except as provided in paragraph (n)(2) of this Section I and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (m) of Section I above 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 (the Service), or the Securities and Exchange Commission (the SEC);

(B) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the PIMCO Mutual Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (n)(1)(B) or (C) of this Section I shall be authorized to examine the trade secrets of PIMCO or commercial or financial information which is privileged or confidential.

Section II. Availabilty of Prohibited Transaction Exemption (PTE) 77–4 [6]

Any purchase of PIMCO Mutual Fund shares by a Plan that complies with the conditions of Section I of this proposed exemption shall be treated as a ''purchase or sale'' of shares of an open-end investment company for purposes of PTE 77–4 and shall be deemed to have satisfied paragraphs (a), (d) and (e) of Section II of PTE 77–4.

Section III. Definitions

For purposes of this proposed exemption,

(a) The term ''PIMCO'' means Pacific Investment Management Company LLC, any successors thereto, and affiliates of PIMCO (as defined in paragraph (b) of this Section III), including Nicholas-Applegate Capital Management, PIMCO Equity Advisers, Cadence Capital Management, NFJ Investment Group, Value Advisors LLC, Allianz of America, Inc., Pacific Specialty Markets LLC, PIMCO/Allianz International Advisors LLC, OpCap Advisors and Oppenheimer Capital, and their existing and future affiliates.

(b) An ''affiliate'' of a person 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, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person 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 ''PIMCO Mutual Fund'' or ''PIMCO Mutual Funds'' means any open-end investment company or companies registered under the ICA for which PIMCO serves as investment adviser, administrator, or investment manager. The term is also meant to include a PIMCO Affiliate Mutual Fund in which a PIMCO Affiliate serves as an investment adviser or investment manager.

(e) The term ''net asset value'' means the amount for purposes of pricing all purchases and redemptions calculated by dividing the value of all securities, determined by a method as set forth in a PIMCO Mutual Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such PIMCO Mutual Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term ''relative'' means a relative as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term ''Second Fiduciary'' means a fiduciary of a plan who is independent of and unrelated to PIMCO. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to PIMCO if —

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with PIMCO;

[6] In relevant part, PTE 77–4 (42 FR 18732 (April 8, 1977) permits the purchase and sale by an employee benefit plan of shares of a registered open-end investment company when a fiduciary with respect to such plan is also the investment adviser for the mutual fund. Section II(a) of PTE 77–4 requires that a plan does not pay a sales commission in connection with such purchase or sale. Section II(d) describes the disclosures that are to be received by an independent plan fiduciary. For example, the plan fiduciary must receive a current prospectus for the mutual fund as well as full and detailed written disclosure of the investment advisory and other fees that are charged to or paid by the plan and the investment company. Section II(e) requires that the independent plan fiduciary approve purchases and sales of mutual fund shares on the basis of the disclosures given.

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of PIMCO (or is a relative of such persons); or

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration from PIMCO for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of PIMCO (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser; (B) the written authorization provided to PIMCO for the Purchase Transactions; (C) the Plan's decision to continue to hold or to redeem shares of the PIMCO Mutual Funds held by such Plan; and (D) the approval of any change of fees charged to or paid by the Plan, in connection with the transactions described above in Section I, then paragraph (g)(2) of this Section III, shall not apply.

(h) The term ''Strategy'' refers to the set of investment guidelines that have been established in advance to govern the Account. The Strategy is created by PIMCO in collaboration with the Second Fiduciary of a client Plan and may be mutually amended, from time to time.

Summary of Facts and Representations

Description of the Parties

1. *PIMCO (i.e., Pacific Investment Management Company, LLC),* an investment counseling firm located in Newport Beach, California, is a subsidiary of PIMCO Advisors, L.P. (PALP). A controlling interest in PALP is indirectly held by Allianz A.G., a European-based multinational insurance and financial services holding company. An indirect, minority equity interest in PALP is held by Pacific Life Insurance Company, a California-based insurance company.

PIMCO provides investment management and advisory services to the private accounts of institutional clients and to mutual funds, including the separate portfolios of the PIMCO Mutual Funds. PIMCO and its affiliates[7] currently provide the PIMCO Mutual Funds described below with overall investment management services, including, but not limited to, the selection and supervision of investment advisers and regulatory reporting. PIMCO also acts as the dividend disbursing agent with respect to certain classes of shares and as the investment adviser to certain PIMCO Mutual Fund portfolios. PIMCO currently serves as administrator to the PIMCO Mutual Funds and provides the PIMCO Mutual Funds with certain administrative and shareholder services necessary for PIMCO Mutual Fund operations. Additionally, PIMCO is responsible for the supervision of other PIMCO Mutual Fund service providers.

PIMCO also provides investment management and asset allocation services to a variety of clients, including the Plans described below. In the course of implementing each Plan's investment strategy (i.e., the Strategy) and to the extent authorized in the investment management agreement (the Investment Management Agreement) or separate investment guidelines for each Plan, PIMCO may utilize the separate investment portfolios of the PIMCO Mutual Funds as the Plans' investment vehicles.

2. *The Plans* will consist of retirement plans qualified under section 401(a) of the Code which constitute ''pension plans'' as defined in section 3(2) of the Act, certain welfare plans as defined under section 3(1) of the Act [e.g., voluntary employees' beneficiary association trusts exempt from tax under Code section 501(c)(9)]; and/or ''plans'' as defined in section 4975(e)(1) of the Code, and with respect to which PIMCO serves or will serve as an investment manager. The Plans will not include employee benefit plans that are sponsored by PIMCO or its affiliates. As a precondition to participating in the Purchase Transactions that are described herein, each Plan will have total assets of at least $100 million.

3. *The PIMCO Mutual Funds* to which the requested exemption will cover consist of investment companies registered under the ICA. A representative group of PIMCO Mutual Funds which have been currently authorized by the Plans adopting one or more Strategies is the Private Account Portfolio Series (the Private Account Portfolios), which is a subset of the Pacific Investment Management Series (otherwise referred to as ''the PIMS Trust''). The Private Account Portfolios are being offered to institutional investors. Any Plan investments in the Private Account Portfolios (or any other PIMCO Mutual Fund offered for the purpose of Purchase Transactions described herein) will be subject to the terms and conditions of this exemption.

The Private Account Portfolios invest at least 65 percent of their assets in bonds or debt securities, including, but not limited to, securities issued or guaranteed by the U.S. Government; corporate debt of U.S. and non-U.S. issuers; asset-backed securities; and notes, repurchase agreements and other obligations of governmental issuers. The Private Account Portfolios currently consist of the following 16 separate mutual funds:

- Short-Term Portfolio
- Short-Term Portfolio II
- U.S. Government Sector Portfolio
- U.S. Government Sector Portfolio II
- Mortgage Portfolio
- Mortgage Portfolio II
- Investment Grade Corporate Portfolio
- Real Return Bond Portfolio
- Asset-Backed Securities Portfolio
- Asset-Backed Securities Portfolio II
- High Yield Portfolio
- Municipal Sector Portfolio
- International Portfolio
- Short-Term Emerging Markets Portfolio
- Emerging Markets Portfolio
- Select Investment Portfolio

These PIMCO Mutual Funds pay PIMCO an annualized advisory fee of 0.02 percent in return for providing investment advisory services. Aside from the Private Account Portfolios, PIMCO also proposes that the Purchase Transactions contemplated herein will also apply to PIMCO Mutual Funds that are equity mutual funds.

5. PIMCO also serves as the administrator of all of the PIMCO Mutual Funds and it receives an annualized administrative fee from the PIMCO Mutual Funds under a fixed fee structure. For example, in the case of the Private Account Portfolios, PIMCO receives an annualized administrative fee ranging from 0.028 percent for the Real Return Bond Portfolio to 0.04 percent for the International Portfolio. In return for these fixed fees, PIMCO provides administrative services for shareholders of the Private Account Portfolios and it also bears certain costs of various third party services such as audits, custodial services, portfolio accounting, as well as legal, transfer agency and printing costs.[8]

[7] Another wholly owned subsidiary of PIMCO, PIMCO Funds Distributors LLC, serves as the principal underwriter and distributor of the PIMCO Mutual Funds.

[8] At the present time, PIMCO represents that it does not know how many PIMCO Mutual Funds it will offer to client Plans. PIMCO notes that its fee structure for the Private Account Portfolios is not unusual given the fact that the client Plans pay a Plan-level investment advisory fee based on the amount of assets managed for them by PIMCO. Because PIMCO manages many large client Plans, which place a minimum of $600 million with PIMCO, the size of the Plan-level investment advisory fees will vary in inverse proportion to the size of the client Plan's Account with PIMCO. As noted in Representation 12 of the proposed exemption, PIMCO will utilize the fee crediting mechanism described in PTE 77–4 to offset its Fund-level investment advisory fees from its Plan-level investment advisory and/or management fees.

As both administrator and investment adviser of the PIMCO Mutual Funds, PIMCO makes overall investment decisions with respect to the assets of each PIMCO Mutual Fund's investment program.

6. The PIMCO Mutual Funds are offered and sold in full compliance with regulations promulgated by the SEC. As mandated by the SEC, shareholders of the PIMCO Mutual Funds receive the following disclosures concerning the PIMCO Mutual Funds:

(a) A copy of the prospectus or offering memorandum, which is updated at least annually; (b) an annual report containing audited financial statements of the PIMCO Mutual Funds and information regarding the PIMCO Mutual Funds' performance (unless such performance is included in the prospectus for the PIMCO Mutual Funds); and (c) a semi-annual report containing unaudited financial statements. With respect to the Plans, PIMCO or National Financial Data Services, Inc., the transfer agent for the PIMCO Mutual Funds, reports all transactions involving shares of the PIMCO Mutual Funds in periodic account statements provided to each Plan's trustee or custodian bank.

As indicated above in the operative language, PIMCO requests that the exemption cover Purchase Transactions involving the Private Account Portfolios as well as other ICA–registered mutual funds that are advised by PIMCO, in which Plans invests. (As noted above, these PIMCO Mutual Funds may also include equity mutual funds.) Similarly, PIMCO requests that the exemption cover Purchase Transactions involving PIMCO Affiliate Mutual Fund shares by client Plans whose assets are managed by investment managers which are PIMCO Affiliates, such as Applegate Capital Management, PIMCO Equity Advisors, Cadence Capital Management, NFJ Investment Group, Value Advisors LLC, Allianz of America, Inc., Pacific Specialty Markets LLC, PIMCO/Allianz International Advisors LLC, OpCap Advisors or Oppenheimer Capital.[9]

If granted, the proposed exemption will be effective as of the date the notice of proposed exemption is published in the **Federal Register** such that no Plan may enter into Purchase Transaction with the PIMCO Mutual Funds prior to this time.

[9] As noted in the operative language of this proposed exemption, unless otherwise stated, references to ''PIMCO'' or to a ''PIMCO Mutual Fund'' refer also to a ''PIMCO Affiliate'' or to a ''PIMCO Affiliate Mutual Fund.

PIMCO's Investment Strategy

7. As noted above, PIMCO serves as investment manager to certain Plans. PIMCO will consult with a Second Fiduciary of the Plan to develop an investment strategy, which is then approved and adopted by the Second Fiduciary to serve as the investment guidelines for the investment of a Plan Account.

According to PIMCO, the term ''Strategy'' refers to the set of investment guidelines that have been established in advance to govern an Account. The Strategy is created by PIMCO, in collaboration with the Second Fiduciary of a client Plan and may be unilaterally amended, from time to time.

The development of the Strategy will include the selection of broad asset classes and the designation of a percentage of Plan assets to be allocated among such broad asset classes by use of separate Plan Accounts. For example, a Plan may desire to allocate 10 percent of its total assets for investment in global funds under PIMCO's management. Therefore, the Plan will transfer 10 percent of its assets to a Global Bond Account with PIMCO that is designed only to invest in such assets, and at the same time indicate how much of that Account may be invested in PIMCO Mutual Funds with the same investment focus. Later or at the same time, the Plan may establish other Accounts with PIMCO with a different investment focus, i.e., Stable Value, High Yield, Total Return, etc. Thus, any Plan may have more than one Account governed by the Strategy. Such investments will be carried out in accordance with PTE 77–4.

The Strategy can only be modified with the approval of the Second Fiduciary. While a Plan may retain PIMCO to manage various Accounts separately (even though they all may be governed by the Strategy), the fee for all such management services is included within PIMCO's Plan-level investment management fee.

Implementation of the Strategy

8. The Strategy will be implemented by PIMCO in various situations. In the case of a new client Plan, PIMCO may be asked to take over an existing portfolio of securities, and that portfolio will have already been created by some other investment manager fiduciary using an asset allocation strategy developed by the Plan's in house fiduciaries or outside consultants. Another situation will occur when an existing client Plan allocates additional assets to PIMCO as investment manager for an Account. Further, a Second Fiduciary of an existing client Plan may transfer additional assets to a new sub-Account established specifically for the purpose of investing in a particular Strategy (i.e., adding new asset classes). If a Plan retains PIMCO to manage only its International Account, the Strategy will provide for allocation solely among international mutual funds.

The Second Fiduciary may decide later to expand the scope of PIMCO's management authority to include total return fixed income mutual funds, in which case, PIMCO will establish a sub-Account for the purpose of investing in the total return fixed income Strategy. At a later date, the Second Fiduciary may decide to retain PIMCO to manage mortgage-backed securities.

In each of the foregoing situations, PIMCO will not become a fiduciary until after the Second Fiduciary has specified which portion of the Plan's assets (including which specific assets and which specific PIMCO Mutual Funds may be authorized for investment) will be allocated to a sub-Account under PIMCO's management. Having obtained the initial authorization of the Second Fiduciary, however, PIMCO will invest the assets of the client Plan, from time to time, among the PIMCO Mutual Funds which the Second Fiduciary has authorized.

Also, in each of the above situations, the client Plan's existing portfolio of securities frequently may include securities that are suitable for investment by the PIMCO Mutual Funds. PIMCO believes that it may be appropriate, in such cases, to transfer these securities in kind, directly to the relevant PIMCO Mutual Funds in order to avoid transaction costs and potential market disruption that may occur from a sale of those securities by the Plan and the subsequent repurchase of those securities by the PIMCO Mutual Funds. Plan securities which are compatible with the investment guidelines for the PIMCO Mutual Funds, and which can be transferred in compliance with procedures adopted by such Funds, will be transferred in kind to the PIMCO Mutual Funds in exchange for Fund shares, pursuant to prior client authorization of the Plans investment in such Funds. Any securities which are not transferred in kind will continue to be held and actively-managed by PIMCO, as directed by the client Plan's Second Fiduciary, outside of the PIMCO Mutual Funds in a separate account maintained such Plan.

9. PIMCO maintains that the in kind transfers of Account assets in exchange for shares of the PIMCO Mutual Funds will be ministerial transactions performed in accordance with pre-

established objective procedures which are approved by the Board of Trustees of the PIMS Trust. Such procedures require that assets transferred to a PIMCO Mutual Fund (a) be consistent with the investment objectives, policies and restrictions of the corresponding portfolios of the PIMCO Mutual Fund, as determined by PIMCO; (b) satisfy the applicable requirements of the ICA and the Code; and (c) have a readily ascertainable market value, as determined pursuant to SEC Rule 17a–7. Further, a Second Fiduciary for each Plan will be required to give PIMCO prior written authorization and approve the transfer of the Plan's assets to the PIMCO Mutual Funds (which Funds have been approved for investment by the Plan's Account), and the transfer of such assets on an in kind basis.

Although PIMCO intends that multiple Purchase Transactions will occur per Plan, after each transaction is completed, PIMCO will continue to manage the Account in accordance with the exemptive relief provided under PTE 77–4. In order to implement the Strategy for each Account (and various sub-Accounts), PIMCO will be guided by its investment process in its management of the Accounts.

Advance Disclosure/Approval

10. Under the Investment Management Agreement, a Second Fiduciary will receive all of the disclosures required by PTE 77–4. In this regard, such information includes, but is not limited to, (a) a current prospectus or offering memorandum for each PIMCO Mutual Fund which has been approved by the Second Fiduciary for that Plan's Account; (b) a statement describing the fees to be charged to, or paid by, the Plan and the PIMCO Mutual Fund to PIMCO, including the nature and extent of any differential between the rates of the fees paid by the such Fund and the rates of the fees otherwise payable by the Plan to PIMCO; (c) a statement of the reasons why PIMCO considers Purchase Transactions to be appropriate for the Plan; (d) a statement on whether there are any limitations on PIMCO with respect to which Plan assets may be invested in the PIMCO Mutual Funds; and (e) in the case of a Plan having total assets that are less than $200 million, the identity of all securities that are deemed suitable by PIMCO for transfer to the PIMCO Mutual Funds. In addition, PIMCO will provide copies of the proposed and final exemptions to the Second Fiduciary, upon such fiduciary's request.

Based on these disclosures, the Second Fiduciary of a Plan having total assets that are at least $200 million, by executing the Investment Management Agreement, will give PIMCO a standing written approval, which will be unilaterally revocable by such Second Fiduciary at any time. Such standing written approval will apply to all future Purchase Transactions that involve the transfer of a Plan's assets to the corresponding PIMCO Mutual Funds in exchange for shares, as appropriate, and PIMCO's receipt of fees for providing services to the PIMCO Mutual Funds. Further, the Second Fiduciary will approve (a) the Strategy for the Account and the management of client Plan assets in separate Accounts in the implementation of such Strategy; (b) the investment of a certain portion or portions of the Accounts in specified PIMCO Mutual funds, as part of the ongoing implementation of the Strategy;[10] (c) the acquisition of shares of PIMCO Mutual Funds in cash or in kind, from time to time; and (d) the receipt of confirmation statements with respect to the Purchase Transactions in the form of written reports to the Second Fiduciary.

In the case of a Plan having total assets that are less than $200 million, the Second Fiduciary will also give PIMCO standing written approval, which will be unilaterally revocable by the Second Fiduciary at any time, and will similarly apply to all future Purchase Transactions. However, such standing approval will cover (a) the Strategy and the management, by PIMCO, of client Plan assets in separate Accounts in the implementation of such Strategy; (b) the investment of a certain portion (or portions) of the Accounts in specified PIMCO Mutual Funds, as part of PIMCO's ongoing implementation of such Strategy; and (c) the acquisition of shares of PIMCO Mutual Funds in cash or in kind, from time to time. In addition, the Second Fiduciary will be required to provide PIMCO with written approval, prior to each Purchase Transaction, with respect to such transaction, consistent with the responsibilities, obligations and duties imposed on fiduciaries by part 4 of Title I of the Act.

Moreover, the Second Fiduciary will be required to authorize the receipt of confirmation statements from PIMCO, with respect to Purchase Transactions, in the form of written reports to such Second Fiduciary.

Under either Plan size scenario, if the Second Fiduciary does not approve the use of the PIMCO Mutual Funds as Plan investments, it will not allow PIMCO the investment discretion to invest in the PIMCO Mutual Funds.

Valuation Procedures

11. The assets transferred by an Account to the Funds in connection with a Purchase Transaction will consist of securities for which there is a recognized market. The value of the securities to be transferred in kind from an Account in such Purchase Transactions will be determined based on market value as of the close of business on the day of the Purchase (the Account Valuation Date). The current market price for specific types of Account securities transferred to the PIMCO Mutual Funds in exchange for shares in a Purchase Transaction on the Account Valuation Date will be determined in a single valuation using the valuation procedures described in Rule 17a–7 under the ICA as follows:

(a) If the security is a ''reported security,'' as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (1934 Act), the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System) for the Account Valuation Date; or if there are no reported transactions in the Consolidated System that day, the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1–1 under the 1934 Act), as of the close of business on the Account Valuation Date; or

(b) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange on the Account Valuation Date; or if there is no reported transaction on such exchange that day, the average of the highest current independent bid and lowest current independent offer on such exchange as of the close of business on the Account Valuation Date; or

(c) If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ as of the close of business on the Account Valuation Date; or

(d) For all other securities, the average of the highest current independent bid and lowest current independent offer as of the close of business on the Account Valuation Date, determined on the basis of reasonable inquiry. For securities in this category, PIMCO intends to obtain quotations from at least two sources that are broker-dealers or pricing services independent of and unrelated to PIMCO, using the average of the quotations to value the securities, in conformance with interpretations by the SEC and practice under Rule 17a–7.[11]

[10] It is represented that the parameters of such blanket approval will be documented by letter agreement between PIMCO and the Plan.

[11] Securities of non-U.S. issuers may be traded on U.S. exchanges or the NASDAQ, directly or in the form of ADRs, or may be acquired on foreign

In addition, if the asset is a short-term investment having a maturity of 60 days or less, the asset will be valued at its amortized cost.[12] If the asset is an exchange traded option or an option on a future, the asset will be valued at the settlement price determined by the exchange.[13] Securities and assets originally valued in currencies other than the U.S. dollar will be converted to U.S. dollars using exchange rates obtained from independent pricing services.

The Account securities received by a transferee PIMCO Mutual Fund in a Purchase Transaction will be valued by such portfolio for purposes of the transfer in the same manner and as of the same day as such securities will be valued by the corresponding transferor Account. The value per share of the PIMCO Mutual Funds issued to the Accounts will be based on the net asset value per share of such PIMCO Mutual Fund.[14]

Rule 17a–7 (or the Rule) of the ICA requires a mutual fund registered under the ICA to adopt procedures reasonably designed to ensure that all transaction with such mutual fund have satisfied the conditions of the Rule. The board of directors of such registered mutual fund must, on a quarterly basis, review all transactions conducted under the Rule and make a determination that all such purchases or sales made during the quarter have complied with the procedures adopted by such fund.

As required by the Rule, reports will be prepared and presented to the board of directors of any PIMCO Mutual Fund that has engaged in transactions covered by such Rule. In addition, PIMCO will provide the reports (with respect to Purchase Transactions affecting the client Plan's Account) to any Second Fiduciary of a client Plan which has engaged in a Purchase Transaction with a PIMCO Mutual Fund during the period in question. Such reports will be disseminated by PIMCO to Second Fiduciaries of client Plans by regular mail, express mail or personal delivery, or if applicable, by facsimile or electronic mail, no later than 30 business days after the Purchase Transaction.

The reports will serve both a confirmation and reporting function. Such reports will contain the following information: (a) A list (or lists, if there are multiple Purchase Transactions) identifying each of the securities that was valued for purposes of the Purchase Transaction in accordance with Rule 17a–7(b)(4) of the ICA; (b) the current market price, as of the date of the Purchase Transaction, of each of the securities involved in the Purchase Transaction; (c) the identity of each pricing service or market maker consulted in determining the value of such securities; (d) the aggregate dollar value of the securities held in the Plan Account immediately before the Purchase Transaction; and (e) the number of shares of the PIMCO Mutual Funds that are held by the Account following the Purchase Transaction (and the related per share net asset value and the aggregate dollar value of the shares received) immediately following the Purchase Transaction.

PIMCO's General Compliance with PTE 77–4

12. As noted above, it is anticipated that the Purchase Transactions will occur not only when a new client Plan retains PIMCO as a discretionary fiduciary under the Investment Management Agreement in connection with an existing portfolio of assets, but where PIMCO, while implementing a Strategy for an ongoing client Plan, determines that it is appropriate to invest Plan assets in the PIMCO Mutual Funds under the terms of PTE 77–4. Any individual Plan (or Plan sponsor) that retains PIMCO as an investment manager will pay directly to PIMCO a Plan-level investment management fee in exchange for all investment management services provided to it by PIMCO. PIMCO's fee is usually based on a percentage of the market value of assets under management. For example, if a Plan Account has less than $600 million in aggregate assets, PIMCO's investment management fee will be computed as follows: 0.50 percent on the first $25 million, 0.375 percent on the next $25 million and 0.25 percent thereafter. If the Account has total assets that are in excess of $600 million, PIMCO's investment management fees will reflect 0.25 percent on the first $600 million, 0.20 percent on the next $700 million and 0.15 percent thereafter.

In addition, certain of PIMCO's fee schedules may include incentive-based fee structures, if agreed to by the client Plan's Second Fiduciary.[15] Under a typical incentive fee arrangement, PIMCO will earn its annual base fee of 20 basis points. Thereafter, PIMCO will earn an additional 20 percent of the excess of an Account's performance over a designated independent index, such as the Lehman Aggregate Bond Index.

Further, client Plans may request customized products and services, and fees for such services may be separately negotiated. As mentioned above, the size of the fee will vary in inverse proportion to the size of the Plan's Account with PIMCO. Fees are normally paid on a quarterly basis, with some accounts being billed during the quarter for services which are provided, using the asset value at the beginning of the quarter. However, the periods over which fees are calculated and their method of payment will be negotiated in advance and will depend upon the requirements of the individual client.

With respect to any Plan with assets invested in the PIMCO Mutual Funds, PIMCO follows PTE 77–4, under which all investment advisory fees payable to PIMCO by the PIMCO Mutual Funds (currently, 0.02 percent for the Private Account Portfolios) that are attributable to that Plan's investment in the PIMCO Mutual Funds are credited against such Plan's Plan-level investment management fees. The net result of the

exchanges or foreign over-the-counter markets. In the latter case, valuation will be in accordance with Representation 11 above.

[12] In PTE 96–54 (61 FR 37933, July 22, 1996), involving the Wells Fargo Bank, N.A. (Wells Fargo), the ''amortized cost'' method referred to an approach to valuing debt securities that were recognized in different contexts by various regulatory agencies and accounting standard boards. Wells Fargo noted that the amortized cost method is a permitted, rather than required, valuation approach and that the term also refers to the value of a security derived from the methodology. For example, Wells Fargo explained that the SEC's ''Codification of Financial Policies,'' describes in detail the use of the amortized cost methodology and recognizes that a mutual fund's board of directors may determine in good faith that, except in unusual circumstances, amortized cost approximates the fair market value of debt securities with remaining maturities of 60 days or less (based on the cost for securities acquired within 60 days of maturity or fair market value on the 61st day prior to maturity for securities already owned). PIMCO represents that it concurs with Wells Fargo's understanding of the amortized cost method.

[13] PIMCO represents that trading in options and futures on options are among the strategies typically employed by managers of fixed income mutual funds, such as the Private Account Portfolios. Any options not traded on an exchange will be valued in the same manner as other securities which are not traded on an exchange. In addition, PIMCO notes that settlement prices for the options are continuously available during the trading day for exchange-traded options.

[14] For purposes of pricing purchases, net asset value is determined by dividing the value of all securities and assets of each portfolio, less the liabilities charged to each portfolio, by the number of each portfolio's outstanding shares.

[15] PIMCO represents that if the Plan-level investment management fees includes an incentive fee which is calculated and payable to it or to the PIMCO Affiliates, such fee will be in accordance with advisory opinions issued by the Department to Batterymarch Financial Management (see ERISA Advisory Opinion 86–20A, August 29, 1986); BDN Advisers, Inc. (see ERISA Advisory Opinion 86–21A, August 29, 1986); and Alliance Capital Management Corporation (see ERISA Advisory Opinion 89–28A, September 25, 1989). However, in this proposed exemption, the Department expresses on opinion on whether the PIMCO's contemplated fee arrangements are in compliance with the aforementioned advisory opinions.

credit to the Plan is that, with respect to any Plan investments, PIMCO receives only a Plan-level investment management fee. Therefore, the investment of Plan assets in the PIMCO Mutual Funds will not result in additional investment management fees to PIMCO or to the PIMCO Affiliates.[16]

PIMCO may also receive other Fund-level fees for administrative, transfer, accounting, and other secondary services (the Secondary Services)[17] provided to a PIMCO Mutual Fund or to the distributor of shares of the PIMCO Mutual Funds and its affiliates. However, no such fees will be paid to PIMCO pursuant to a 12b-1 Plan. PIMCO represents that the trustees of the PIMCO Mutual Funds and the shareholders of such Funds approve the compensation that PIMCO receives from the PIMCO Mutual Funds. In addition, the trustees of the PIMCO Mutual Funds approve any changes in the compensation paid to PIMCO for services rendered to the PIMCO Mutual Funds.

Currently, PIMCO credits all or a portion of the Fund-level fees it receives from the Private Account Portfolios for Secondary Services that are administrative in nature to the participating Plans in the same manner as PIMCO credits back its Fund-level advisory fees. For certain of these PIMCO Mutual Funds, PIMCO is retaining a portion of such administrative fees in accordance with the Department's advisory opinions involving PNC Financial Corp. (ERISA Advisory Opinion 93–12A, April 27, 1993) and the Frank Russell Company (ERISA Advisory Opinion 93–13A, April 27, 1993).[18]

Finally, PIMCO represents that the combined total of all Plan-level and Fund-level fees received by PIMCO for the provision of services to such Plans and to the PIMCO Mutual Funds, respectively, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

Conditions for Exemption

13. If granted, this proposed exemption will be subject to the satisfaction of certain conditions that will further protect the interests of the Plans. For example, the proposed Purchase Transactions are subject to the prior written authorization of an independent Second Fiduciary, acting on behalf of each of the Plans, who has been provided with full and written disclosure by PIMCO. The Second Fiduciary will generally be the administrator, sponsor, or a committee appointed by the sponsor to act as a named fiduciary for a Plan.

With respect to disclosure, the Second Fiduciary of such Plan will receive full and written disclosure of information concerning the PIMCO Mutual Funds as set forth in the Investment Management Agreement, including (a) a current prospectus or offering memorandum (containing the same information as the prospectus for securities registered under the 1933 Act) for each PIMCO Fund to which the Plan's assets may be transferred; (b) a statement describing the fees to be charged to, or paid by, the Plan and the PIMCO Mutual Funds to PIMCO, including the nature and extent of any differential between the rates of the fees paid by the Fund and the rates of the fees otherwise payable by the Plan to PIMCO; (c) a statement of the reasons why PIMCO considers Purchase Transactions to be appropriate for the Plan; (d) a statement on whether there are any limitations on PIMCO with respect to which Plan assets may be invested in the Funds, and if so, the nature of such limitations; and (e) in the case of a Plan having total assets that are less than $200 million, the identity of all securities that are deemed suitable by PIMCO for transfer to the PIMCO Mutual Funds.

On the basis of the information disclosed, the Second Fiduciary, in the Investment Management Agreement for a client Plan, or in separate Investment Guidelines provided to PIMCO, will authorize in writing the investment of assets of the Plans in shares of the PIMCO Mutual Funds in connection with the Purchase Transactions set forth herein and the compensation received by PIMCO in connection with its services to the PIMCO Mutual Funds. The Second Fiduciary's written authorization will extend to those portfolios of the PIMCO Mutual Funds that are specifically referenced in the Plan's Investment Management Agreement with PIMCO or in separate Investment Guidelines given to PIMCO by the client Plan. (As noted above in Representation 10, such authorization by the Second Fiduciary may include either blanket approval or transactional approval, depending upon the size of the Plan.) Having obtained the authorization of the Second Fiduciary, PIMCO will invest the assets of a Plan, from time to time, among such portfolios of the PIMCO Mutual Funds and in the manner provided in the Investment Management Agreement and the Strategy, subject to satisfaction of the other terms and conditions of this proposed exemption.

In addition to the disclosures provided to the Plan prior to investment in any of the PIMCO Mutual Funds, PIMCO will routinely provide at least annually to the Second Fiduciary of the Plan, updated prospectuses of the PIMCO Mutual Funds or offering memoranda in accordance with the requirements of the ICA and the SEC rules promulgated thereunder. Further, the Second Fiduciary of a Plan will be supplied, upon request, with a report or statement (which may take the form of the most recent financial report of the PIMCO Mutual Funds, the current statement of additional information (or offering memoranda supplement), or some other written statement) which contains a description of all fees paid by the PIMCO Mutual Fund to PIMCO.

In addition to the disclosures provided to the Plan prior to investment in any of the PIMCO Mutual Funds, it is represented that (a) Plans and other investors will purchase or redeem shares in the Funds in accordance with standard procedures adopted by each Fund's board of directors; (b) Plans will pay no sales commissions, redemption fees, or Rule 12b–1 Fees in connection with purchase or redemption of shares in the Funds by the Plans; (c) PIMCO will not purchase from or sell to any of the Plans shares of any of the Funds; (d) PIMCO will maintain for a period of six years, in a manner that is capable for audit and examination, records necessary to enable certain designated persons, such as Plan fiduciaries, Plan participants, or duly authorized employees or representatives of the Department, the Service or the SEC, to determine whether the conditions of the exemption have been met; (e) all dealings in connection with a Purchase Transaction will be on a basis that is no less favorable to a Plan than dealings between the PIMCO Mutual Fund and other shareholders; and (f) the price paid or received by the Plans for shares of the Funds will be the net asset value per share at the time of such purchase or redemption and will be the same

[16] The total annual operating expenses of the portfolios for the PIMCO Mutual Funds are set forth in the offering materials and disclosures given to Plan clients in connection with an investment in such Funds. As noted above, the Private Account Portfolios of the PIMCO Mutual Funds impose an annualized administrative fee, which currently ranges (after appropriate credits) from 0.028 percent for the Real Return Bond Portfolio to 0.04 percent for the International Portfolio.

[17] The term ''Secondary Service'' means a service, other than an investment management, investment advisory or similar service which is provided by PIMCO to the Funds, including, but not limited to, custodial, accounting, administrative, or legal services.

[18] PIMCO represents that the PIMCO Mutual Fund portfolios for which it presently credits back fees for Secondary Services are the Short-Term Fund, the Short-Term II Fund, the U.S. Government Sector II Fund, the Mortgage Fund, the Mortgage II Fund, and the Investment Grade Corporate Fund.

price as any other investor would have paid or received at that time.

The value of the Funds' shares and the value of each Funds' portfolios are determined on a daily basis. Assets are valued at fair market value, as required by Rule 17a–7.[19] Net asset value per share, for purposes of pricing purchases and redemptions, is determined by dividing the value of all securities and other assets of each portfolio, less the liabilities charged to each portfolio, by the number of each portfolio's outstanding shares.

It is represented that the receipt of fees, as described above, is generated by a Plan's investment in the PIMCO Mutual Funds. These investments are the result of purchases of shares with cash and the exchanges of assets of the Plans, including those in Accounts, for shares of the PIMCO Mutual Funds. With respect to such Purchase Transactions, it is represented that Plans and other investors will purchase or redeem shares of the PIMCO Mutual Funds in accordance with standard procedures described in the prospectus (or offering memorandum) for each portfolio of the PIMCO Mutual Funds.

14. In summary, it is represented that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Depending upon the size of an investing Plan, a Second Fiduciary has authorized or will authorize, in writing, a Purchase Transaction prior to its consummation either by blanket approval or by transactional approval after such Second Fiduciary has received full written disclosure of information concerning the Plan's investment in a PIMCO Mutual Fund.

(b) Each Plan has received or will receive shares of a PIMCO Mutual Fund, in connection with a Purchase Transaction, that are equal in value to the assets of the Plan exchanged for such shares, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures set forth in Rule 17a–7 under the ICA, as amended from time to time or any successor rule, regulation or similar pronouncement.

(c) Not later than 30 business days after a Purchase Transaction, a Second Fiduciary of a Plan that has engaged in a Purchase Transaction has received or will receive a report containing the following information: (1) The identity of each of the securities that was valued for purposes of a Purchase Transaction in accordance with Rule 17a–7(b)(4) of the ICA; (2) the current market price, as of the date of the Purchase Transaction, of each of the securities involved in the Purchase Transaction; (3) the identity of each pricing service or market maker consulted in determining the value of such securities; (4) the aggregate dollar value of the securities held in the Plan Account immediately before the Purchase Transaction; and (5) the number of shares of the PIMCO Mutual Funds that are held by the Account following the Purchase Transaction (and the related per share net asset value and the aggregate dollar value of the shares received) immediately following the Purchase Transaction.

(d) The price that has been paid or received or will be paid or received by the Plans for shares in the PIMCO Mutual Funds is the net asset value per share at the time of the transaction and will be the same price for the shares which will be paid or received by any other investor for shares of the same class at that time.

(e) As to each individual Plan, the combined total of all fees received by PIMCO for the provision of services to a Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, has not been in excess, nor will be in excess of ''reasonable compensation,'' within the meaning of section 408(b)(2) of the Act.

(f) No sales commissions, redemption fees, or Rule 12b–1 Fees have been paid or will be paid by a Plan in connection with a Purchase Transaction.

(g) With respect to each Purchase Transaction, the Second Fiduciary has received or will receive a full and detailed written disclosure of information concerning a PIMCO Mutual Fund, including a current prospectus and a statement describing the fee structure, and such Second Fiduciary has authorized or will authorize, in writing, the investment of the Plan's assets in the Fund and the fees paid by the Fund to PIMCO.

(h) In accordance with the requirements of PTE 77–4 and advisory opinions issued by the Department thereunder, (1) the Plans have received or will receive a full credit against Plan-level fees of any investment management, investment advisory or similar fees paid to PIMCO with respect to any of the assets of such Plans that are or will be invested in shares of any of the Funds; and (2) PIMCO may retain fees for certain Secondary Services it performs on behalf of the Funds.

(i) PIMCO will provide ongoing disclosures (e.g., updated prospectuses or offering memoranda) to Second Fiduciaries of Plans so that such fiduciaries may, among other things, verify the fees charged by PIMCO to the PIMCO Mutual Funds.

(j) All dealings between the Plans and any of the PIMCO Mutual Funds have been or will be on a basis that is no less favorable to such Plans than dealings between the PIMCO Mutual Funds and other shareholders holding shares of the same class as the Plans.

Notice to Interested Persons

PIMCO represents that because client Plans that may be potentially interested in engaging in the aforementioned Purchase Transactions cannot be identified at this time, the only practical means of notifying the Second Fiduciaries of such Plans is by the publication of this notice of proposed exemption in the **Federal Register**. Therefore, comments and requests for a hearing must be received by the Department no later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

[19] However, if the use of a money market fund is authorized by a client Plan, the assets would instead be valued based on the amortized cost method authorized by SEC Rule 2a–7 in order to maintain the net asset value at $1.00 per share.

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of January, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.

[FR Doc. 02–2640 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–09; Exemption Application No. D–10984]

Grant of Individual Exemptions; Prudential Insurance Company of America (Prudential Insurance)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption 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).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is 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 exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

The Prudential Insurance Company of America (Prudential Insurance), Located in Newark, NJ

[Prohibited Transaction Exemption 2002–09; Exemption Application No. D–10984]

Exemption

Section I. Covered Transactions

The restrictions of section 406(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 (D) of the Code,[1] shall not apply, effective September 27, 2001, to (1) the receipt of shares of common stock (Common Stock) issued by Prudential Financial, Inc. (Prudential Financial or the Holding Company) or (2) the receipt of cash (Cash) or policy credits (Policy Credits) by any eligible policyholder (the Eligible Policyholder) of Prudential Insurance, which is an employee benefit plan (the Plan), including Plans sponsored by Prudential Insurance and/or its affiliates for the benefit of their own employees (collectively, the Prudential Insurance Plans),[2] in exchange for such Eligible Policyholder's mutual membership interest in Prudential Insurance, pursuant to a plan of conversion (the Plan of Reorganization) adopted by Prudential Insurance and implemented in accordance with section 17:17C–2 of the New Jersey Insurance Law.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply, effective September 27, 2001, to the receipt and holding, by the Prudential Welfare Plan, of Common Stock, whose fair market value exceeds 10 percent of the value of the total assets held by such Plan.

This exemption is subject to the general conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Reorganization is implemented in accordance with procedural and substantive safeguards that are imposed under New Jersey Insurance Law and is subject to review and supervision by the New Jersey Commissioner of Banking and Insurance (the Commissioner).

(b) The Commissioner reviews the terms of any options that are provided to Eligible Policyholders of Prudential Insurance as part of such Commissioner's review of the Plan of Reorganization, and the Commissioner only approves the Plan of Reorganization following a determination that the Plan of Reorganization is fair and equitable to all Eligible Policyholders.

(c) Except as provided below, each Eligible Policyholder has an opportunity to comment on and vote to approve the Plan of Reorganization after full written disclosure of the terms of the Plan of Reorganization is given to such policyholder by Prudential Insurance. As provided under the Plan of Reorganization and approved by the Commissioner,

(1) Eligible Policyholders of policies issued by designated subsidiaries (the Designated Subsidiaries) of Prudential Insurance will not have the opportunity to comment and vote on the Plan of Reorganization, and

(2) Prudential Insurance will be precluded from voting on the Plan of Reorganization where a group policy is issued to Prudential Insurance as trustee for a multiple employer, or similar, trust (the MET).

[1] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[2] Unless otherwise noted, references to the term ''Plan'' are meant to include ''outside'' Plan policyholders of Prudential Insurance as well as the Prudential Welfare Benefits Plan (the Prudential Welfare Plan).

(d) Any election by an Eligible Policyholder which is a Plan to receive Common Stock pursuant to the terms of the Plan of Reorganization, or any decision by such Eligible Policyholder to participate in the commission-free purchase and sale program (the Program), is made by one or more fiduciaries of such Plan that are independent of Prudential Insurance and neither Prudential Insurance nor any of its affiliates exercises any discretion or provides ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c) with respect to such election or decision-making.

(e) In the case of the Prudential Insurance Plans, the independent fiduciary—

(1) Conducts a due diligence review of the subject transactions; and

(2) Votes whether to approve or disapprove the Plan of Reorganization, on behalf of such Plan.

(f) In the case of the Prudential Welfare Plan, the independent fiduciary—

(1) Votes shares of Common Stock that are held by such Plan, which exceed the limitation of section 407(a) of the Act;

(2) Disposes of Common Stock in excess of the limitation set forth under section 407(a)(2) of the Act as soon as reasonably practicable, but in no event later than six months after the effective date of the Plan of Reorganization;

(3) Provides the Department with a complete and detailed final report as it relates to such Plan prior to the effective date of the Plan of Reorganization; and

(4) Takes all actions that are necessary and appropriate to safeguard the interests of such Plan.

(g) After each Eligible Policyholder entitled to receive Common Stock is allocated at least 8 shares (or the equivalent value of 10 shares of Common Stock for Eligible Policyholders receiving Cash or Policy Credits), additional consideration is allocated to Eligible Policyholders who own eligible policies based on a methodology that takes into account each eligible policy's contribution to Prudential Insurance's surplus, which methodology has been reviewed by the Commissioner.

(h) All Eligible Policyholders that are Plans participate in the transactions on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(i) No Eligible Policyholder pays any brokerage commissions or fees in connection with the receipt of Common Stock or in connection with the implementation of the Program.

(j) All of Prudential Insurance's policyholder obligations remain in force and are not affected by the Plan of Reorganization.

(k) The terms of the transactions are at least as favorable to the Plans as an arm's length transaction with an unrelated party.

Section III. Definitions

For purposes of this exemption:

(a) The term ''Prudential Insurance'' means The Prudential Insurance Company of America and any affiliate of Prudential Insurance as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Prudential Insurance includes —

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Prudential Insurance. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.); and

(2) Any officer, director or partner in such person.

(c) The term ''Eligible Policyholder'' means a policyholder who is eligible to receive compensation under Prudential Insurance's Plan of Reorganization. Eligible Policyholders are policyholders of Prudential Insurance on the day the Plan of Reorganization is adopted by the Board of Directors of Prudential Insurance.

(d) The term ''Designated Subsidiary'' means stock life insurance company subsidiaries of Prudential Insurance whose policyholders, pursuant to section 17:17C–1 of New Jersey Insurance Law, have been deemed eligible under the Plan of Reorganization to receive compensation, but which are not qualified to vote on the Plan of Reorganization.

(e) The term ''Holding Company'' refers to a New Jersey stock business corporation which will be named ''Prudential Financial, Inc.'' Under the Plan of Reorganization, Prudential Insurance will become an indirect, wholly owned stock life insurance company subsidiary of the Holding Company.

(f) The term ''Policy Credit'' means a dividend accumulation, an additional dividend, an increase in the policy's account value, an extension of the policy's expiration date, or an additional payment under an annuity contract.

(g) The term ''Plan'' refers to employee benefit plans covered by ERISA or section 4975(e) of the Code.

(h) The term ''demutualization'' refers to the process of an insurance company's reorganizing or converting from a mutual life insurance company to a stock life insurance company. As used herein, ''reorganization'' and ''conversion'' also refer to a demutualization.

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 49408.

Effective Date: This exemption is effective as of September 27, 2001.

Written Comments

The Department received two written comments with respect to the proposed exemption. One comment was submitted by a Plan policyholder of Prudential Insurance who expressed concerns about the demutualization. The other comment was submitted by Prudential Insurance and requested minor clarifications and updates to the proposed exemption.

Discussed below are the comments submitted by the policyholder and Prudential Insurance, as well as responses to such comments made by either Prudential Insurance or the Department.

Plan Policyholder's Comment

Although characterized as a comment, the Plan policyholder objects to the proposed exemption but offers no comments on the covered transactions, their terms, or the conditions of the proposal. Instead, the policyholder expresses general opposition to Prudential Insurance's Plan of Reorganization. In this regard, the Plan policyholder believes that Prudential Insurance's demutualization will impair the security of his insurance policy and is of the view that the Policyholder Information Booklet (the PIB), describing such Plan of Reorganization, is ''biased and inadequate.''

In response, Prudential Insurance indicates that the Plan policyholder's comment is unfounded and notes that the concerns expressed therein have been considered by the Commissioner and independent experts as part of their review of the PIB and the Plan of Reorganization. In addition, Prudential Insurance states that a very small number of policyholders, who submitted objections to the Commissioner, expressed concerns similar to those articulated by the Plan policyholder. Prudential Insurance notes further that the Commissioner, in determining that the Plan of Reorganization is fair and equitable to

Prudential Insurance policyholders and consistent with New Jersey Insurance Law, rejected such comments. Accordingly, Prudential Insurance finds nothing in the Plan policyholder's comment letter to prevent the Department from granting the requested exemption.

Prudential Insurance's Comment

1. *Voting by Prudential Insurance.* Section II(c)(2) of the proposal provides that ''Prudential Insurance will be precluded from voting on the Plan of Reorganization where a group policy is issued to Prudential as trustee for a multiple employer, or similar, trust (the MET) which is not a plan described in section 3(3) of the Act or section 4975(e)(1) of the Code.'' (Emphasis added.) Prudential Insurance states that it did not include the italicized language in the exemption application or in the draft operative language it provided because it could not know whether any particular MET or similar arrangement would qualify as a plan for ERISA purposes, or whether the employers participating in such arrangement would be deemed to have established their own ERISA-covered plans in connection with the arrangement. Therefore, Prudential Insurance recommends deleting the italicized language from Section II(c)(2) of the final exemption.

The Department concurs with this comment and has made the requested deletion in the operative language of the final exemption.

2. *Source of Prudential Insurance's Voting Authority.* In Representation 10 of the proposed exemption, Footnote 23 states that New Jersey Insurance Law precludes Prudential Insurance as a trustee of a MET from voting on the Plan of Reorganization. Prudential Insurance states that the terms of the Plan of Reorganization actually preclude Prudential Insurance from voting in this situation rather than New Jersey Insurance Law. Accordingly, the Department notes this change to Footnote 23 of the proposed exemption.

3. *Status of the Demutualization.* Prudential Insurance explains that its Plan of Reorganization was given final approval by the Commissioner on October 15, 2001. In addition, Prudential Insurance states that on December 13, 2001, it completed its initial public offering and that the stock of Prudential Financial is currently being traded on the New York Stock Exchange.

In response to this comment, the Department has noted these recent developments in Prudential Insurance's demutualization.

Accordingly, after giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption subject to the modifications and clarifications described above. For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10984) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

The Rollover Individual Retirement Account for Brenda A. Moran (the IRA), Located in Hobbs, New Mexico

[Prohibited Transaction Exemption No. 2002–10; Application No. D–11015]

Exemption

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 cash sale (the Sale) of common stock (the Stock) of Bravo Energy Inc. (Bravo) by the IRA [3] to Bravo, a disqualified person with respect to the IRA, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party;

(c) The IRA receives the greater of $14.24 per share of Stock or the fair market value of the Stock at the time of the Sale; and

(d) The IRA is not required to pay any commissions, costs or other expenses in connection with the Sale.

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 December 13, 2001 at 66 FR 64478.

[3] Because Brenda A. Moran (the Applicant) is the only participant in the IRA, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

FOR FURTHER INFORMATION CONTACT: Mr. Khalif Ford of the Department, telephone (202) 693–8560. (This is not a toll-free number.)

Individual Retirement Account of Howard E. Adkins (the IRA), Located in Boise, Idaho

[Prohibited Transaction Exemption 2002–11; Exemption Application No. D–11025]

Exemption

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 by the IRA of an interest (the Interest) in certain real property (the Property) to Moccasin, LLC, a disqualified person with respect to the IRA, [4] provided that the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the IRA pays no commissions nor other expenses relating to the sale; and (3) the sales price received by the IRA equals the Interest's fair market value, as of the date of the sale, as established by a qualified, independent appraiser.

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 December 13, 2001 at 66 FR 64478.

Written Comments

The applicant, Howard E. Adkins, M.D., has provided the Department with the following updated information regarding a change in the value of the IRA's Interest. On November 26, 2001, Dr. Adkins received from the IRA an additional two percent undivided interest in the West Tract of the Property as the minimum required distribution (MRD) for the year 2001. Dr. Adkins had previously received a nine percent undivided interest in the West Tract as the MRD for the year 2000, as described in Item 3 of the Summary of Facts and Representations (the Summary) contained in the Notice. An independent appraisal valued the Property as a whole at $685,700, and the West Tract at $385,320, as of September 18, 2001 (see Item 4 of the Summary). Subtracting the 11 percent minority interest in the West Tract ($385,320 × .11 = $42,385), which is owned individually by Dr. Adkins, the value of the IRA's Interest is thus reduced to

[4] Pursuant to 29 CFR 2510.3–2(d), the IRA is not an employee benefit plan within the jurisdiction of title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

$643,315. The appraisal will be updated at the time of the sale transaction.

Based upon the information contained in the entire record, the Department has determined to grant the proposed exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng 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 exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is 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 this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of January, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–2639 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for the Management and Administration of the Coming Up Taller Awards.

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to one (1) award of a Cooperative Agreement for the management and administration of the Coming Up Taller Awards. The Coming Up Taller Awards annually honor and bring public attention to approximately ten excellent programs that provide education and practical experience in the arts and humanities for at-risk children and youth. The organizations that receive Coming Up Taller Awards receive a grant award from the National Endowment for the Arts. The responsibilities of the successful recipient of the Cooperative Agreement will include assisting in various aspects of the award selection process, design and production of an award ceremony and related events, development and implementation of a media and public information strategy, and maintenance of a web site. Those interested in receiving the Solicitation package should reference Program Solicitation PS 02–01 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored. The Program Solicitation will also be posted on the Endowment's Web site at *http://www.arts.gov.*

DATES: Program Solicitation PS 02–01 is scheduled for release approximately February 19, 2002 with proposals due on March 21, 2002.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements.

[FR Doc. 02–2651 Filed 2–4–02; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board

Nominations for Membership

The National Science Board (NSB) is the policymaking body of the National Science Foundation (NSF). The Board consists of 24 members appointed by the President, with the advice and consent of the Senate, for six-year terms, in addition to the NSF Director *ex officio.* Section 4(c) of the National Science Foundation Act of 1950, as amended, states that: ''The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific and engineering leaders in all areas of the Nation.''

The Board and the NSF Director solicit and evaluate nominations for submission to the President. Nominations accompanied by biological information may be forwarded to the Chairman, National Science Board, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, no later than March 29, 2002. Any questions should be directed to Mrs. Susan E. Fannoney, Staff Assistant, National Science Board Office (703/292–8096).

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–2645 Filed 2–4–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it

displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension: Revision.*

2. *The title of the information collection:* Part 61—Licensing Requirements for Land Disposal of Radioactive Waste (3150–0135).

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Applications for licenses are submitted as needed. Other reports are submitted annually and as other events require.

5. *Who is required or asked to report:* Applicants for and holders of an NRC license for land disposal of low-level radioactive waste, and all generators, collectors, and processors of low-level waste intended for disposal at a low-level waste facility.

6. *The number of annual responses:* 12 (9 reports and 3 recordkeepers).

7. *The estimated number of annual respondents:* 3.

8. *The number of hours needed annually to complete the requirement or request:* 4,059 hours (42 hours for reporting plus 4,017 hours for recordkeeping) or approximately 1,353 hours per respondent.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* Part 61 establishes the procedures, criteria, and license terms and conditions for the land disposal of low-level radioactive waste. Reporting and recordkeeping requirements are mandatory or, in the case of application submittals, are required to obtain a benefit. The information collected in the applications, reports, and records is evaluated by the NRC to ensure that the licensee's or applicant's physical plant, equipment, organization, training, experience, procedures, and plans provide an adequate level of protection of public health and safety, common defense and security, and the environment.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by March 7, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0135), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 30th day of January 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–2733 Filed 2–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 73—Physical Protection of Plants and Materials.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion. Required reports are submitted and evaluated as events occur.

5. *Who will be required or asked to report:* Persons who possess, use, import, export, transport, or deliver to a carrier for transport, special nuclear material.

6. *An estimate of the number of responses:* 77,734.

7. *The estimated number of annual respondents:* 103.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* The industry total burden is 364,805 hours annually (45,835 hours for reporting and 318,970 hours for recordkeeping).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* NRC regulations in 10 CFR part 73 prescribe requirements for establishment and maintenance of a physical protection system with capabilities for protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used. The information in the reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of special nuclear material is in compliance with license and regulatory requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by March 7, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0002), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 30th day of January 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–2737 Filed 2–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[License Number 42–26928–01]

Environmental Assessment, Finding of No Significant Impact, and Notice of Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission is considering authorizing

Core Laboratories, Inc., an exemption to use radioactive markers containing quantities exceeding the limits listed in 10 CFR 30.71 as pipe collar markers in oil and gas wells.

Environmental Assessment

Identification of the Proposed Action

Core Laboratories, Inc. is licensed by the NRC to conduct well logging operations. They have requested, in letters dated July 14, 1997 and February 4, 1998, that the United States Nuclear Regulatory Commission (NRC) grant them an exemption from 10 CFR 39.47 to use radioactive markers containing quantities exceeding the limits listed in 10 CFR 30.71 as pipe collar markers in oil and gas wells. 10 CFR 39.47 specifies that licensees may only use radioactive markers if the individual markers contain quantities not exceeding the quantities listed in 10 CFR 30.71. Core Laboratories requested authorization to use iridium-192, scandium-46, antimony-124, cesium-137, and cobalt-60 markers with activities up to 50 microcuries, as pipe collar markers. 10 CFR 30.71 limits iridium-192, scandium-46, antimony-124, and cesium-137 to 10 microcuries and cobalt-60 to 1 microcurie.

The markers Core Laboratories requested authorization to use are either installed directly into the collars or are placed onto the collar threads and secured between the pipe casing joints and, therefore, are not easily removable. Once installed in a well, the casing and collars are cemented into place. The Supplementary Information section of the proposed rulemaking concerning radioactive markers notes that the reason limiting the activity to those specified in 10 CFR 30.71 was necessary, is ''because it is impracticable for the licensee that installs the radioactive marker to recover the marker when the well owner or operator removes the casings from the well at a later date.'' In its correspondence to NRC, Core Laboratories describes agreements it will have with the well owner/operator, and procedures it will follow to ensure the markers are recovered should the casing and collars be removed prior to a specified date.

Need for the Proposed Action

The exemption is needed so that Core Laboratories, Inc. can carry out its business of logging wells in the oil and gas industry. The higher activity markers allow for more accurate pipe collar location measurements when logging certain oil and gas wells.

Environmental Impacts of the Proposed Action

There will be no significant environmental impact from the proposed action due to the fact that no material is being released into the environment and all of the material is wholly contained within the pipe collars and will be recovered should the casing and collars be removed from the wells.

During operations, the radiation dose will not be significantly greater than occurs normally because of the low activities involved. Compensatory safety measures will be in place at all times when placing or removing the markers into the pipe casing collars and will ensure the markers will be recovered should the casing and collars be removed from the wells.

Alternatives to the Proposed Action

As required by section 102(2)(E) of NEPA (42 USC 4322(2)(E)), possible alternatives to the final action have been considered. The only alternative is to deny the exemption. This option would not produce a gain in protecting the human environment, and would force Core Laboratories, Inc. to only use the lower activity markers specified in the regulation. This may result in Core Laboratories, Inc. having to depend on less accurate pipe collar location measurements when logging oil and gas wells.

Alternative Use of Resources

No alternative use of resources was considered due to the reasons stated above.

Agencies and Persons Consulted

No other agencies or persons were contacted regarding this proposed action.

Identification of Sources Used

Letters from Core Laboratories, Inc. to U.S. Nuclear Regulatory Commission, Region IV, dated July 14, 1997 and February 4, 1998.

Finding of No Significant Impact

Based on the above environmental assessment, the Commission has concluded that environmental impacts that would be created by the proposed action would not have a significant effect on the quality of the human environment and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The licensee's letters dated July 14, 1997 and February 4, 1998, are available for inspection and copying for a fee in the Region IV Public Document Room, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011–8064. The documents may also be viewed in the Agency-wide Documents Access and Management System (ADAMS) located on the NRC web site at *www.nrc.gov.*

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this action may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852), and on the licensee (Core Laboratories, Inc., 9830 Rosprim, Houston, TX 77040); and must comply with the requirements for requesting a hearing set forth in the Commission's regulations, 10 CFR part 2, subpart L, ''Information Hearing Procedures for Adjudications in Materials Licensing Proceedings.''

These requirements, which the request must address in detail, are:

1. The interest of the requestor in the proceeding;
2. How that interest may be affected by the results of the proceeding (including the reasons why the requestor should be permitted a hearing);
3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for hearing is timely—that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (*i.e.*, health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 29th day of January, 2002.

For the Nuclear Regulatory Commission.

John W. N. Hickey,

Chief, Material Safety and Inspection Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–2734 Filed 2–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 50–388]

PPL Susquehanna, LLC, Allegheny Electric Cooperative, Inc., Susquehanna Steam Electric Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR), part 50, section 50.60(a), and Appendix G, for Facility Operating License Nos. NPF–14 and NPF–22 issued to PPL Susquehanna, LLC (PPL, the licensee), for operation of the Susquehanna Steam Electric Station (SSES), Units 1 and 2 (SSES–1 and 2), located in Luzerne County, Pennsylvania. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow PPL to use American Society of Mechanical Engineers (ASME) Code Case N–640 as the basis for establishing the fracture toughness values used in pressure-temperature (P–T) limit calculations. Section 50.60(a) of 10 CFR part 50 requires nuclear power reactors to meet the fracture toughness requirements set forth in 10 CFR part 50, Appendix G. Appendix G of 10 CFR part 50 requires that P–T limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR part 50, Appendix G, states, ''The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' Appendix G of 10 CFR part 50 specifies that the requirements for these limits are the ASME Boiler and Pressure Vessel Code (ASME Code), Section XI, Appendix G, limits. Code Case N–640 permits application of the lower bound static initiation fracture toughness value equation (KI_c equation) as the basis for establishing the P–T curves in lieu of using the lower bound crack arrest fracture toughness value equation (i.e., the KI_a equation, the method invoked by Appendix G to Section XI of the ASME Code) as the basis for the curves.

The proposed action is in accordance with the licensee's application for exemption dated July 17, 2001, as supplemented by letters dated July 26, and October 15, 2001.

The Need for the Proposed Action

ASME Code Case N–640 is needed to revise the method used to determine the P–T limits, since continued use of the present curves unnecessarily restricts the reactor coolant system (RCS) P–T operating window. The RCS P–T operating window is defined by the RPV P–T operating and test limit curves developed in accordance with the ASME Code, Section XI, Appendix G. Continued operation of SSES–1 and 2, with these P–T curves without the relief provided by ASME Code Case N–640 would unnecessarily require the licensee to maintain the RCS temperature in a limited, high-temperature (over 200 °F) operating band during the pressure test. This results in challenges to plant operators in maintaining the RCS within the narrow allowable temperature band and challenges to personnel safety due to the high ambient drywell temperatures. Implementation of the proposed P–T curves, as allowed by ASME Code Case N–640, does not significantly reduce the margin of safety and would eliminate the challenges to plant operators and personnel safety by allowing the pressure test to be conducted at a lower coolant temperature.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the exemption described above would provide an adequate margin of safety against brittle failure of the SSES–1 and 2 RPVs.

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 nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in 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 Susquehanna Steam Electric Station, dated June 1981.

Agencies and Persons Consulted

On December 17, 2001, the staff consulted with the Pennsylvania State official, Mr. Michael Murphy of the Pennsylvania Department of Environmental Protection, 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 July 17, 2001, as supplemented by letters dated July 26, and October 15, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems Public Library (ADAMS) 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 30th day of January 2002.

For the Nuclear Regulatory Commission.

Joel T. Munday,

Acting Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–2738 Filed 2–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of February 4, 11, 18, 25, March 4, 11, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 4, 2002

Wednesday, February 6, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)

9:30 a.m.
Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

Week of February 11, 2002—Tentative

There are no meetings scheduled for the Week of February 11, 2002.

Week of February 18, 2002—Tentative

Tuesday, February 19, 2002

1:55 p.m.
Affirmation Session (Public Meeting) (If needed)

2 p.m.
Meeting with the Advisory Committee on the Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Angela Williamson, 301–415–5030)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of February 25, 2002—Tentative

Friday, March 1, 2002

9:30 a.m.
Briefing on Status of Office of the Chief Financial Officer (OCFO) Programs, Performance, and Plans (Public Meeting) (Contact: Lars Solander, 301–415–6080)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of March 4, 2002—Tentative

Monday, March 4, 2002

2 p.m.
Briefing on Status of Nuclear Waste Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of March 11, 2002—Tentative

There are no meetings scheduled for the Week of March 11, 2002.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information

By a vote of 5–0 on January 29 and 30, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of 1) Dominion Nuclear Connecticut Inc. (Millstone Nuclear Power Station, Units 2 and 3) Petition for Reconsideration of CLI–01–24 and 2) Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility); Georginas Against Nuclear Energy's Motion for Reconsideration of CLI–01–28'' be held on January 30, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, D.C. 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: January 31, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–2801 Filed 2–1–02; 10:23 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 11, 2002 through January 24, 2002. The last biweekly notice was published on January 22, 2002 (67 FR 2917).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the

Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 7, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: December 13, 2001.

Description of amendments request: The amendments would lower the maximum allowable differential pressure across the Engineered Safety Features (ESF) ventilation system units when tested at specified system flowrates.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification (TS) 5.5.11, Ventilation Filter Testing Program (VFTP) establishes a program for requiring testing of Engineered Safety Feature (ESF) filter ventilation systems in accordance with appropriate regulatory guidance.

PVNGS [Palo Verde Nuclear Generating Station] calculations 13–MC–HJ–0804 and 13–MC–HF–0902 were developed to document the design basis and testing standard positions that PVNGS has taken concerning the Control Room Essential Filtration System (CREFS) air filtration units (AFUs) and the ESF Pump Room Exhaust Air Cleanup System (PREACS) AFUs. These calculations established a lower design dirty filter differential pressure (D/P) to ensure that the AFUs are capable of delivering the design flows at 100% maximum dirty filter condition and also able to meet the adsorber residence time when the filters are clean. Design margin of the AFUs is validated via analyses performed in the referenced calculations and confirmed by the various startup and surveillance tests.

The analyses established a more restrictive design criteria than that which is currently listed in TS 5.5.11.d. The new D/P limit for the CREFS AFUs is less than or equal to 4.8 inches water gauge (iwg). The new D/P limit for the PREACS AFUs is less than or equal to 5.2 iwg. This applies to all three of the PVNGS units. Each PVNGS unit is equipped with two CREFS and two PREACS AFUs.

These essential AFUs are not event initiators. The essential CREFS and PREACS AFUs are used to mitigate the consequences of a postulated accident as discussed in Updated Final Safety Analysis Report (UFSAR) Sections 15.6 and 15.7. The proposed change in filter D/P for dirty filter conditions does not increase the probability of an accident previously evaluated.

The accident analyses that could be affected by the proposed changes to the CREFS and PREACS AFUs are addressed in the calculations which determine the expected radiological doses in the control room, at the Exclusion Area Boundary (EAB), and in the Low Population Zone (LPZ) resulting from postulated accidents. The efficiency of the essential AFU filter and charcoal adsorber as well as adsorber residence time and airflow rate are required parameters to evaluate the removal of radioactive gases and particulates from the postulated accidents evaluated in UFSAR Chapter 15. However, the proposed changes to the essential AFUs D/P limits ensure that PVNGS remains within existing licensing bases for radiological consequences of fuel handling accidents and LOCA events.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The purpose of the essential AFUs (CREFS and PREACS) is to mitigate the consequences of an accident and as such, they are not plant accident initiators.

The proposed changes in filter D/P limits for these essential AFUs do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operations. The proposed changes in the filter D/P limit for dirty filter conditions ensure that PVNGS remains within existing licensing bases for radiological consequences of fuel handling accidents and LOCA [loss-of-coolant accident] events and are not initiators of any new or different kinds of accidents.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change in the allowed maximum D/P across the filter in a dirty condition is a more conservative and restrictive change (less than or equal to 4.8 inches of water (iwg) for the CREFS units and 5.2 iwg for the PREACS units) than the current value of ''less than 8.4 iwg'' in Technical Specification 5.5.11.d. Under these conditions, the AFUs are required to deliver the design flows at a lower maximum D/P, which increases the structural safety margin of the filters. At the same time, the charcoal adsorber residence time requirements are met for the higher fan flowrate achieved with clean filters. The variations in diesel generator output voltage and frequency and its effects on the airflows and adsorber residence time are bounded by the design value parameters as demonstrated in calculations 13–MC–HJ–0804 and 13–MC–HF–0902. As such, the proposed changes ensure that PVNGS remains within existing licensing bases.

Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Carolina Power & Light Company (CP&L), Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The amendment would revise Technical Specifications Section 5.6.5, ''Core Operating Limits Report (COLR)'' to add a report to the list of documents describing the approved methodologies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

* * * [The report proposed to be added to the COLR references is under generic review by NRC and, if approved, will be adopted for use.] Analyzed events are assumed to be initiated by the failure of plant structures, systems, or components. The core operating limits developed in accordance with the new methodology will be bounded by any limitations in the NRC acceptance in its safety evaluations of the new methodologies. The topical report associated with the new methodology demonstrates that the integrity of the fuel will be maintained during normal operations and that design requirements will continue to be met. The proposed change does not involve physical changes to any plant structure, system, or component. Therefore, the probability of occurrence for a previously analyzed accident is not significantly increased.

The consequences of a previously analyzed accident are dependent on the initial conditions assumed for the analysis, the behavior of the fuel during the analyzed accident, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. The proposed methodology continues to meet applicable design and safety analyses acceptance criteria. The proposed change does not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. As a result, no analysis assumptions are violated and there are no adverse effects on the factors that contribute to offsite or onsite dose as the result of an accident. The proposed change does not affect setpoints that initiate protective or

mitigative actions. The proposed change ensures that plant structures, systems, or components are maintained consistent with the safety analysis and licensing bases. Based on this evaluation, there is no significant increase in the consequences of a previously analyzed event.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve any physical alteration of plant systems, structures, or components, other than allowing for fuel design in accordance with NRC approved methodologies. The proposed methodology continues to meet applicable criteria for LBLOCA [large-break loss-of-coolant accident] analysis. No new or different equipment is being installed. No installed equipment is being operated in a different manner. There is no alteration to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. As a result no new failure modes are being introduced. There are no changes in the methods governing normal plant operation, nor are the methods utilized to respond to plant transients altered. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The margin of safety is established through the design of the plant structures, systems, and components, through the parameters within which the plant is operated, through the establishment of the setpoints for the actuation of equipment relied upon to respond to an event, and through margins contained within the safety analyses. The proposed change in the methodology used for LBLOCA analyses does not impact the condition or performance of structures, systems, setpoints, and components relied upon for accident mitigation. The proposed change does not significantly impact any safety analysis assumptions or results. Therefore, the proposed change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Richard P. Correia.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: December 6, 2001.

Description of amendment request: The proposed amendments would revise the Technical Specification (TS) 3.7.16, ''Control Room Area Cooling System (CRACS),'' which currently requires entry into TS 3.0.3 when two trains of CRACS are inoperable. The proposed amendments would allow 6 hours to restore the operability of one train.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Loss of CRACS for the duration of the Completion Time is not a safety concern because equipment in the control area is suitable for considerably higher temperatures than will be experienced within the Completion Time.

The accidents evaluated in the UFSAR [Updated Final Safety Analysis Report] are not initiated by the CRACS or loss of the CRACS. Furthermore, the CRACS is not directly credited for mitigation of the accidents evaluated in the UFSAR. The CRACS does perform a support function to maintain environmental conditions for equipment that does help mitigate accidents. The proposed change does extend the total time from loss of a second required train until entry into the required MODEs. However, analysis confirms that the CRACS function is not required for a number of hours (i.e. 18 or more), which is substantially greater than the proposed Completion Time of 6 hours. The proposed Completion Time of 6 hours allows reasonable time for restoration prior to initiation of shutdown while leaving sufficient time to reach hot shutdown. The probability of an accident or event occurring during this Completion Time is acceptably low.

The current TS may require simultaneous reduction in power and shutdown of all three Units. Such action is not without some risk. Allowing the requested limited additional time to restore control area cooling reduces some risk factors by not changing plant power level in response to a minor problem that does not constitute a safety concern. If the initiation of shutdown of the affected units does become necessary, this change would allow operators more flexibility to sequence the shutdowns to minimize overall operator burden and the impact of simultaneous shutdowns.

In summary, this change will not involve a significant increase in the probability or consequences of any previously evaluated accident.

2. Do the proposed changes create the possibility of new or different kind of accident from any previously evaluated?

Response: No.

No new or different kind of accident has been identified as a result of this Technical Specification change.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The accidents evaluated in the UFSAR are not initiated by the CRACS or loss of the CRACS. The loss of the CRACS was screened out of the Oconee PRA and is not modeled in the present Oconee PRA as either an initiating event or as a support system failure. Temperature transient analyses calculate the time to reach the limiting design temperature of required systems, structures, or components supported by CRACS. Current analyses show CRACS is not required to perform a support function for at least 18 hours.

This 18 hour time is not used to calculate the consequences or impact on fission product barriers if CRACS is not restored. Instead this time is used to prioritize activities to restore CRACS and is substantially greater than the proposed 6 hour Completion Time. As discussed above, this allows reasonable time for restoration prior to initiation of shutdown, while leaving sufficient time to reach hot shutdown. Since either the CRACS function will be restored or the affected unit(s) will be shutdown, this change would not result in a change of, or challenge to, the design basis limit for a fission product barrier.

This change does not involve a departure from a method of evaluation used for evaluating behavior or response of the facility or supported components.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The proposed amendments would revise the Technical Specification 5.6.5.b to eliminate the revision number and dates of the topical reports that contain the analytical methods used to determine the core operating limits. This proposed change is consistent with

TSTF (Technical Specification Task Force)–363.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would implementation of the changes proposed in this LAR [license amendment request] involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR makes an administrative change to the Technical Specifications made necessary as part of Duke's implementation of revised NRC regulations. The changes proposed to these TS have no substantive impact on the Oconee licensing bases, nor Duke's ability to conservatively evaluate changes to these licensing bases. Therefore, the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR makes administrative changes that have no impact on any accident analyses.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The proposed changes are administrative, an implementation of the revised 10CFR50.59 regulation. Implementation of the revised 10CFR50.59 regulation provides the necessary regulatory requirements to ensure that nuclear plants' margin of safety is preserved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard J. Laufer, Acting.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: December 3, 2001.

Description of amendment request: Energy Northwest is requesting a revision to the technical specifications (TSs) and licensing and design bases to reflect the application of alternative source term methodology. The alternative source term analyses have been performed without crediting secondary containment during fuel handling accidents. As such, the proposed license amendment relaxes operability requirements during fuel handling and core alterations for: (1) secondary containment; (2) secondary containment isolation instrumentation; and (3) the standby gas treatment system. The alternative source term analyses have also been performed without crediting the main steam leakage control system; therefore, the licensing basis and the TS are being revised to reflect the proposed deactivation of the system. The license amendment request also addresses the establishment of secondary containment vacuum under adverse environmental conditions. In addition, the amendment request increases the allowed amount of unfiltered control room leakage into the control room.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The alternative source term does not affect the design or operation of the facility; rather, once the occurrence of an accident has been postulated, the new source term is an input to evaluate the consequence. The implementation of the alternative source term methodology has been evaluated in revisions to the analyses of the following limiting design basis accidents at Columbia Generating Station:

- Control Rod Drop Accident
- Fuel Handling Accident
- Main Steam Line Break Accident
- Loss of Coolant Accident

Based upon the results of these analyses, it has been demonstrated that, with the requested changes, the dose consequences of these limiting events are within the regulatory guidance provided by the NRC for use with the alternative source term. This guidance is presented in 10 CFR 50.67 and associated Regulatory Guide 1.183, and Standard Review Plan Section 15.0.1.

Requirements for secondary containment operability, secondary containment isolation valves, and the standby gas treatment system during fuel movement or core alterations are being eliminated. This is acceptable because, with the application of alternative source term methodology, secondary containment is not credited for the fuel handling accident. The licensing basis is being revised to reflect the proposed deactivation of the main steam leakage control system. This is acceptable because, with the application of alternative source term methodology, no credit is assumed for the system in the accident analyses.

With regard to the Justification for Continued Operation regarding the establishment of secondary containment vacuum under adverse environmental conditions, the proposed changes to the secondary containment and standby gas treatment system Technical Specifications and application of alternative source term methodology ensures that secondary containment draw-down and bypass leakage are within the assumptions of the applicable safety analysis.

With regard to the previously-identified Unreviewed Safety Question pertaining to increased unfiltered control room in-leakage into the control room envelope, application of alternative source term methodology has shown that in-leakage rates in excess of tested values would result in control room doses below the regulatory limit.

Therefore, operation of Columbia Generating Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The alternative source term does not affect the design, functional performance or operation of the facility. Similarly, it does not affect the design or operation of any structures, systems or components equipment or systems involved in the mitigation of any accidents, nor does it affect the design or operation of any component in the facility such that new equipment failure modes are created.

Requirements for the main steam leakage control system are being deleted by this proposed amendment request. This is acceptable because the system no longer meets the criteria of 10 CFR 50.36. With the application of alternative source term methodology, no credit is assumed for the system in the accident analyses. Furthermore, since the main steam leakage control system is a mitigating system, it cannot create the possibility of an accident.

Requirements for secondary containment operability, secondary containment isolation valves, and the standby gas treatment system during fuel movement or core alterations are being eliminated. This is also acceptable because, with the application of alternative source term methodology, secondary containment is not credited for the fuel handling accident.

Therefore, the operation of Columbia Generating Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The changes proposed are associated with the implementation of a new licensing basis for Columbia Generating Station. Approval of the basis change from the original source term developed in accordance with TID–14844 to a new alternative source term as described in Regulatory Guide 1.183 is requested by this submittal. The results of the accident analyses revised in support of this submittal, and the requested Technical Specification changes, are subject to revised acceptance criteria. These analyses have been performed using conservative methodologies.

Safety margins and analytical conservatisms have been evaluated and are satisfied. The analyzed events have been carefully selected and margin has been retained to ensure that the analyses adequately bound postulated event scenarios. The dose consequences of these limiting events are within the acceptance criteria also found in the latest regulatory guidance. This guidance is presented in 10 CFR 50.67 and associated Regulatory Guide 1.183.

The proposed changes can be made while still satisfying regulatory requirements and review criteria, with significant margin. The changes continue to ensure that the doses at the exclusion area and low population zone boundaries, as well as the control room, are within the corresponding regulatory limits.

Therefore, operation of Columbia Generating Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: September 7, 2001 as revised December 17, 2001. This notice supersedes (66 FR 52799) published on October 17, 2001, which was based upon the licensee's application dated September 7, 2001.

Description of amendment request: The amendment would revise the Post Accident Monitoring Instrumentation Technical Specifications to ensure that licensee commitments to Regulatory Guide 1.97 are properly reflected.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

The proposed amendment involves rewording or reformatting of technical specification requirements regarding certain post accident monitoring instrumentation at Indian Point 3, to improve the usability of the specification. The proposed rewording of the required channels for core exit temperature adopts the wording from the Standard Technical Specifications, which is applicable to the Indian Point 3 design. New condition entry statements are added in Condition C as an alternate formatting method which replaces the existing approach of using notes in the instrumentation list in Table 3.3.3–1, for certain instrument channels. Similarly, combining two existing functions into one new function is an improved formatting method that eliminates the need for a note in the Table. None of these proposed changes affect the requirements established in the existing specification.

Post accident monitoring instrumentation is a tool used by plant operators to conduct diagnostic activities outlined in plant emergency operating procedures. The presence or absence of this instrumentation does not influence accident initiators for accidents previously analyzed. Also, this instrumentation is not credited to support automatic responses for accident mitigating systems or equipment. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed amendment involves rewording or reformatting of technical specification requirements to improve the usability of the specification for certain post accident monitoring instrumentation at Indian Point 3. The proposed amendment does not involve any changes to plant equipment, setpoints, or the way in which the plant is operated. The proposed amendment maintains the existing requirements for post accident monitoring instrumentation using an improved presentation format. Therefore the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed license amendment involve a significant reduction in a margin of safety?

Response:

The proposed amendment involves rewording or reformatting of technical specification requirements to improve the usability of the specification for certain post accident monitoring instrumentation at Indian Point 3. The proposed rewording of the required channels for core exit temperature adopts the wording from the Standard Technical Specifications, which is applicable to Indian Point 3. Use of the standard wording ensures consistent application of the requirements for this post accident monitoring function. Similarly, reformatting the specification to use new condition entry statements, rather than the existing notations in the Table will improve the usability of the specification and ensure that the intended requirements will be consistently applied.

The proposed changes do not delete or modify existing requirements or add new requirements. The changes involve rewording or reformatting of existing requirements and provide an improved method of stating the requirements intended in the existing specification. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Joel T. Munday, Acting.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: January 16, 2002.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to permit functional testing of the emergency diesel generators (EDGs) to be performed during power operation. The proposed changes will add a footnote to Surveillance Requirement 4.8.1.1.2.g.7 regarding the 24-hour functional test of the EDGs. The changes are based on an integrated review of deterministic design basis factors, and an evaluation of plant risk using probabilistic safety assessment (PSA) techniques.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The function of the emergency diesel generators is to supply emergency power in the event of a LOOP. Operation of the EDGs is not a precursor to any accident. The EDGs provide assistance in accident mitigation. There are no technical changes related to the acceptance criteria of the surveillance requirement. The proposed change requesting that the scheduling aspects of the surveillance requirements be changed to accommodate improved planning capability for testing does not affect the accident analyses. The EDG that is being tested will be considered inoperable however, the remaining required EDGs would be operable during the test and they are capable of supporting the safe shutdown of the plant. The Probabilistic Safety Assessment (PSA)

results fall below the Acceptance Guidelines for TS changes contained in Regulatory Guides 1.174 and 1.177; therefore, the risk of performing the EDG 24-hour run during POWER OPERATION has only a small quantitative impact on plant risk. Therefore, the proposed change to permit the 24-hour functional test of the EDGs to be performed during POWER OPERATION does not significantly increase the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not include any physical changes to plant design or a change to current Surveillance Requirement acceptance criteria. Performance of the Surveillance Requirement during POWER OPERATION results in equipment out of service, inoperable EDG, which is addressed by current Technical Specification limiting condition for operation. Therefore, performance of the EDG 24-hour functional testing during POWER OPERATION does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed changes are associated with surveillance requirements for the EDGs. The proposed changes allow the EDG 24-hour functional testing to be performed during POWER OPERATION. Performing the functional test during POWER OPERATION will not impact the plant design bases or safety analyses because the affected EDG will be declared inoperable during the test. During the time that the EDG in test is declared inoperable, the system is considered to be exempt from the single failure criterion such that adequate emergency power will remain available to support the system design bases.

From a design basis perspective, the inoperable EDG effectively represents a single failure for the system. Since the emergency power system is designed to accomplish its system safety functions with only two of the three EDGs in service, and recovery of a failed component is not credited in the plant safety analysis (i.e., the single failure remains in effect for the entire accident sequence), removing an EDG from service to perform a 24-hour functional test during POWER OPERATION will not reduce the margin of safety assumed in the plant safety analyses.

The Probabilistic Safety Assessment (PSA) results fall below the Acceptance Guidelines for TS changes contained in Regulatory Guides 1.174 and 1.177. Therefore, the risk of performing the EDG 24-hour run during POWER OPERATION has only a small quantitative impact on plant risk.

An integrated assessment of the risk impact of performing the 24-hour functional test during POWER OPERATION for a single inoperable EDG has determined that the risk contribution is small and is within regulatory guidelines. Therefore, facility operation in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit No. 2, Oswego County, New York

Date of application for amendment: December 26, 2001.

Brief description of amendment: The licensee proposed to revise Table 3.6.1.3–1, ''Secondary Containment Bypass Leakage Paths Leakage Rate Limits,'' of the Technical Specifications to re-designate two feedwater system air-operated primary containment isolation valves (PCIVs) as simple check valves. Upon approval by the NRC staff, the licensee would modify the air-operated PCIVs to become simple check valves. The simple check valves will perform the same function as the air-operated valves during normal and accident conditions. This design change only affects the nonsafety-related remote testing and position indication design features of the feedwater check valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided its analysis of the issue of no significant hazards consideration. The NRC staff reviewed the licensee's analysis and has performed its own, which is presented below:

1. Does the amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment does not affect the probability of previously evaluated accidents because the affected PCIVs were not presumed to be initiators or precursors of any accident. The modified valves will continue to perform the same function as before. The modified valves will not alter or prevent the ability of existing structures, systems, or components to perform their intended safety or accident-mitigating functions depicted in the Updated Final Safety Analysis Report. The proposed amendment and the underlying design change will not prevent the unit to continue to comply with applicable regulatory requirements. As a result, the proposed amendment will not alter the conditions or assumptions used in previously evaluated accidents, specifically, the feedwater line break accident outside containment, and the loss-of-coolant accident.

Therefore, operation in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment would lead to modification of air-operated PCIVs to become simple check valves. The modified valves will continue to perform the same function (i.e., prevent back flow in the feedwater line). Furthermore, the modified valves would not alter or prevent the ability of structures, systems, or components to perform their intended safety or accident mitigating functions. Thus, previously evaluated accident scenarios would not be altered by the proposed amendment.

Accordingly, the proposed amendment and the resulting design modification do not create any new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

No. The proposed amendment does not change any analysis methodology, safety limits or acceptance criteria. The modified valves will have the same level of performance as before.

Therefore, operation in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: L. Raghavan (Acting).

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 19, 2001.

Description of amendment request: The proposed amendment would extend the completion time under Technical Specification (TS) Section 3.8.4.A to allow replacement of 125 VDC Batteries 1D1 and 1D2 while at power (Mode 1). The proposed amendment would add required actions 3.8.4.A.2.1 and 3.8.4.A.2.2 as one-time-only alternates and a conditional note following 3.8.4.A.1 to allow replacement of the 125 VDC batteries during a 10-day period for each battery. This TS change would be applicable one-time only, for each battery.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

During the replacement of the existing station batteries, a temporary battery will provide the same function as the battery being removed. Even though this temporary battery will not meet seismic requirements, it will be assembled from safety-related Class 1E cells. The temporary battery will be subjected to surveillance testing prior to being utilized to confirm serviceability. The respective DC bus will be continuously energized by the existing battery charger. A backup swing charger will also be available which is a normal part of system configuration.

This one-time change also requires that required features be declared inoperable when the associated 125 VDC source is inoperable and the redundant required feature(s) are also inoperable for at least four hours. This action is intended to provide assurance that a loss of onsite power, during the period that a 125 VDC source is inoperable, does not result in a complete loss of safety function of critical systems. The completion time is intended to allow the operator time to evaluate and repair any discovered inoperabilities.

Due to the limited duration of the activity, the very low probability of a seismic event over this limited extended completion time, and the planned implementing contingency actions, a significant increase in the probability of an accident previously evaluated does not occur. The proposed change does not affect accident initiators or precursors, or design assumptions for the systems or components used to mitigate the consequences of an accident as analyzed in Chapter 15 of the DAEC UFSAR. The other division of DC power will remain operable to support design mitigation capability. Therefore, the proposed one-time completion time TS amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

During the replacement of the existing station batteries, a temporary battery will provide the same function as the batteries being removed. Even though this temporary battery does not meet the seismic requirements, it possesses adequate capacity to fulfill the safety-related requirements of supplying necessary power to the associated 125VDC bus. Because the temporary battery will perform like the station battery that is currently installed, no new electrical or functional failure modes are created. The temporary battery will be located in the turbine building which is non-seismic. The temporary battery will not be placed into seismically mounted racks. Thus, a seismic failure of this temporary battery is possible. The failure, if it does occur, would not create a new or different kind of accident from accidents previously evaluated.

This one-time change also requires that required features be declared inoperable when the associated 125 VDC source is inoperable and the redundant required feature(s) are also inoperable for at least four hours. This action is intended to provide assurance that a loss of onsite power, during the period that a 125 VDC source is inoperable, does not result in a complete loss of safety function of critical systems. The completion time is intended to allow the operator time to evaluate and repair any discovered inoperabilities.

The proposed one-time change does not introduce any new accident initiators or precursors or any new design assumptions for those systems or components used to mitigate the consequences of an accident. Therefore, the possibility of a new or different kind of accident from any previously evaluated has not been created. Thus, the proposed one-time completion time extension TS amendment does not create the possibility of a new of different kind of accident from any previously evaluated.

(3) The proposed amendment will not involve a significant reduction in a margin of safety.

During the replacement of the existing station batteries, a temporary safety-related battery will perform the same function as the battery being removed. Even though this battery will not be seismically mounted, it will be assembled from safety-related Class 1E cells. The battery is functionally similar to the safety-related battery that is already installed. It will possess adequate capacity to fulfill the requirements of the associated 125VDC bus. The proposed replacement activity will not prevent the plant from mitigating a Design Basis Accident (DBA) during events that result in the loss of power from the temporary battery. In these cases, the remaining DC power supporting the design mitigation capability will be maintained. Due to the limited duration of the activity, the very low probability of a seismic event over this limited extended completion time, and the planned implementing contingency actions, a significant reduction in the margin of safety will not result. The associated DC bus will always be supplied by either the temporary battery and/or the battery charger at all times. In addition a spare swing battery charger is available. As a result, there is no significant reduction in the margin of safety.

This one-time change also requires that required features be declared inoperable when the associated 125 VDC source is inoperable and the redundant required feature(s) are inoperable for at least four hours. This action is intended to provide assurance that a loss of onsite power, during the period that a 125 VDC source is inoperable, does not result in a complete loss of safety function of critical systems. The completion time is intended to allow the operator time to evaluate and repair any discovered inoperabilities.

Therefore, this proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Al Gutterman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: William D. Reckley, Acting Section Chief.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: July 30, 2001, as supplemented September 7, October 16, and December 5, 2001, and January 18, 2002.

Description of amendment request: This notice supercedes a notice published on November 14, 2001 (66 FR 57123).

The proposed amendments would revise Technical Specification 5.5.12, ''Primary Containment Leakage Rate Testing Program,'' to allow a one-time deferral of the Type A containment integrated leakage rate test (ILRT) at the Susquehanna Steam Electric Station (SSES), Units 1 and 2. The Unit 1 test would be deferred to no later than May 3, 2007, and the Unit 2 test would be deferred to no later than October 30, 2007, resulting in an extended interval of 15 years for performance of the next ILRT at each unit. Additionally the proposed amendments would allow a one-time deferral of the drywell-to-suppression chamber bypass leakage test, Surveillance Requirement (SR) 3.6.1.1.2, so that it would continue to be conducted along with the ILRT, consistent with current practice.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The frequency of Type A testing does not change the probability of an event that results in core damage or vessel failure. Primary containment is the engineered feature that contains the energy and fission products from evaluated events. The SSES IPE [Individual Plant Examination] documents events that lead to containment failure. The frequency of events that lead to containment failure does not change because it is not a function of the Type A test interval. Containment failure is a function of loss of safety systems that shutdown the reactor, provide adequate core cooling, provide decay heat removal, and loss of drywell sprays.

Similarly, the frequency of the SR 3.6.1.1.2 bypass test does not change the probability of an event that results in core damage or vessel failure since they are not a function of the bypass test.

The consequences of the evaluated accidents are the amount of radioactivity that is released to secondary containment and subsequently to the public. Normally, extending a test interval increases the probability that a Structure, System, or Component will fail. However, NUREG–1493, Performance-Based Containment Leak-Test Program, states that calculated risks in BWR's is very insensitive to the assumed leakage rates. The remaining testing and inspection programs provide the same coverage as these tests, and will maintain containment leakage at appropriately low levels. Any leakage problems will be identified and repairs will be made. Additionally, the containment is continuously monitored during power operation. Anomalies are investigated and resolved. Thus there is a high confidence that [containment] integrity will be maintained independent of the Type A test and SR 3.6.1.1.2 bypass test frequency.

Therefore, this proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously analyzed?

Primary containment is designed to contain energy and fission products during and after an event. The SSES IPE identifies events that lead to containment failure. The proposed revision to the Type A and SR 3.6.1.1.2 test interval does not change this list of events. There are no physical changes being made to the plant and there are no changes to the operation of the plant that could introduce a new failure mode creating an accident or affecting mitigation of an accident.

Therefore, this proposed amendment does not involve a possibility of a new or different kind of accident from any previously analyzed.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed one time extension to the Type A test frequency and the frequency of SR 3.6.1.1.2 from 10 to 15 years does not involve a significant reduction in margin of safety.

The tests are performed to ensure the degree of reactor containment structural integrity and leak-tightness considered in the plant safety analysis is maintained. These proposed changes do not affect the degree of leak-tightness nor structural integrity of the containment. These proposed changes only affect the frequency by which the tests are performed. The test acceptance criteria are not affected.

The proposed TS changes do not involve a change in the manner in which any plant system is operated or controlled.

The proposed TS changes do not affect the availability of equipment associated with containment integrity that is assumed to operate in the plant safety analysis.

The NUREG–1493 generic study of the effects of extending containment leakage testing found that a 20-year interval in Type A leakage testing resulted in an imperceptible increase in risk to the public. PPL analyses determined the total integrated risk and [Large Early Release Frequency] LERF increase is not significant. NUREG–1493 found that, generically, the design containment leakage rate contributes a very small amount of individual risk and would have minimal affect since most potential leakage paths are detected by Type B and Type C testing. Type B and Type C testing combined with visual inspection programs will maintain containment leakage at appropriately low levels.

The vacuum breaker leakage test (SR 3.6.1.1.3) and stringent acceptance criteria, combined with the negligible non-vacuum breaker leakage area and thorough periodic visual inspection, provide an equivalent level of assurance as the SR 3.6.1.1.2 bypass test. PPL analyses determined the total integrated risk and LERF increase is not significant.

The combination of the factors described above ensures that the proposed changes do not represent a significant reduction on margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: J. Munday, Acting.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: November 1, 2001.

Description of amendment request: The proposed changes would modify the provisions under which equipment may be considered operable when either its normal or emergency power source is inoperable. Technical Specifications (TSs) Section 3.0.5 will be deleted under this proposal, and additional limiting conditions for operation (LCO) will be incorporated into electrical power systems TS 3.8.1.1, A.C. Sources—Operating. The corresponding TS Bases will be modified accordingly. The proposed changes are consistent with the recommendations contained in NUREG–1431, Rev. 2, ''Standard Technical Specifications for Westinghouse Plants.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The design of the AC electrical power system ensures that sufficient power will be available for engineered safeguards equipment required for safe shutdown of the facility and mitigation of accident conditions. Initial conditions of design basis accidents and transients in the Accident Analysis assume required engineered safeguards systems are operable and will function in order to maintain plant response within design limits. The proposed changes to action times do not affect the probability that any accident will occur. Since the minimum configuration of equipment assumed in the Accident Analysis will remain available, there will similarly be no increase in consequences of any accident.

The proposed changes to action times are consistent with the Westinghouse Standard Technical Specification (STS) requirements. This specification is intended to provide assurance that an event coincident with a failure of the associated normal or emergency power supply will not result in complete loss of safety function of critical required systems. The completion time allows the operator time to evaluate and repair any discovered inoperability. The given time periods are considered acceptable because they minimize risk while allowing time for restoration before subjecting the unit to transients associated with shutdown. These completion times take into account the capacity and capability of the remaining AC sources, a reasonable time for repairs and the low probability of a design basis accident occurring during this period.

With failure of one offsite power source, the remaining operable offsite circuit and diesel generators (DG) are adequate to supply electrical power to the onsite Class 1E electrical distribution system. At least one complete train of equipment will continue to operate in the same manner as assumed in the analyses to mitigate a design basis

accident, given a failure of one component in a redundant train.

With both required offsite circuits inoperable, onsite emergency AC sources remain available to maintain the unit in a safe shutdown condition in the event of a design basis accident (DBA) or transient. The action completion time is reduced to 12 hours in this case. At least one complete train of equipment will operate as assumed in the analyses to mitigate a design basis accident, given a failure of one component in a redundant train.

With a single emergency diesel generator inoperable, the remaining operable DG and offsite power circuits are adequate to supply power to the onsite Class 1E electrical distribution system. Required actions ensure that a loss of offsite power during this period does not result in a complete loss of safety functions. Four hours is considered an acceptable time period to minimize risk during this condition, while allowing reasonable time for repair.

In any of these scenarios at least one train of equipment will be available to mitigate an accident and bring the plant to a safe shutdown condition, as assumed in the Accident Analysis. There will be no impact to radiological dose consequences.

Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously analyzed.

Expanding the allowable out of service time consistent with requirements of Standard Technical Specifications does not introduce any new or different failure from any previously evaluated or change the manner in which safety systems are operated. The associated system and equipment configurations are no different from those previously evaluated. The change in allowable action times have been considered and determined to be acceptable, without causing additional risk. The conditions of TS 3.8.1 continue to ensure that an event coincident with a failure of the associated normal or emergency power supply will not result in complete loss of safety function of critical required systems.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Involve a significant reduction in a margin of safety.

The power sources and distribution systems are designed to ensure sufficient power is available to supply safety related equipment required for safe shutdown of the facility and mitigation and control of accident conditions. Operability requirements are consistent with initial conditions assumed in the accident analysis. The proposed changes continue to provide assurance that an event coincident with failure of an associated diesel generator or offsite power circuit will not result in complete loss of safety function of critical required redundant systems or equipment.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395 Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: August 7, 2001.

Description of amendment request: SCE&G proposes a change to Table 3.3–2 of the Virgil C. Summer Nuclear Station Technical Specifications Surveillance Requirements to include a response time requirement of 0.5 seconds for the Source Range (SR) Neutron Flux Reactor Trip. The proposed change results from SCE&G's review of Westinghouse Nuclear Safety Advisory Letter NSAL–00–016. This NSAL notified SCE&G that the SR Neutron Flux Reactor Trip is implicitly credited within the accident analyses for the Uncontrolled Rod Cluster Control Assembly Bank Withdrawal from Subcritical event during Modes 3, 4, and 5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change enhances the operability requirements of the SR Neutron Flux Instrumentation (NI) system by requiring response time testing. The performance of the required response time testing for the SR Neutron Flux Channels does not contribute to the initiation of any accident previously evaluated. Testing will be done during normal channel calibration when the SR Reactor Trip function is not required to be operable. During and following the required response time testing, there will be no adverse affect on the design and operation of the NSSS, BOP, and fluid and auxiliary system which are important to safety. Since the reactor coolant pressure boundary integrity and normally operating systems are not adversely impacted, the probability of occurrence of an accident evaluated in the VCSNS FSAR is no greater than the original design basis of the plant.

The availability of a reactor trip on the SR trip function with a defined response time of 0.5 seconds ensures that the event consequences of a RWFS event in Modes 3, 4, or 5 remain bounded by the current FSAR analysis. This is accomplished by ensuring that the reactor is shutdown before any significant power is generated.

With this change, periodic time response testing of the SR reactor trip function will be required to demonstrate that SR reactor trip function can be completed within the time limit assumed in the accident analyses. This enhanced operability requirement of the SR NI system provides additional assurance that the plant will be operated within its design and licensing basis. Any event that requires the mitigative function of this system will remain bounded by the analysis documented in Chapter 15 of the FSAR. No adverse hardware, software, setpoint or procedure changes are associated with this change. Furthermore, during and following the required response time testing, there will be no adverse affect on the design and operation of the NSSS, BOP, and fluid and auxiliary systems which are important to safety. Given the above, there is no potential for additional releases as a result of this activity. Therefore, no increase in any previously evaluated accident consequences will occur.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Enhancing the operability requirement for a Reactor Protection System input can not be considered an accident precursor. This change adds response time testing to the SR NI system which assures that the accident analysis, including assumptions, is maintained. No hardware, software, operational practices or instrumentation setpoints are being revised. No change to plant operating characteristics or philosophy result from this change. Therefore, the possibility of an accident of a different type is not being created.

3. Does this change involve a significant reduction in margin of safety?

TS Table 3.3–2 currently states that the response time for the SR NI is not applicable. However, the inherent assumption that this system will be the principal system to mitigate the rod withdrawal from subcritical accident is described in FSAR 15.2.1. The margin of safety is enhanced by the addition of an administrative requirement, to assure the safety analysis assumptions are satisfied. The maximum response time of 0.5 seconds is consistent with the maximum for Power Range and is conservative enough to limit the potential excursion to a safe value prior to tripping the plant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas

Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: Richard Laufer, Acting.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: January 9, 2002.

Description of amendment requests: The proposed amendments would revise Technical Specification 5.4, Technical Specifications (TS) Bases control. Specifically, TS 5.4.2 and TS 5.4.2.b would be revised to replace the word ''involve'' with ''require'' and delete the term ''unreviewed safety question,'' respectively. The proposed changes are pursuant to the revised regulations in Title 10, Code of Federal Regulations (10 CFR) Section 50.59 which eliminated the term ''unreviewed safety question.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change replaces the word ''involve'' with ''require'' and deletes reference to the term ''unreviewed safety question'' consistent with 10 CFR 50.59. Deletion of the term ''unreviewed safety question'' was approved by the Nuclear Regulatory Commission (NRC) with the revision to 10 CFR 50.59. Consequently, the probability of an accident previously evaluated is not significantly increased. Changes to the Technical Specification (TS) Bases are still evaluated in accordance with 10 CFR 50.59. As a result, the consequences of any accident previously evaluated are not significantly affected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing plant operation. These changes are considered administrative changes and do not modify, add, delete, or relocate any technical requirements in the TS.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes will not reduce a margin of safety because they have no effect on any safety analyses assumptions. Changes to the TS Bases that result in meeting the criteria in paragraph (c)(2) of 10 CFR 50.59 will still require NRC approval. The proposed changes to TS 5.4.2 are considered administrative in nature based on the revision to 10 CFR 50.59.

Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of amendment request: January 4, 2002.

Description of amendment request: The proposed amendment would change the Safety Limit Minimum Critical Power Ratio (SLMCPR) for single loop operation (SLO) in Technical Specification (TS) 2.1.1.2 to reflect the results of a cycle-specific calculation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specification [TS] change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the revised SLO [single loop operation] SLPCPR for [safety limit critical power ratio] Plant Hatch Unit 1 Cycle 21 for incorporation into the TS, and its use to determine cycle-specific thermal limits, has been performed using NRC-approved methods and procedures. The procedures incorporate cycle-specific parameters and reduced power distribution uncertainties in the determination of the value for the SLMCPR. These calculations do not change the method of operating the plant and have no effect on the probability of an accident initiating event or transient.

The basis of the MCPR Safety Limit is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. The new SLO SLMCPR preserves the existing margin to transition boiling and the probability of fuel damage is not increased. Therefore, the proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is the result of a cycle-specific application of NRC-approved methods to the Unit 1 Cycle 21 core reload. This change does not involve any new method for operating the facility and does not involve any facility modifications. No new initiating events or transients result from this change. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS bases will remain the same. Cycle-specific SLMCPRs are calculated using NRC-approved methods and procedures, and meet the current fuel design and licensing criteria. The SLO SLMCPR will be high enough to ensure that greater than 99.9% of all fuel rods in the core are expected to avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer, Acting.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: December 14, 2001.

Description of amendment request: A change is proposed to Surveillance Requirement (SR) 3.0.3 to allow a longer period of time to perform a missed surveillance. The time is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified

Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated December 14, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer, Acting.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: October 24, 2001.

Description of amendment request: The proposed amendment would relocate various Technical Specifications (TSs) to the Technical Requirements Manual (TRM). Their associated Bases will also be relocated to the TRM to be consistent with relocation of the various TSs. In addition, the proposed amendment corrects various typographical and page numbering errors, deletes an outdated one-time exception, and makes minor formal changes to improve consistency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This request involves relocation of information to the Technical Requirements Manual and administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed changes. Therefore, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated.

2. Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This request involves relocation of information to the Technical Requirements Manual and administrative changes only. The proposed change does not alter the performance of the equipment or the manner in which the equipment will be operated. The equipment will still be verified by test, if applicable, in accordance with applicable surveillance requirements. Changing the location of these requirements and surveillances from Technical Specifications to the Technical Requirements Manual will not create any new accident initiators or scenarios. Since the proposed changes only allow activities that are presently approved and conducted, no possibility exists for a new or different kind of accident from those previously evaluated.

3. Will the change involve a significant reduction in a margin of safety?

Response: No.

This request involves relocation of information to the Technical Requirements Manual and administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety systems settings, or will not relax the bases for any limiting conditions of operation. Therefore, the proposed changes will not impact the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis &

Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 5, 2001.

Description of amendment request: The proposed amendments would revise specific requirements of Technical Specification (TS) Section 6.0, ''Administrative Controls.'' The proposed amendments include relocating specific TS administrative control requirements to licensee-controlled documents; updating specific management titles to more generic title positions; updating requirements to be consistent with current industry standards; and reformatting, renumbering, and rewording existing requirements for better readability. The proposed changes include Items 1 thru 125, and 127 in Table 1 of Attachment 1 of the licensee's submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes involve reformatting, renumbering, and rewording of the existing TS. These modifications involve no technical changes to the existing TS. As such, these changes are administrative in nature and do not effect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes involve reformatting, renumbering, and rewording of the existing TS. The changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The changes will not impose any new or different requirements or eliminate any existing requirements. Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in margin of safety?

The proposed changes involve reformatting, renumbering, and rewording of the existing TS. The changes are administrative in nature and will not involve any technical changes. The changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Also, since these changes are administrative in nature, no question of safety is involved. Therefore, the changes do not involve a significant reduction in a margin of safety.

More Restrictive Changes

The proposed changes designated as ''More Restrictive'' (M) technical changes involve adding more restrictive requirements to the existing TS by either making current requirements more stringent or by adding new requirements that currently do not exist. These changes have been evaluated to not be detrimental to plant safety. These changes are modifications of requirements to provide consistency with the Improved Standard Technical Specifications recommended in NUREG–1431. The proposed changes include Items 39, 51, 129 and 130 in Table 1.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes provide more stringent requirements for operation of the facility. The more stringent requirements do not result in operation that will increase the probability of initiating an analyzed event and do not alter assumptions relative to mitigation of an accident or transient event. The more stringent requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The changes will not impose any new or different requirements or eliminate any existing requirements. Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in margin of safety?

The imposition of more stringent requirements either has no impact on or increases the margin of plant safety. As noted in the discussion of the changes, each change in this category, by definition, provides additional restrictions to enhance plant safety. The changes maintain requirements within the safety analyses and licensing basis. Therefore, these changes do not involve a significant reduction in a margin of safety.

Less Restrictive Changes L.1

Current TS 6.8.3.i, ''Diesel Fuel Oil Testing Program,'' requires properties for ASTM 2D fuel oil to be within limits within 30 days following sampling. The proposed change will increase the time in which compliance must be verified following sampling from 30 days to 31 days. This change is reasonable based on the relatively small increase in time and the probability of a major problem being found that would prevent the diesel generator from starting and operating. The proposed change, Item 70 in Table 1, is consistent with NUREG–1431.

In accordance with the criteria set forth in 10 CFR 50.92, the South Texas Project has evaluated this proposed TS change and determined that it involves no significant hazards consideration. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change extends the allowed completion time from 30 days to 31 days to verify that diesel fuel sample properties comply with ASTM 2D. This change does not affect the probability of an accident. Diesel fuel oil is not an initiator of any analyzed event. The consequences of an accident are not increased significantly because of the remote probability of an event occurring during the 24-hour period. Also, the probability of a major problem being found which would prevent the diesel generator from starting and operating is remote. The change will not alter the ability to mitigate an accident or transient event. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The change will not impose any new or different requirements or eliminate any existing requirements. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change extends the allowed completion time from 30 days to 31 days to verify that diesel fuel sample properties comply with ASTM 2D. The change does not significantly decrease the margin of safety because of the remote probability of an event occurring during the 24-hour period. Also, the probability of a major problem being found which would prevent the diesel generator from starting and operating is remote. The safety analysis assumptions will still be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Change L.2

Current TS 6.9.1.2 and 6.9.1.2.a require annual submittal of an Occupational Radiation Exposure Report by March 1 of the calendar year following the exposures. The submittal date is revised to April 30. This change is consistent with previous comprehensive revisions to 10 CFR Part 20. The report is provided to supplement the information required by 10 CFR 20.2206(b), which is filed on or before April 30 in accordance with 10 CFR 20.2206(c). The proposed change, Item 76 in Table 1, is consistent with NUREG–1431.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not result in any changes in hardware or methods of operation. The change in date for submittal of ''after the fact'' information is not considered in the safety analysis and cannot initiate or affect the mitigation of an accident in any way. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The change will impact only the administrative requirements for submittal of information and does not directly impact the operation of the plant. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not impact the margin of safety since the margin of safety is not dependent on the submittal of information. The safety analysis assumptions will still be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Change L.3

Current TS 6.9.1.3 requires annual submittal of a Radiological Environmental Operating Report by May 1 of each year. The submittal date is revised to May 15. This is an interval increase of 15 days. There is no requirement for the NRC to approve this report and 10 CFR [Part] 50 does not specify a specific reporting date. The proposed change, Item 82 in Table 1, is consistent with NUREG–1431.

In accordance with the criteria set forth in 10 CFR 50.92, the South Texas Project has evaluated this proposed TS change and determined that it involves no significant hazards consideration. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not result in any changes in hardware or methods of operation. The change in date for submittal of ''after the fact'' information is not considered in the safety analysis and cannot initiate or affect the mitigation of an accident in any way. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The change will impact only the administrative requirements for submittal of information and does not directly impact the operation of the plant. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not impact the margin of safety since the margin of safety is not dependent on the submittal of information. The safety analysis assumptions will still be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Change L.4

Current TS 6.9.1.4 requires annual submittal of a Radioactive Effluent Release Report within 60 days after January 1 of each year. The submittal date is revised to May 1. This is an interval increase of approximately 60 days. The proposed change, Item 85 in Table 1, is consistent with NUREG–1431.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not result in any changes in hardware or methods of operation. The change in date for submittal of ''after the fact'' information is not considered in the safety analysis and cannot initiate or affect the mitigation of an accident in any way. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The change will impact only the administrative requirements for submittal of information and does not directly impact the operation of the plant. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not impact the margin of safety since the margin of safety is not dependent on the submittal of information. The safety analysis assumptions will still be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Change L.5

The details specifying responsibility for initiating the Radiation Work Permit (RWP) surveillance frequency are being deleted. The requirement of current TS 6.12.1.c pertains to the individual qualified in radiation protection responsible for providing control over the activities in a high radiation area, including the performance of periodic radiation surveillances. The details specifying responsibility for the surveillance frequency in the RWP have no bearing on the requirements for entering a high radiation area. RWP details are controlled by plant procedures. Deleting these details eliminates ambiguity in the TS and the possibility for a misinterpretation of the TS requirements. The proposed change is provided in Table 1 as Item 103.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change eliminates ambiguity in the TS details specifying responsibility for the surveillance frequency in the Radiation Work Permit. The proposed change does not result in any changes in hardware or methods of operation. The details pertaining to the surveillance frequency in the Radiation Work Permit are not considered in the safety analysis and cannot initiate or affect the mitigation of an accident in any way. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed [change] does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The change will not impose any new or different requirements or eliminate any existing requirements. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not impact the margin of safety since the margin of safety is not dependent on who initiates the surveillance frequency of the Radiation Work Permit. The safety analysis assumptions will still be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Change L.6

The details specifying the individuals responsible for performance of the review of the use of overtime are being deleted, and the frequency at which the overtime review is performed is being changed from monthly to periodic. The details specifying responsibility for performance of the overtime review and the frequency of review are controlled by plant procedures. The proposed changes are consistent with the programmatic controls required by NUREG–1431. The proposed changes are provided in Table 1 as Item 30a.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes delete the details specifying the individuals responsible for performance of the overtime use review, and changes the frequency at which the overtime review is performed from monthly to periodic. The proposed change does not result in any changes in hardware or methods of operation. The details pertaining to the review of overtime are not considered in the safety analysis and cannot initiate or affect the mitigation of an accident in any way. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The change will not impose any new or different requirements or eliminate any existing requirements. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not impact the margin of safety since the margin of safety is not dependent on who performs the overtime review, nor on the frequency at which the review is performed. The safety analysis assumptions will still be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Change L.7

The details specifying the actions to be taken in the event a Safety Limit is violated are deleted from the Specifications. The details regarding notification and reporting to the Commission are unnecessary, since reporting requirements are delineated in 10 CFR 50.72 and 50.73. The details regarding onsite notification requirements and review of the report by PORC [Plant Operations Review Committee] and NSRB [Nuclear Safety Review Board] are unnecessary, since plant policies and procedures already provide guidance on onsite notification and review of reports by these committees. Furthermore, these notification and reporting requirements are beyond the criteria of 10 CFR 50.36(c)(5) for inclusion in the Administrative Controls Section of the TS, and programmatic controls regarding actions to be taken for Safety Limit violations are not included in NUREG–1431. The proposed changes are provided in Table 1 as Item 30a.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes delete the details regarding actions to be taken in the event of a Safety Limit violation. The proposed change does not result in any changes in hardware or methods of operation. The details pertaining to notification and reporting of Safety Limit violations are not considered in the safety analysis and cannot initiate or affect the mitigation of an accident in any way. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The change will not impose any new or different requirements or eliminate any existing requirements. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not impact the margin of safety since the margin of safety is not dependent on notification and reporting of Safety Limit violations. The safety analysis assumptions will still be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Relocation of Requirements

The proposed changes designated as ''Relocated'' (R) technical changes involve the relocation of existing TS requirements or details to other licensee-controlled documents such as the UFSAR [Updated Final Safety Analysis Report], TRM [Technical Requirements Manual], ODCM [Offsite Dose Calculation Manual], or OQAP [Operational Quality Assurance Plan]. Future modification of relocated Administrative Controls requirements is adequately controlled by regulatory requirements such as 10 CFR 50.59 and 10 CFR 50.54. The proposed changes include Items 4, 12, 13, 15, 22, 25, 29, 31, 32, 40, 41, 42, 44, 46, 49, 52, 55, 58, 59, 68, 75, 96, 112, 117, 118, and 126 in Table 1.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes relocate certain details from the TS to the UFSAR, TRM, OQAP, or other licensee-controlled documents. These licensee-controlled documents containing the relocated information will be maintained in accordance with 10 CFR 50.59 or 10 CFR 50.54, as appropriate. The UFSAR is subject to the change control provisions of 10 CFR 50.71(e) and the plant procedures and other licensee-controlled documents are subject to controls imposed by plant administrative procedures, which endorse applicable regulations and standards. Since any changes to the UFSAR, TRM, OQAP, or other licensee-controlled documents will be evaluated per 10 CFR 50.59 or 10 CFR 50.54, such changes will not involve a significant increase in the probability or consequences of an accident previously evaluated. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve physical alteration of the plant (no new or different type of equipment will be installed) or change in the methods governing normal plant operation. The proposed changes will not impose or eliminate any requirements and adequate control of the information will be maintained. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. In addition, the details to be relocated from the TS to the UFSAR, TRM, OQAP, or other licensee-controlled documents are the same as in the existing TS. Since any future change to these details in the UFSAR, TRM, OQAP, or other licensee-controlled documents will be evaluated per the requirements of 10 CFR 50.59 or 10 CFR 50.54, as appropriate, such changes would not involve a significant reduction in a margin of safety. Based on 10 CFR 50.92, the existing requirement for NRC review and approval of revisions to these details proposed for relocation does not have a specific margin of safety upon which to evaluate. However, since the proposed changes are consistent with NUREG–1431, which was approved by the NRC Staff, revising the TS to reflect the approved level of detail ensures no significant reduction in the margin of safety.

The NRC staff has reviewed the licenses's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 10, 2001.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) 4.0.1 and 4.0.3 from the current South Texas Project (STP) TS format to the Improved TS format. In addition, the licensee has proposed that a Bases Control Program be incorporated into Section 6.0 of the TSs in order to (1) specify an administrative process for making changes to the TS bases, (2) delineate what kinds of changes can be made to the TS Bases without prior NRC approval, and (3) to provide for consistency between the TS Bases and the STP Final Safety Analysis Report. TS 4.0.3 would also be changed to reflect Technical Specification Task Force (TSTF) 358, Revision 6, changes to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified surveillance interval, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified surveillance interval, whichever is greater.'' The following requirement would be added to TS 4.0.3: ''A risk

evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves rewording of the existing Technical Specifications [4.0.1 and 4.0.3] to be consistent with NUREG–1431, Revision 2. These modifications involve no technical changes to the existing Technical Specifications. As such, these changes are administrative in nature and do not affect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves incorporation of the NUREG–1431, Revision 2, Bases Control Program requirements into the STP Technical Specifications. These modifications involve no technical changes to the existing Technical Specifications. As such, these changes are administrative in nature and do not affect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change involves rewording of the existing Technical Specifications [4.0.1 and 4.0.3] to be consistent with NUREG–1431, Revision 2. The change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The changes will not impose any new or different requirements or eliminate any existing requirements. Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change involves incorporation of the NUREG–1431, Revision 2, Bases Control Program requirements into the STP Technical Specifications. The changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The changes will not impose any new or different requirements or eliminate any existing requirements. Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in [a] margin of safety?

The proposed change involves rewording of the existing Technical Specifications [4.0.1 and 4.0.3] to be consistent with NUREG–1431, Revision 2. The changes are administrative in nature and will not involve any technical changes. The changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Also, since these changes are administrative in nature, no question of safety is involved. Therefore, the changes do not involve a significant reduction in a margin of safety.

The proposed change involves incorporation of the NUREG–1431, Revision 2, Bases Control Program requirements into the STP Technical Specifications. The changes are administrative in nature and will not involve any technical changes. The changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Also, since these changes are administrative in nature, no question of safety is involved. Therefore, the changes do not involve a significant reduction in a margin of safety.

With regard to the changes associated with TSTF–358, Revision 6, the NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated December 10, 2001.

As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in margin of safety.

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: November 8, 2001 (TS 01–06).

Brief description of amendments: The proposed amendment would revise a License Condition and the Technical Specifications (TS) for Sequoyah Units 1 and 2. The proposed change would delete License Condition 2.H, ''Reporting to the Commission,'' Administrative Control Section 6.6, ''Reportable Event Action,'' and Administrative Control Section 6.7, ''Safety Limit Violation.'' Because Administrative Control Section 6.6 is referenced in several Limiting Conditions for Operation (LCOs) and associated TS Bases, these LCOs and TS Bases would also be modified to remove those references.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

These revisions govern the reporting of either site characteristics and past events or of events covered under current NRC regulations and the proposed amendment is administrative in nature. Therefore, it does not increase the probability or consequences of any accident previously evaluated because it does not affect the state of the plant in any physical manner.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment is strictly administrative and does not affect plant equipment or operational procedures. Therefore, it will not create any new or different accidents.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed amendment affects the reporting to the Commission. As such, it does not affect personnel, public, or plant safety. Since the amendment will not affect the plant in a physical manner nor will it affect personnel, public, or plant safety, it will therefore not reduce the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant (SQN), Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: January 15, 2002 (TS 01–13).

Brief description of amendments: The proposed amendment would revise Technical Specification (TS) Section 4.0.5.c to provide an exception to the recommendations of Regulatory Position c.4.b of NRC Regulatory Guide 1.14, Revision 1, ''Reactor Coolant Pump Flywheel Integrity,'' dated August 1975. This change is in accordance with Improved Standard TS Generic Change Traveler TSTF–237, Revision 1, Westinghouse Electrical Corporation Topical Report WCAP–14535A, ''Topical Report on Reactor Coolant Pump Flywheel Inspection Elimination.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

An integral part of the Reactor Coolant System (RCS) in a pressurized water reactor is the RCP [reactor coolant pump]. The RCP ensures an adequate cooling flow rate by circulating large volumes of the primary coolant water at high temperature and pressure through the RCS. Following an assumed loss of power to the RCP motor, the flywheel, in conjunction with the impeller and motor assembly, provides sufficient rotational inertia to assure adequate core cooling flow during RCP coastdown.

Westinghouse Electric Corporation Topical Report WCAP–14535A, ''Topical Report on Reactor Coolant Pump Flywheel Inspection Elimination,'' dated November 1996, provides the technical basis for the elimination of inspection requirements for RCP flywheels for all domestic Westinghouse plants. In the Safety Evaluation for WCAP–14535, dated September 1996, the NRC stated that the evaluation methodology described in WCAP–14535 is appropriate and the criteria are in accordance with the design criteria of RG 1.14.

RCP flywheel inspections have been performed for 20 years with no indications of service induced flaws. Flywheel integrity evaluations show a very high flaw tolerance for the RCP flywheels. Crack extension over a 60-year service life is negligible. Structural reliability studies have shown that eliminating inspections after 10 years of plant life will not significantly change the probability of failure.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed change does not alter or prevent the ability of structures, systems, and components (SSC) from performing their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the SQN Updated Final Safety Analysis Report (UFSAR). The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the SQN UFSAR.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not modify the design or function of the RCP flywheels. Based upon the results of WCAP–14535A, no new failure mechanisms will be introduced by the revised RCP Flywheel Inservice Inspection Program. As presented in WCAP–14535A, detailed stress analysis and risk assessments have been performed that indicate that there would be no change in the probability of failure for RCP flywheels if all inspections were eliminated. In addition, the flywheel integrity evaluations show that RCP flywheels exhibit a very high tolerance for the presence of flaws.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

There is no significant mechanism for in-service degradation of the flywheels since they are isolated from the primary coolant environment. Additionally, WCAP–14535A analyses have shown there is no significant deformation of the flywheels even at maximum overspeed conditions. Likewise, the results of RCP flywheel inspections performed throughout the industry and at SQN identified no indications that would affect flywheel integrity.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority,

400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: December 26, 2001.

Brief description of amendments: The proposed amendments would revise Technical Specifications (TS) 5.5.16, ''Containment Leakage Rate Testing Program'' to allow for a one-time extension of the current interval between the Type A tests from 10 to 15 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed revision to Technical Specifications adds a one time extension to the current interval for Type A testing (10CFR50, Appendix J, Option B, Integrated Leak Rate Testing). The current test interval of 10 years, based on past performance, would be extended on a one time basis to 15 years from the last Type A test. The proposed extension to Type A testing does not involve a significant increase in the consequences of an accident since research documented in NUREG–1493, ''Performance-Based Containment System Leakage Testing Requirements,'' September 1995, has found that, generically, very few potential containment leakage paths are not identified by Type B and C tests. The NUREG concluded that reducing the Type A testing frequency to one per twenty years was found to lead to an imperceptible increase in risk. A high degree of assurance is provided through testing and inspection that the containment will not degrade in a manner detectable only by Type A testing. The last Type A test show[s] leakage to be below acceptance criteria, indicating a very leak tight containment. Inspections required by the American Society of Mechanical Engineers (ASME) Code [Boiler and Pressure Vessel Code] Section XI (Subsections IWE and IWL) and maintenance rule monitoring (10CFR50.65, ''Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants'') are performed in order to identify indications of containment degradation that could affect that leak tightness. Type B and C testing required by Technical Specifications will identify any containment opening such as valves that would otherwise be detected by the Type A tests. These factors show that a Type A test extension will not represent a significant increase in the consequences of an accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed revision to Technical Specifications adds a one time extension to the current interval for Type A testing (10CFR50, Appendix J, Option B, Integrated Leak Rate Testing). The current test interval of 10 years, based on past performance, would be extended on a one time basis to 15 years from the last Type A test. The proposed extension to Type A testing cannot create the possibility of a new or different type of accident since there are no physical changes being made to the plant and there are no changes to the operation of the plant that could introduce a new failure mode creating an accident or affecting the mitigation of an accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed revision to Technical Specifications adds a one time extension to the current interval for Type A testing (10CFR50, Appendix J, Option B, Integrated Leak Rate Testing). The current test interval of 10 years, based on past performance, would be extended on a one time basis to 15 years from the last Type A test. The proposed extension to Type A testing will not significantly reduce the margin of safety. The NUREG–1493, ''Performance-Based Containment System Leakage Testing Requirements,'' September 1995, generic study of the effects of extending containment leakage testing found that a 20 year extension in Type A leakage testing resulted in an imperceptible increase in risk to the public. NUREG–1493 found that, generically, the design containment leakage rate contributes about 0.1 percent to the individual risk and that the decrease in Type A testing frequency would have a minimal affect on this risk since 95% of the potential leakage paths are detected by Type C testing. Regular inspections required by the American Society of Mechanical Engineers (ASME) Code Section XI (Subsections IWE and IWL) and maintenance rule monitoring (10CFR50.65, ''Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants'') will further reduce the risk of a containment leakage path going undetected.

Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: December 6, 2001.

Description of amendment request: The proposed amendment would revise Required Actions for Limiting Conditions for Operation (LCOs) 3.3.1, ''Reactor Trip (RTS) Instrumentation;'' 3.3.9, ''Boron Dilution Mitigation System (BDMS);'' 3.4.5, ''RCS Loops—MODE 3;'' 3.4.6, ''RCS Loops—MODE 4;'' 3.4.7, ''RCS Loops—MODE 5, Loops Filled;'' 3.4.8, ''RCS Loops—MODE 5, Loops Not Filled;'' 3.8.2, ''AC Sources—Shutdown;'' 3.8.5, ''DC Sources—Shutdown;'' 3.8.8, ''Inverters—Shutdown;'' 3.8.10, ''Distribution Systems—Shutdown;'' 3.9.3, ''Nuclear Instrumentation;'' 3.9.5, ''Residual Heat Removal (RHR) and Coolant Circulation—High Water Level;'' and 3.9.6, ''Residual Heat Removal (RHR) and Coolant Circulation—Low Water Level'' in the Callaway Plant Technical Specifications (TSs). The Required Actions proposed to be revised require suspension of operations involving positive reactivity additions or reactor coolant system (RCS) boron concentration reductions. In addition, the proposed amendment would revise Notes, for several of the LCOs, that preclude reductions in RCS boron concentration. This amendment would revise these Required Actions and LCO Notes to allow small, controlled, safe insertions of positive reactivity, but limits the introduction of positive reactivity such that compliance with the required shutdown margin or refueling boron concentration limits will still be satisfied.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes. The RTS instrumentation and reactivity control systems will be unaffected. Protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction

standards that were applicable prior to the request are maintained.

The probability and consequences of accidents previously evaluated in the FSAR [Final Safety Analysis Report] are not adversely affected because the changes to the Required Actions and LCO Notes assure the limits on SDM [shutdown margin] and refueling boron concentration continue to be met, consistent with the analysis assumptions and initial conditions included within the safety analysis and licensing basis. The activities covered by this amendment application are routine operating evolutions. The proposed changes do not reduce the capability of reborating the RCS.

The proposed changes will not involve a significant increase in the probability of any event initiators. The initiating event for an inadvertent boron dilution event, as discussed in FSAR Section 15.4.6, is a failure in the reactor makeup control system (RMCS) or operator error such that inventory makeup with the incorrect boron concentration enters the RCS by way of the CVCS [chemical volume and control system] mixing tee. Since the RMCS design is unchanged, there will be no initiating event frequency increase associated with equipment failures. However, there could be an increased exposure time per operating cycle to potential operator errors during TS Conditions that, heretofore, prohibited positive reactivity additions. As such, the RTS Instrumentation, BDMS, and RCS Loops TS Bases changes from TSTF–286, Revision 2, have been augmented to preclude the introduction of reactor makeup water into the RCS via the CVCS mixing tee when one source range neutron flux channel (and, thus, the associated BDMS train) is inoperable or when no RCS loop is in operation. The equipment and processes used to implement RCS boration or dilution evolutions are unchanged and the equipment and processes are commonly used throughout the applicable MODES under consideration. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance. Required Action A.1 of LCO 3.3.9 limits the exposure to one inoperable BDMS train, which may be caused by an inoperable source range neutron flux channel. During the time the plant is in a TS Condition with a finite equipment restoration time, a single failure of the opposite train is not postulated. However, administrative controls have been added to this Action's Bases to highlight the need for operator awareness during all reactivity manipulations and to preclude introduction of reactor makeup water into the RCS.

The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of plant operation or change any operating limits. The proposed changes merely permit the conduct of normal operating evolutions when additional controls over core reactivity are imposed by the Technical Specifications. The proposed changes do not introduce any new equipment into the plant or alter the manner in which existing equipment will be operated. The changes to operating procedures are minor, with clarifications provided that required limits must continue to be met. No performance requirements or response time limits will be affected. These changes are consistent with assumptions made in the safety analysis and licensing basis regarding limits on SDM and refueling boron concentration.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

This amendment does not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not alter the limits on SDM or refueling boron concentration. The nominal trip setpoints specified in the Technical Specifications Bases and the safety analysis limits assumed in the transient and accident analyses are unchanged. None of the acceptance criteria for any accident analysis is changed.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F\Delta H$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: December 13, 2001.

Description of amendment request: The amendment would revise the Limiting Condition for Operation (LCO) 3.5.5, Required Action A.1 for the LCO, and Surveillance Requirement 3.5.5.1 in Technical Specification (TS) 3.5.5, ''Seal Injection Flow.'' The revision would replace the flow and differential pressure limits for the reactor coolant pump (RCP) seal injection flow stated in TS 3.5.5 by limits in Figure 3.5.5–1 that would be added to TS 3.5.5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes. The RTS [reactor trip system] instrumentation and reactivity control systems will be unaffected. Protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The probability and consequences of accidents previously evaluated in the FSAR [Final Safety Analysis Report] are not adversely affected because the changes continue to assure the analysis assumptions and initial conditions included within the safety analysis and licensing basis are satisfied.

The proposed changes will not involve a significant increase in the probability of any event initiators. The initiating event for a loss of coolant accident, as discussed in FSAR Section 15.6.5, is a break in the RCS [reactor coolant system] piping. Since the RCS piping design is unchanged, there will be no initiating event frequency increase associated with pipe breaks. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of plant operation. The proposed changes do not introduce any new equipment into the plant or alter the manner in which existing equipment will be operated. The changes to operating procedures are minor, with clarifications provided that required limits must continue to be met. No performance requirements or response time limits will be affected. These changes are consistent with assumptions made in the safety analysis and licensing basis regarding limits on RCP seal injection flow.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

This amendment does not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not alter the input parameters listed in FSAR Table 15.6–9 and used in large break and small break LOCA [loss-of-coolant accident] peak cladding temperature analyses. The containment pressure and temperature analyses are not adversely impacted. The nominal reactor and ESFAS [engineered safety feature actuation system] trip setpoints (Technical Specification Bases Tables B 3.3.1–1 and B 3.3.2–1), reactor and ESFAS allowable values (Technical Specification Tables 3.3.1–1 and 3.3.2–1), and the safety analysis limits assumed in the transient and accident analyses (FSAR Table 15.0–4) are unchanged. None of the acceptance criteria for any accident analysis is changed.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protective functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F\Delta H$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: April 3, 2001 as supplemented by letters dated October 22 and December 18, 2001. The April 3, 2001, amendment application was previously noticed in the **Federal Register** on May 2, 2001 (66 FR 22036).

Description of amendment request: The supplemental letter of October 22, 2001, added the following change to the technical specifications (TSs): revise TS Section 5.6.5 by adding TS 2.1.1 on reactor core safety limits on the existing list of core operating limits for each reload cycle that are documented in the Core Operating Limits Report (COLR). This proposed change is being added to the previous changes requested by the licensee's letter of April 3, 2001. The amendment would make the following changes to the TSs:

(1) Revise Safety Limit 2.1.1 by replacing Figure 2.1.1–1, ''Reactor Core Safety Limits,'' with a reference to limits being specified in the Core Operating Limits Report (COLR) and by adding two reactor core safety limits on departure from nucleate boiling ratio (DNBR) and peak fuel centerline temperature.

(2) Revise Note 1 on the over temperature ΔT in Table 3.3.1–1 of TS 3.3.1, ''Reactor Trip System Instrumentation,'' by replacing values of parameters with a reference to the values being specified in the COLR and correcting the expression for one term in the inequality for over temperature ΔT.

(3) Revise Note 2 on the overpower ΔT in Table 3.3.1–1 by replacing values of parameters with a reference to the values being specified in the COLR.

(4) Replace the limits for the reactor coolant system (RCS) pressure and average temperature with a reference to the limits being specified in the COLR for Limiting Condition for Operation (LCO) 3.4.1 and Surveillance Requirements (SRs) 3.4.1.1 and 3.4.1.2.

(5) Add the phrase ''and greater than or equal to the limit specified in the COLR'' to the RCS total flow rate in LCO 3.4.1 and SRs 3.4.1.3 and 3.4.1.4.

(6) Move items a. and b. to the left in the Note to the applicability in LCO 3.4.1.

(7) Revise TS Section 5.6.5 by adding TS 2.1.1 on reactor core safety limits, TS 3.3.1 on over temperature and overpower ΔT trip setpoints, and TS 3.4.1 on RCS pressure, temperature, and flow limits to the existing list of core operating limits for each reload cycle that are documented in the COLR and revising the list of topical reports in the COLR that represent the analytical methods approved by the Commission to determine core operating limits.

The proposed changes remove cycle-specific parameter limits and relocate them to the COLR, but they do not change any of the limits. The changes add more specific requirements regarding DNBR limit and peak fuel centerline temperature limit to the TSs, revise the list of topical reports in the list of NRC-approved analytical methods, correct one term of an expression, and move terms in a Note to the mode applicability for an LCO.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are programmatic and administrative in nature which do not physically alter safety related systems, nor affect the way in which safety related systems perform their functions. More specific requirements regarding the safety limits (i.e., DNBR limit and peak fuel centerline temperature limit) are being imposed in TS 2.1.1, ''Reactor Core Safety Limits,'' which replace the Reactor Core Safety Limits figure and are consistent with the values stated in the USAR [Updated Safety Analysis Report]. The proposed changes remove the cycle-specific parameter limits from TS 3.4.1 and relocate them to the COLR which do not change plant design or affect system operating parameters. In addition, the minimum limit for RCS total flow rate is being retained in TS 3.4.1 to assure that a lower flow rate than reviewed by the NRC will not be used. The proposed changes do not, by themselves, alter any of the parameter limits. The removal of the cycle-specific parameter limits from the TS does not eliminate existing requirements to comply with the parameter limits. The existing TS Section 5.6.5b, COLR Reporting Requirements, continues to ensure that the analytical methods used to determine the core operating limits meet NRC reviewed and approved methodologies. The existing TS Section 5.6.5c, COLR Reporting

Requirements, continues to ensure that applicable limits of the safety analyses are met.

The proposed changes to reference only the Topical Report number and title do not alter the use of the analytical methods used to determine core operating limits that have been reviewed and approved by the NRC. This method of referencing Topical Reports would allow the use of current Topical Reports to support limits in the COLR without having to submit an amendment to [the TS of] the operating license. Implementation of revisions to Topical Reports would still be reviewed in accordance with 10 CFR 50.59 and where required receive NRC review and approval.

Although the relocation of the cycle-specific parameter limits to the COLR would allow revision of the affected parameter limits without prior NRC approval, there is no significant effect on the probability or consequences of an accident previously evaluated. Future changes to the COLR parameter limits could result in event consequences which are either slightly less or slightly more severe than the consequences for the same event using the present parameter limits. The differences would not be significant and would be bounded by the existing requirement of TS Section 5.6.5c to meet the applicable limits of the safety analyses.

The cycle-specific parameter limits being transferred from the TS to the COLR will continue to be controlled under existing programs and procedures. The USAR accident analyses will continue to be examined with respect to changes in the cycle-dependent parameters obtained using NRC reviewed and approved reload design methodologies, ensuring that the transient evaluation of new reload designs are bounded by previously accepted analyses. This examination will continue to be performed pursuant to 10 CFR 50.59 requirements ensuring that future reload designs will not involve a significant increase in the probability or consequences of an accident previously evaluated. Additionally, the proposed changes do not allow for an increase in plant power levels, do not increase the production, nor alter the flow path or method of disposal of radioactive waste or byproducts. Therefore, the proposed changes do not change the types or increase the amounts of any effluents released offsite.

[The proposed changes to the expression of the $f_1(\Delta I)$ term, which is in the over temperature ΔT inequality, clarifies and corrects the term. Moving the terms in a Note to the LCO mode applicability is an administrative action.]

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[The proposed changes are programmatic and administrative in nature which do not physically alter safety related systems, nor affect the way in which safety related systems perform their functions.]

The proposed changes that retain the minimum limit for RCS total flow rate in the TS, and that relocate certain cycle-specific parameter limits from the TS to the COLR, thus removing the requirement for prior NRC approval of revisions to those parameters, do not involve a physical change to the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no changes being made to the parameters within which the plant is operated, other than their relocation to the COLR. There are no setpoints affected by the proposed changes at which protective or mitigative actions are initiated. The proposed changes will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alteration in the procedures which ensure the plant remains within analytical limits is being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced.

The proposed changes to reference only the Topical Report number and title do not alter the use of the analytical methods used to determine core operating limits that have been reviewed and approved by the NRC. This method of referencing Topical Reports would allow the use of current Topical Reports to support limits in the COLR without having to submit an amendment to [the TS of] the operating license. Implementation of revisions to Topical Reports would still be reviewed in accordance with 10 CFR 50.59 and where required receive NRC review and approval.

Relocation of cycle-specific parameter limits has no influence or impact on, nor does it contribute in any way to the possibility of a new or different kind of accident. The relocated cycle-specific parameter limits will continue to be calculated using the NRC reviewed and approved methodology. The proposed changes do not alter assumptions made in the safety analysis and operation within the core operating limits will continue.

[The proposed changes to the expression of the $f_1(\Delta I)$ term, which is in the over temperature ΔT inequality, clarifies and corrects the term.]

Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed changes [are programmatic and administrative in nature and] do not physically alter safety related systems, nor does it [a]ffect the way in which safety-related systems perform their functions. The setpoints at which protective actions are initiated are not altered by the proposed changes.

Therefore, sufficient equipment remains available to actuate upon demand for the purpose of mitigating an analyzed event. As the proposed changes to relocate cycle-specific parameter limits to the COLR will not affect plant design or system operating parameters, there is no detrimental impact on any equipment design parameter, and the plant will continue to operate within prescribed limits.

The development of cycle-specific parameter limits for future reload designs will continue to conform to NRC reviewed and approved methodologies, and will be performed pursuant to 10 CFR 50.59 to assure that plant operation [is] within cycle-specific parameter limits.

The proposed changes to reference only the Topical Report number and title do not alter the use of the analytical methods used to determine core operating limits that have been reviewed and approved by the NRC. This method of referencing Topical Reports would allow the use of [the] current Topical Reports to support limits in the COLR without having to submit an amendment to [the TS of] the operating license. Implementation of revisions to Topical Reports would still be reviewed in accordance with 10 CFR 50.59 and where required receive NRC review and approval.

[The proposed changes to the expression of the $f_1(\Delta I)$ term, which is in the over temperature ΔT inequality, clarifies and corrects the term. Moving the terms in a Note to the LCO mode applicability is an administrative action.]

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was

published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.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.*

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: July 9, 2001.

Brief description of amendment: The amendment revised the Administrative Controls Section of the Technical Specifications to provide consistency with the changes to Title 10 of the Code of Federal Regulations (10 CFR), Section 50.59, which were published in the **Federal Register** on October 4, 1999 (64 FR 53582). Specifically, the amendment replaced the term ''safety evaluation'' with ''10 CFR 50.59 evaluation'' and the term ''unreviewed safety question'' with ''requires NRC [Nuclear Regulatory Commission] approval pursuant to 10 CFR 50.59.''

Date of issuance: January 22, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 239.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** August 22, 2001 (66 FR 44162).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 22, 2002.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: October 31, 2001.

Brief description of amendment: The amendment deletes Technical Specification 5.5.3, ''Post-Accident Sampling,'' eliminating the requirement to have and maintain the Post-Accident Sampling System at H. B. Robinson. The amendment also deletes Condition 3.G.(4) of the Operating License.

Date of issuance: January 14, 2002.

Effective date: January 14, 2002.

Amendment No. 192.

Facility Operating License No. DPR–23. Amendment revises the License and Technical Specifications.

*Date of initial notice in **Federal Register:*** December 12, 2001 (66 FR 64286) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 2002.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: October 30, 2001.

Brief description of amendment: The amendment deletes requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post-Accident Sampling System.

Date of issuance: January 14, 2002.

Effective date: As of the date of issuance and shall be implemented within 180 days of issuance.

Amendment No.: 108.

Facility Operating License No. NPF–63: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** December 12, 2001 (66 FR 64287).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: April 11, 2001, as supplemented on September 26 and November 16, 2001.

Brief description of amendment: The amendment approves a change to Technical Specifications 1.12, ''Core Alteration;'' 3.9.1, ''Refueling Operations—Boron Concentration;'' 3.9.2, ''Refueling Operations—Instrumentation;'' and 3.9.11, ''Refueling Operations—Water Level—Reactor Vessel.'' The amendment also revises the Technical Specifications Bases to reflect the changes to the definitions.

Date of issuance: January 11, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 263.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** June 12, 2001 (66 FR 31705).

The September 26 and November 16, 2001, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: October 23, 2001, as supplemented December 20, 2001.

Brief description of amendment: The amendment revised Technical Specification Surveillance Requirement 3.8.4.1 to support replacement of the station batteries. The amendment will allow for separate required terminal voltage values for the new 31 and 32 station batteries.

Date of issuance: January 17, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 209.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 28, 2001 (66 FR 59503).

The December 20, 2001, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 17, 2002.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: October 12, 2001.

Brief description of amendments: The amendments delete TS 6.8.3 requiring a program for post accident sampling, and thereby eliminate the requirements to have and maintain Post Accident Sampling System at Donald C. Cook Nuclear Plant, Units 1 and 2.

Date of issuance: January 16, 2002.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment Nos.: 261—Unit 1, 244—Unit 2.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64295)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 16, 2002.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of application for amendment: November 19, 2001.

Brief description of amendment: The amendment would revise the action statement for Technical Specification (TS) 3.3.3.5, ''Remote Shutdown Instrumentation,'' to add a statement that the provisions of TS 3.0.4 are not applicable.

Date of issuance: January 16, 2002.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 262.

Facility Operating License No. DPR–58: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64295).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: October 22, 2001.

Brief description of amendment: The amendment revised the KNPP TS 6.14, ''Post Accident Sampling and Monitoring,'' and thereby eliminate the requirements to have and maintain the Post Accident Sampling System. Although TS 6.14's title contains the word ''monitoring,'' elimination of this TS does not eliminate the post-accident monitoring instrumentation from KNPP TS. These instruments are contained in KNPP TS section 3.5, which are listed in TS Table 3.5–6, ''Accident Monitoring Instrumentation Operating Conditions for Indication.''

Date of issuance: January 16, 2002.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 160.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64299).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: May 30, 2001.

Brief description of amendment: The amendment eliminates local suppression pool temperature limits from the Updated Safety Analysis Report as the basis for limiting suppression pool mechanical loads due to unstable steam condensation during safety relief valve actuations.

Date of issuance: January 18, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 126.

Facility Operating License No. DPR–22. Amendment revised the licensing basis.

Date of initial notice in ***Federal Register:*** June 27, 2001 (66 FR 34286).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 18, 2002.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 15, 2001, as supplemented by letters dated June 14 and November 21, 2001.

Brief description of amendment: The amendment: (1) replaced the titles of Manager—Fort Calhoun Station and Vice President with generic titles, (2) relocated the requirements for the Plant Review Committee (PRC) and the Safety Audit and Review Committee (SARC) to the Fort Calhoun Station Quality Assurance Program, (3) relocated the requirements for procedure controls and records retention to the Fort Calhoun Station Quality Assurance Program, (4) enhanced and clarified the qualification and training requirements for individuals who perform licensed operator functions, (5) incorporated the Westinghouse/CENP definition of azimuthal power tilt, and (6) eliminated specific mailing address and reporting requirements that are redundant to Title 10 of the Code of Federal Regulations.

Date of issuance: January 11, 2002.

Effective date: January 11, 2002, and shall be implemented within 30 days from the date of issuance.

Amendment No.: 202.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 27, 2001 (66 FR 34287). The June 14 and November 21, 2001, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: April 2, 2001.

Brief description of amendment: This amendment revises the Technical Specifications (TSs) to relocate TS Sections 3/4.9.4, ''Refueling Operations,

Decay Time;'' 3/4.9.5, ''Refueling Operations, Communications;'' 3/4.9.6, ''Refueling Operations, Refueling Platform;'' and 3/4.9.7, ''Refueling Operations, Crane Travel—Spent Fuel Storage Pool'' and the associated TS Bases pages to the Hope Creek Generating Station Updated Final Safety Analysis Report.

Date of issuance: January 17, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 137.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 16, 2001 (66 FR 27177).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 17, 2002.

No significant hazards consideration comments received: No.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 25, 2001.

Brief description of amendment: The amendment deletes Technical Specification Section 5.5.3, ''Post Accident Sampling Program'', and thereby eliminates the requirements to have and maintain the Post-Accident Sampling System.

Date of issuance: January 17, 2002.

Effective date: January 17, 2002.

Amendment No.: 81.

Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64300).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 17, 2002.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: August 24, 2001, as supplemented by e-mail dated November 16, 2001.

Brief description of amendments: The amendments decrease the calculated peak containment internal pressure for the design basis loss-of-coolant accident and main steamline break from 55.1 to 45.9 psig and 56.6 to 56.5 psig, respectively, in Section 5.5.2.15, ''Containment Leakage Rate Testing Program,'' of the Technical Specifications.

Date of issuance: January 24, 2002.

Effective date: January 24, 2002, to be implemented within 60 days of issuance.

Amendment Nos.: Unit 2—182; Unit 3—173.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 3. 2001 (66 FR 50472).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 24, 2002.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: May 24, 2001.

Brief description of amendment: This amendment revises Technical Specifications Sections 4.2.2.2.e and g, and 4.2.2.4.e and g to adopt a modified methodology that relocates the heat flux hot channel factor, $F_Q(z)$, penalty for increasing $F_Q(z)$ versus burnup to a table in the Core Operating Limits Report. The amendment also increases the surveillance region of $F_Q(z)$ to be consistent with the current core design and provide assurance that the peak $F_Q(z)$ is monitored and evaluated near end of core life.

Date of issuance: January 24, 2002.

Effective date: January 24, 2002.

Amendment No.: 153.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 25, 2001 (66 FR 38766).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 24, 2002.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 9, 2001.

Brief description of amendments: The amendments consist of changes to the Technical Specifications, extending the emergency core cooling system accumulator's allowable outage time from 12 hours to 24 hours.

Date of issuance: January 10, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: Unit 1—135; Unit 2—124.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44176).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 10, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: October 31, 2001.

Brief description of amendments: The amendments delete the program requirements of Technical Specification 6.8.4.e, ''Post Accident Sampling.''

Date of issuance: January 14, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 272 and 261.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the TSs.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64302).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: October 31, 2001.

Brief description of amendment: The amendment deletes the program requirements of Technical Specification 5.7.2.6, ''Post Accident Sampling System.''

Date of issuance: January 14, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 34.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64304).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: May 14, 2001.

Brief description of amendment: The amendment incorporates part of TSTF–51, Revision 2 into the Watts Bar Technical Specifications (TS). TSTF–51 allows revising the TS to eliminate engineered safety features operability requirements that do not involve the movement of irradiated fuel during core alterations.

Date of issuance: January 22, 2002.

Effective date: As of the date of issuance and shall be implemented prior to entering Mode 6 for the Cycle 4 refueling outage.

Amendment No.: 35.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 25, 2001 (66 FR 38768).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 22, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: May 14, 2001.

Brief description of amendment: The amendment revises Technical Specification section 3.3.5 ''Loss of Power (LOP) Diesel Generator Start Instrumentation,'' to increase the time delay setting of the 6.9kV shutdown board degraded voltage relays from a nominal 6 seconds to 10 seconds.

Date of issuance: January 23, 2002.

Effective date: As of the date of issuance and shall be implemented prior to startup following the Cycle 4 refueling outage.

Amendment No.: 36.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 25, 2001 (66 FR 38767).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 23, 2002.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: October 2, 2001.

Brief description of amendments: The amendments delete Technical Specification (TS) 5.5.3, ''Post Accident Sampling System,'' and thereby eliminate the requirements to have and maintain the Post Accident Sampling System (PASS) at Comenche Peak Steam Electric Station. In addition, the amendments revise TS 5.5.2, ''Primary Coolant Sources Outside Containment,'' to reflect the elimination of PASS.

Date of issuance: January 15, 2002.

Effective date: As of the date of issuance and shall be implemented by March 15, 2003.

Amendment Nos.: 91 and 91.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 15, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 29th day of January, 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–2567 Filed 2–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1569]

Solicitation of Comments on a Draft Standard Review Plan (NUREG–1569) for Staff Reviews for in Situ Leach Uranium Extraction License Applications

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability; Opportunity for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting comments from interested parties on a Draft Standard Review Plan (NUREG–1569) which provides guidance for staff safety and environmental reviews of applications to develop and operate uranium in situ leach facilities. An NRC Materials License is required, under the provisions of Title 10 of the Code of Federal Regulations, part 40 (10 CFR part 40), Domestic Licensing of Source Material, in conjunction with uranium extraction by in situ leach extraction techniques.

The applicant for a license is required to provided detailed information on the facilities, equipment, and procedures used and an Environmental Report that discusses the effects of proposed operations on the health and safety of the public and on the environment. This information, and the licensee's Environmental Report, are used by the NRC staff to determine whether the proposed activities will be protective of public health and safety and the environment.

This draft Standard Review Plan provides the NRC staff with specific guidance on performing reviews of this information and will be used to ensure a consistent quality and uniformity of staff reviews. Each section in the review plan provides guidance on what is to be reviewed, the basis for the review, how the staff review is to be accomplished, what the staff will find acceptable in a demonstration of compliance with the regulations, and the conclusions that are sought regarding the applicable sections in 10 CFR part 40, Appendix A. The Standard Review Plan is also intended to improve the understanding of interested members of the public, and the uranium recovery industry, of the staff review process.

A draft of NUREG–1569 was issued in October 1997 for public comment. This draft of NUREG–1569 incorporates the staff responses to comments and the results of Commission policy decisions affecting uranium recovery issues, which are described in NRC Regulatory Issue Summary 2000–23, dated November 30, 2000.

Opportunity to Comment: Interested parties are invited to comment on the standard review plan. A final standard review plan will be prepared after the NRC staff has evaluated comments received on the draft standard review plan. Written comments must be received prior to April 22, 2002. Comments on the draft review plan should be sent to the Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

A copy of the Draft Standard Review Plan (NUREG–1569) may be obtained by writing to the Reproduction and Distribution Services Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or e-mail *distribution@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: John Lusher @ (301) 415–7694 or *jhl@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of January, 2002.

For the Nuclear Regulatory Commission.

Melvyn N. Leach,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety, and Safeguards, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 02–2735 Filed 2–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1620]

Solicitation of Comments on a Draft Standard Review Plan (NUREG–1620) for Staff Reviews of Reclamation Plans for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability; Opportunity for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting comments from interested parties on a Draft Standard Review Plan (NUREG–1620) which provides guidance for staff reviews of Reclamation Plans for uranium mill tailings sites covered by Title II of the Uranium Mill Tailings Radiation Control Act. An NRC Materials License is required, under the provisions of Title 10 of the Code of Federal Regulations, part 40 (10 CFR part 40), Domestic Licensing of Source Material, in conjunction with uranium or thorium milling, or with byproduct material at sites formerly associated with such milling.

Appendix A to part 40 establishes technical and other criteria relating to siting, operation, decontamination, decommissioning, and reclamation of mills and tailings. The licensee's site Reclamation Plan documents how the proposed activities demonstrate compliance with the criteria in Appendix A. This information, and the licensee's Environmental Report, are used by the NRC staff to determine whether the proposed activities will be protective of public health and safety and the environment.

This Standard Review Plan provides the NRC staff with specific guidance on performing reviews of this information and will be used to ensure a consistent quality and uniformity of staff reviews. Each section in the review plan provides guidance on what is to be reviewed, the basis for the review, how the staff review is to be accomplished, what the staff will find acceptable in a demonstration of compliance with the regulations, and the conclusions that are sought regarding the applicable sections in 10 CFR part 40, Appendix A. The Standard Review Plan is also intended to improve the understanding of interested members of the public, and the uranium recovery industry, of the staff review process.

A draft of NUREG–1620 was issued in January 1999 for public comment. A final NUREG–1620, which incorporated NRC staff responses to the comments received on the draft, was issued in June 2000. This draft of NUREG–1620 was developed from the final version of the Standard Review Plan. The issue of a new draft Standard Review Plan was a result of Commission policy decisions affecting uranium recovery issues, which are described in NRC Regulatory Issue Summary 2000 –23, dated November 30, 2000.

Opportunity to Comment: Interested parties are invited to comment on the new draft standard review plan. A final standard review plan will be prepared after the NRC staff has evaluated comments received on the draft standard review plan. Written comments must be received prior to April 22, 2002. Comments on the draft standard review plan should be sent to the Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

A copy of the Draft Standard Review Plan (NUREG–1620) may be obtained by writing to the Reproduction and Distribution Services Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or e-mail *distribution@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: John Lusher @ (301) 415–7694 or *jhl@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of January, 2002.

For the Nuclear Regulatory Commission.

Melvyn N. Leach,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety, and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–2736 Filed 2–4–02; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Proposed Information Collection Requests

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget (OMB Control Number 0420–0513).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 USC, Chapter 35), the Peace Corps has submitted to the Office of Management and Budget a request for approval of information collections, OMB Control Number 0420–0513, the Peace Corps Teacher Brochure/Enrollment Form; the Peace Corps Volunteer Enrollment Form; and the follow-up program survey, the World Wise Schools (WWS) annual Teacher Survey. The purpose of this information collection is to include the participation of interested teachers and Peace Corps Volunteers in the WWS Program. The questionnaire serves to better determine which populations we are serving as well as which teachers have access to alternative information channels. The survey also assists in developing WWS Programs to meet the needs of the schools and teachers it serves. The purpose of this notice is to allow for public comments on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether their information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collections information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. A copy of the information collection may be obtained from Ms. Amy Wickenheiser, Peace Corps, Office of Domestic Programs, World Wise Schools, 1111 20th Street, NW, Room 2144, Washington, DC 20526. Ms. Wickenheiser can be contacted by telephone at 202–692–1426 or 800–424–8580 ext 1426. Comments on the form should also be addressed to the attention of Ms. Wickenheiser and should be received on or before April 8, 2002.

Information Collection Abstract

Title: Peace Corps Teacher Brochure/Enrollment Form; Peace Corps Volunteer Enrollment Form; and the World Wise Schools (WWS) annual Teacher Survey.

Need for and Use of This Information: The Peace Corps Teacher and Volunteer Enrollment Forms are completed by interested Teachers and Volunteers who want to participate in the World Wise Schools Program. The Teacher Survey asks questions to better determine which populations we are serving as well as which teachers have access to alternative information channels. The

survey also assists in developing WWS Programs to meet the needs of the schools and teachers it serves. There is other means of obtaining the required data. This program also fulfills the third goal of the Peace Corps as required by Congressional legislation.

Respondents: Teachers and Peace Corps Volunteers.

Respondent's Obligation to Reply: Individuals who voluntarily agree to participate in the WWS educational programs.

Burden on the Public:

	Teacher/volunteer forms	Teacher survey
a. Annual reporting burden	833 hours	1,000 hours.
b. Annual record keeping burden	250 hours	330 hours.
c. Estimated average burden per response	5 minutes	10 minutes.
d. Frequency of response	one time	one time.
e. Estimated number of likely respondents	10,000	6,000.
f. Estimated cost to respondents	$1.84	$3.68.

At this time, responses will be returned by mail.

This notice is issued in Washington, DC on December 19, 2001.

Judy Van Rest,

Associate Director for Management.

[FR Doc. 02–2653 Filed 2–4–02; 8:45 am]

BILLING CODE 6051–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Individual authorities established under Schedule C between December 1, and December 31, 2001, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule C

The following Schedule C authorities were established during December 2001:

Broadcasting Board of Governors

Staff Director to the Director, Office of the Advisory Board for Cuba Broadcasting. Effective December 13, 2001.

Commission on Civil Rights

Special Assistant to a Commissioner. Effective December 3, 2001.

Council on Environmental Quality

Associate Director for Communications to the Chairman, Council on Environmental Quality. Effective December 17, 2001.

Department of Agriculture

Confidential Assistant to the Administrator, Rural Utilities Service. Effective December 17, 2001.

Staff Assistant to the Confidential Assistant, Office of the Secretary. Effective December 26, 2001.

Department of Commerce

Confidential Assistant to the Assistant Secretary for Economic Development. Effective December 3, 2001.

Confidential Assistant to the Director, Office of External Affairs. Effective December 3, 2001.

News Analyst to the Director, Office of Public Affairs. Effective December 3, 2001.

Senior Advisor to the Assistant Secretary for Economic Development. Effective December 7, 2001.

Associate Under Secretary for Communications to the Under Secretary for Economic Affairs. Effective December 7, 2001.

Special Assistant to the Assistant Secretary for Market Access and Compliance. Effective December 7, 2001.

Special Assistant to the Under Secretary for Oceans and Atmosphere. Effective December 17, 2001.

Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective December 17, 2001.

Congressional Affairs Specialist to the Director of Legislative Affairs. Effective December 17, 2001.

Confidential Assistant to the Chief of Staff. Effective December 17, 2001.

Special Assistant to the Under Secretary and Director, Patent and Trademark Office. Effective December 17, 2001.

Special Assistant to the Director of External Affairs. Effective December 17, 2001.

Confidential Assistant to the Executive Assistant to the Secretary. Effective December 17, 2001.

Special Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective December 17, 2001.

Deputy Director to the Director, Executive Secretariat. Effective December 20, 2001.

Public Affairs Specialist to the National Director, Minority Business Development Agency. Effective December 20, 2001.

Confidential Assistant to the Director, Executive Secretariat. Effective December 21, 2001.

Special Assistant to the Director, Office of White House Liaison. Effective December 21, 2001.

Department of Defense

Special Assistant to the Under Secretary of Defense for Policy. Effective December 3, 2001.

Protocol Officer to the Special Assistant to the Secretary of Defense (White House Liaison). Effective December 4, 2001.

Special Assistant to the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict. Effective December 17, 2001.

Department of Education

Secretary's Regional Representative, Region II, to the Deputy Assistant Secretary for Regional Services. Effective December 3, 2001.

Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective December 3, 2001.

Confidential Assistant to the Assistant Secretary for Vocational and Adult Education. Effective December 3, 2001.

Special Assistant to the General Counsel. Effective December 4, 2001.
Special Assistant to the Commissioner of Rehabilitative Service Administration. Effective December 4, 2001.
Secretary's Regional Representative, Region IX, to the Deputy Secretary for Regional Services. Effective December 11, 2001.
Special Assistant to the Secretary of Education. Effective December 19, 2001.
Confidential Assistant to the Chief of Staff to the Deputy Secretary. Effective December 19, 2001.
Special Assistant to the Director, Office of Public Affairs. Effective December 19, 2001.
Special Assistant to the Deputy Secretary. Effective December 21, 2001.
Confidential Assistant to the Assistant Secretary for Management. Effective December 26, 2001.

Department of Energy

Senior Advisor, Communications to the Principal Deputy Assistant Secretary for Energy, Efficiency and Renewable Energy. Effective December 7, 2001.
Chief of Staff to the Assistant Secretary for Energy Efficiency and Renewable Energy. Effective December 11, 2001.
Special Assistant for Communications to the Director, Office of Civilian Radioactive Waste Management. Effective December 11, 2001.
Policy Advisor to the Secretary of Energy. Effective December 11, 2001.
Special Assistant to the Director, Office of Management and Administration. Effective December 11, 2001.
Senior Policy Advisor to the Assistant Secretary for Environmental Management. Effective December 11, 2001.
Special Assistant to the Assistant Secretary for Policy and International Affairs. Effective December 17, 2001.
Deputy White House Liaison to the White House Liaison and Senior Policy Advisor. Effective December 17, 2001.

Department of Health and Human Services

Secretary's Regional Representative to the Director of Intergovernmental Affairs. Effective December 13, 2001.
Secretary's Regional Representative to the Director of Intergovernmental Affairs. Effective December 13, 2001.
Speechwriter to the Assistant Secretary for Public Affairs. Effective December 13, 2001.
Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media). Effective December 17, 2001.
Counselor to the Deputy Secretary. Effective December 19, 2001.
Executive Director, President's Committee on Mental Retardation to the Assistant Secretary for Children and Families, Administration for Children and Families. Effective December 19, 2001.
Deputy Director for Policy to the Director of Intergovernmental Affairs. Effective December 20, 2001.
Special Assistant to the Assistant Deputy Secretary for Public Affairs (Policy and Strategy). Effective December 20, 2001.
Special Assistant to the Deputy Assistant Secretary for Policy and External Affairs, Administration for Children and Families. Effective December 20, 2001.
Associate Commissioner Children's Bureau to the Commissioner, Administration for Children Youth and Families. Effective December 20, 2001.
Confidential Assistant to the Director of Communications. Effective December 20, 2001.
Special Assistant to the Assistant Secretary for Children and Families, Administration for Children and Youth Families. Effective December 20, 2001.
Director, Office of International and Refugees Health to the Assistant Secretary for Health. Effective December 26, 2001.

Department of Housing and Urban Development

Special Assistant to the Director Special Actions. Effective December 20, 2001.
Staff Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations. Effective December 21, 2001.
Special Assistant to the Chief Financial Officer. Effective December 26, 2001.

Department of the Interior

Special Assistant to the Deputy Director for External Affairs (National Park Service). Effective December 13, 2001.
Deputy White House Liaison to the White House Liaison. Effective December 14, 2001.

Department of Justice

Press Assistant to the Director, Office of Public Affairs. Effective December 5, 2001.

Department of Labor

Special Assistant to the Secretary of Labor. Effective December 7, 2001.
Chief of Staff to the Assistant Secretary, Employment Standards Administration. Effective December 11, 2001.
Special Assistant to the Assistant Secretary for Occupational Safety and Health Administration. Effective December 13, 2001.
Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective December 13, 2001.
Secretary's Representative, Seattle, WA to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective December 13, 2001.
Special Assistant to the Assistant Secretary for Administration and Management. Effective December 13, 2001.
Special Assistant to the Director, 21st Century Workforce. Effective December 17, 2001.
Chief of Staff to the Deputy Assistant Secretary. Effective December 20, 2001.
Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective December 20, 2001.

Department of State

Legislative Management Officer to the Assistant Secretary for Legislative Affairs. Effective December 11, 2001.

Department of Transportation

Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance. Effective December 5, 2001.
Associate Director to the Assistant Secretary for Governmental Affairs. Effective December 6, 2001.
Scheduling/Advance Assistant to the Director for Scheduling and Advance. Effective December 27, 2001.
Staff Assistant to the Administrator, Federal Transit Authority. Effective December 28, 2001.

Department of the Treasury

Special Assistant to the Assistant Secretary for Financial Institutions. Effective December 21, 2001.
Senior Advisor to the Deputy Assistant Secretary for Government Financial

Policy. Effective December 21, 2001.
Deputy Executive Secretary to the Executive Secretary. Effective December 26, 2001.

Environmental Protection Agency

Assistant to the Director of Operations, Office of Communications, Education and Media Relations. Effective December 3, 2001.
Director of Operations to the Administrator. Effective December 3, 2001.
Special Assistant to the Associate Administrator for Communications, Education, and Media Relations. Effective December 13, 2001.
Program Advisor (Publications) to the Associate Administrator for Communications, Education and Media Relations. Effective December 13, 2001.
Program Advisor to the Assistant Administrator for Policy, Economics and Innovation. Effective December 13, 2001.

Equal Employment Opportunity Commission

Confidential Assistant to the Chair. Effective December 17, 2001.
Special Assistant (Speech Writer) to the Director, Office of Communications and Legislative Affairs. Effective December 17, 2001.
Confidential Assistant to the Director, Office of Communications and Legislative Affairs. Effective December 20, 2001.

Federal Trade Commission

Consumer Liaison Specialist to the Director, Office of Consumer and Business Education. Effective December 7, 2001.

National Aeronautics and Space Administration

Staff Support Specialist to the Administrator, National Aeronautics and Space Administration. Effective December 21, 2001.
Confidential Assistant to the Administrator, National Aeronautics and Space Administration. Effective December 21, 2001.

Office of Management and Budget

Confidential Assistant to the Associate Director, National Security and International Affairs. Effective December 3, 2001.
Special Assistant to the Associate Director for Information Technology and E-Government. Effective December 28, 2001.

Office of National Drug Control Policy

Public Affairs Specialist to the Director, Office of National Drug Control Policy. Effective December 3, 2001.

Office of Personnel Management

White House Liaison to the Chief of Staff. Effective December 12, 2001.
Special Iniatives Coordinator to the Director, Office of Communications. Effective December 17, 2001.
Deputy General Counsel to the General Counsel. Effective December 17, 2001.
Special Assistant to the Director, Office of Communications. Effective December 17, 2001.
Senior Advisor to the Chief of Staff. Effective December 17, 2001.

President's Commission on White House Fellowships

Executive Director to the President of the United States. Effective December 3, 2001.
Outreach Coordinator to the Executive Director. Effective December 13, 2001.

Small Business Administration

Special Assistant to the Associate Deputy Administrator of Entrepreneurial Development. Effective December 3, 2001.
Regional Administrator, Region I, Boston, MA to the Associate Administrator for Field Operations. Effective December 28, 2001.
Regional Administrator, Region 10, Seattle Washington to the Associate Administrator for Field Operations. Effective December 28, 2001.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–2675 Filed 2–4–02; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45355; File No. SR–NASD–2001–75]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. To Make Permanent a Pilot Amendment to NASD Rule 4120 Relating to Nasdaq's Authority To Initiate and Continue Trading Halts

January 29, 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 October 18, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On January 28, 2002, Nasdaq amended the proposal.[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

Nasdaq proposes to make permanent an amendment to NASD Rule 4120 that the Commission approved on a pilot basis. The amendment clarified Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq. In addition, Nasdaq proposes to make the following amendments to the language of the pilot rule that is currently in effect. Proposed new language is in italics; proposed deletions are in brackets.

4120. Trading Halts

(a) No change.

(1)–(5) No change.

(6) Halt trading in a security listed on Nasdaq when

(i) Extraordinary market activity in the security is occurring, such as the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the national best bid and offer, [and]

(ii) Nasdaq determines that such extraordinary market activity is likely to have a material effect on the market for the security, and

([ii]*iii*) Nasdaq believes that such extraordinary market activity may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* January 25, 2002 letter from Mary M. Dunbar, Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, and attachments (''Amendment No. 1''). Amendment No. 1 completely replaces and supersedes the original proposal.

(b) (1)–(5) No change.

(6) *(i) In the case of a trading halt under Rule 4120(a)(6) based on the possible misuse or malfunction of an electronic quotation, communication, reporting, or execution system that is linked to (but not operated by) Nasdaq, Nasdaq will promptly contact the operator of the system in question to ascertain information that will assist Nasdaq in determining whether a misuse or malfunction has occurred, what effect the misuse or malfunction is having on trading in a security, and what steps are being taken by the operator of the system to address the misuse or malfunction. If the operator of the system is unavailable when contacted by Nasdaq, Nasdaq will continue efforts to contact the operator of the system to ascertain information that will assist Nasdaq in determining whether the trading halt should be terminated.*

(*ii*) A trading halt initiated under Rule 4120(a)(6) shall be terminated as soon as Nasdaq determines either that the system misuse or malfunction that caused the extraordinary market activity [has been corrected] *will no longer have a material effect on the market for the security* or that system misuse or malfunction is not the cause of the extraordinary market activity.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

On May 11, 2001, Nasdaq filed with the Commission a proposed rule change to clarify Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq.[4] On July 27, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change, requesting that the Commission approve the proposed rule change on a three-month pilot basis, expiring on October 27, 2001.[5] Also on July 27, 2001, the Commission approved the proposed rule change.[6] On September 27, 2001, Nasdaq filed a proposed rule change extending the pilot until January 27, 2002.[7] Nasdaq again extended the pilot until April 30, 2002.[8]

NASD Rule 4120 provides Nasdaq with authority to halt trading in securities in a number of circumstances in which Nasdaq deems a trading halt necessary to protect investors and the public interest. Before adopting the pilot amendment, the specific bases for initiating a trading halt focused primarily on ensuring that all investors have access to material news about an issuer. The pilot amendment added a new basis for the imposition of a trading halt, focused on aberrational trading in a particular security.

As a result of the decentralized and electronic nature of the market operated by Nasdaq, the price and volume of transactions in a Nasdaq-listed security may be affected by the misuse or malfunction of electronic systems, including systems that are linked to, but not operated by, Nasdaq. In circumstances where misuse or malfunction results in extraordinary market activity, Nasdaq believes that it may be appropriate to halt trading in an affected security until the system problem can be rectified. In the period during which the rule has been in effect, Nasdaq has not had occasion to initiate a trading halt under the pilot rule, and it continues to be Nasdaq's expectation that the rule would be invoked only in rare circumstances. Nevertheless, Nasdaq believes that the rule is an important component of its authority and responsibility to maintain the fairness and orderly structure of the Nasdaq market and should be approved on a permanent basis.

The rule was drafted to be flexible and to permit rapid action, in order to serve the rule's purpose of guarding against disruptive trading conditions. Thus, the rule allows Nasdaq to halt trading based on a belief that system misuse or malfunction may be the cause of extraordinary market activity.[9] In recognition of the fact that the rule allows Nasdaq to take action in response to problems with systems that Nasdaq does not operate, however, Nasdaq is proposing to amend the rule to specify procedures that Nasdaq will follow in connection with a trade halt based on the misuse or malfunction of a system that is linked to, but not operated by, Nasdaq.

Specifically, Nasdaq will promptly contact the operator of the system in question to ascertain information that will assist Nasdaq in determining whether a misuse or malfunction has occurred, what effect the misuse or malfunction is having on trading in a security, and what steps are being taken by the operator of the system to address the misuse or malfunction. If the operator of the system is unavailable when contacted by Nasdaq, Nasdaq will continue efforts to contact the operator of the system to ascertain information that will assist Nasdaq in determining whether the trading halt should be terminated. In addition, Nasdaq is proposing to amend the rule to require a finding that an observed instance of extraordinary market activity is likely to have a material effect on the market for the security that is the subject of a trading halt.

As is true for all trading halts initiated under NASD Rule 4120, a decision to halt trading requires a determination that the action is necessary to protect investors and the public interest. Moreover, a trading halt initiated under the rule will be terminated as soon as Nasdaq can conclude that the system misuse or malfunction will no longer have a material effect on the market for the security that is the subject of the halt or that system misuse or malfunction is not the cause of an instance of extraordinary market activity.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[10] which requires, among other things, that

[4] Securities Exchange Act Release No. 44307 (May 15, 2001), 66 FR 28209 (May 22, 2001)(SR–NASD–2001–37).

[5] Letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Alton Harvey, Division of Market Regulation, SEC (July 27, 2001).

[6] Securities Exchange Act Release No. 44609 (July 27, 2001), 66 FR 40761 (August 3, 2001)(SR–NASD–2001–37).

[7] Securities Exchange Act Release No. 44870 (September 28, 2001), 66 FR 50701 (October 4, 2001)(SR–NASD–2001–60).

[8] SR–NASD–2002–14.

[9] The phrase ''extraordinary market activity'' is not defined in the rule. Similar phrases, such as ''unusual market conditions,'' have been used in SEC and self-regulatory organization rules without being specifically defined. *See e.g.,* SEC Rule 11Ac1–1(b)(3); New York Stock Exchange Rule 104, Supplementary Material .10(6)(i)(B); New York Stock Exchange Rule 717. A rule that is designed to respond to aberrational market conditions must be somewhat flexible in its application because of the difficulty of defining *ex ante* all situations in which application of the rule might be necessary.

[10] 15 U.S.C. 78o–3.

a registered national securities association's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest. Nasdaq believes the proposed amendments to the rule are consistent with the Act because they establish procedures that Nasdaq will follow in connection with a trading halt that is based on the misuse or malfunction of a system that is not operated by Nasdaq, and will therefore help to ensure that the rule is applied in an appropriate manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will impose no 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

Instinet Corporation (''Instinet'') commented on the proposed rule change as originally proposed, expressing concerns about trading halts that might be premised on the misuse or malfunction of systems that are not operated by Nasdaq.[11] Nasdaq believes that the amendments to the rule proposed in this filing respond to the concerns expressed by Instinet without impairing the flexibility that the rule must retain in order for the rule to assist Nasdaq in meeting its overarching responsibility to maintain the fairness and orderly structure of the Nasdaq market. Written comments on the proposed rule change were neither solicited nor 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 the NASD 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.

[11] *See* July 27, 2001 letter from Jon Kroeper, First Vice President-Regulatory Policy/Strategy, Instinet, to Jonathan G. Katz, Secretary, SEC.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions 2 should refer to file number SR–NASD–2001–75 and should be submitted by February 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2654 Filed 2–4–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before April 8, 2002.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Ruthie Abney, Office Automation Assistant, Office of Business Development, Small Business Administration, 409 3rd Street, SW., Suite 8000, Washington DC 20416.

[12] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: Ruthie Abney, Office Automation Assistant, (202) 205–6410 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: 8(a) Annual Update.
Form No: 1450.
Description of Respondents: 8(a) Program Participants.
Annual Responses: 5,000.
Annual Burden: 13,000.

Title: Semiannual Report on Representatives and Compensation Paid for Services in Connection with Obtained Federal Contracts.
Form No: 1790.
Description of Respondents: 8(a) Program Participants.
Annual Responses: 9,000.
Annual Burden: 9,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–2725 Filed 2–4–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Agency Information Collection; Other Than Those Contained In Proposed Rules or In Current Rules; Transportation for Individuals With Disabilities-Accessibility of Over-the-Road Buses (OTRBs)

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the Department of Transportation's (DOT) amendment of its Americans with Disabilities Act and Final Rule on Accessibility of Over-the-Road Buses.

DATES: Comments on this notice must be received by April 8, 2002.

ADDRESSES: Comments should be directed to the Assistant General Counsel for Regulation and Enforcement, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Linda A. Lasley, Attorney-Advisor, Regulation and Enforcement, Office of the General Counsel, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202)366–4723.

SUPPLEMENTARY INFORMATION:

Title: Transportation For Individuals With Disabilities-Accessibility of Over-the-Road Buses (OTRBs).

OMB Number: 2100–0019.

Type of Request: New Collection.

Affected Public: Bus companies and the disability community.

Abstract: The Department of Transportation (DOT), in conjunction with the U.S. Architectural and Transportation Barriers Compliance Board, issued final access regulations for privately-operated over-the-road buses (OTRBs) as required by the Americans with Disability Act (ADA) of 1990. The final rule has four different recordkeeping/reporting requirements. The first has to do with 48 hour advance notice and compensation. The second has to do with equivalent service and compensation. The third has to do with reporting information on ridership on accessible fixed-route buses. The fourth has to do with reporting information on the purchase and lease of accessible and inaccessible new and used buses. The purpose of the information collection requirements is to provide data that the Department can use in its regulatory review and to assist the Department in its oversight of compliance by bus companies.

Respondents: Charter/Tour Service Operators, Fixed Route Companies, Small Mixed Service Operators.

Estimated Number of Respondents: 3,448.

Average Annual Burden Per Respondent: Variable.

Estimated Total Burden on Respondents: 316,226 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. All responses to this notice, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on January 30, 2002.

Robert Ashby,

Deputy Assistant General, Counsel for Regulation and Enforcement.

[FR Doc. 02–2724 Filed 2–4–02; 8:45 am]

BILLING CODE 4910–6–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To impose and Use a Passenger Facility Charge (PFC) at Metropolitan Oakland International Airport, Oakland, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Metropolitan Oakland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 7, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Hawthorne, CA 90250, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Tay Yoshitani, Executive Director, Port of Oakland, at the following address: 530 Water Street, Oakland, CA 94607. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port of Oakland under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Metropolitan Oakland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 17, 2002, the FAA determined that the application to impose and use a PFC submitted by the Port of Oakland was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 19, 2002.

The following is a brief overview of the application No.: 02–11–C–00–OAK.

Project No. 1 (Use Project) Construct Remote Overnight Aircraft Parking Apron

Level of proposed PFC: $3.00.

Charge effective date: July 1, 1997.

Proposed charge expiration date: July 1, 2002.

Total estimated PFC revenue: $30,000,000.

Project No. 2 (Impose and Use Project) Terminal One Gate Improvement Project

Level of proposed PFC: $4.50.

Proposed Charge effective date: October 1, 2003.

Proposed charge expiration date: January 1, 2003.

Total estimated PFC revenue: $7,000,000.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/On-Demand Air Carriers filing FAA form 1800–31 and Commuters or Small Certificated Air Carriers filing DOT form 298–C of T1 or E1.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Hawthorne, CA 90250. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Port of Oakland.

Issued in Hawthorne, California, on January 25, 2002.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 02–2722 Filed 2–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Reno/Tahoe International Airport, Reno, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Reno/Tahoe International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 7, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Hawthorne, CA 90250, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Christopher Horton, Manager of Finance, Airport Authority of Washoe County, Airport Department, at the following address: P.O. Box 12490, Reno, NV 89510. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Airport Authority of Washoe County under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Reno/Tahoe International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 17, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport Authority of Washoe County was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 18, 2002. The following is a brief overview of the application No. 02–05–C–00–RNO:

Level of proposed PFC: February 1, 2003.

Proposed charge effective date: February 1, 2003.

Proposed charge expiration date: October 1, 2003.

Total estimated PFC revenue: $6,734,192.

Brief description of the proposed project: Replacement of Flight and Baggage Information Display System (FIDS/BIDS), Airfield Signage Standardization (Guidance Signs)—Phase 2, Concourse Escalator Replacement, Terminal Lobby Modernization, 800 Megahertz Radio System and Terminal Apron Reconstruction—Phase 5A.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/on-demand Air Carriers (formerly Air Taxi/Commercial Operators) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTRACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Hawthorne, CA 90250. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Airport Authority of Washoe County.

Issued in Hawthorne, California, on January 25, 2002.

Herman C. Bliss,

Manager, Airports Division Western-Pacific Region.

[FR Doc. 02–2723 Filed 2–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number PS–ACE100–2002–001]

Proposed Issuance of Policy Memorandum, Dive Test for Part 23/CAR 3 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of policy statement; request for comments.

SUMMARY: This document proposes to adopt new policy for certification of normal, utility, acrobatic, and commuter category turbine powered airplanes for dive test.

DATES: Comments sent must be received by April 8, 2002.

ADDRESSES: Send all comments on this proposed policy statement to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Lowell Foster, FAA, Small Airplane Directorate, Regulations and Policy Branch, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127; fax (816) 329–4090; email: <*Lowell.Foster@faa.gov*>.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on the Proposed Policy?

We invite your comments on this proposed policy statement PS–ACE100–2002–001. You may send whatever written data, views, or arguments you choose. We will consider all comments received by the closing date. We may change the proposals contained in this notice because of the comments received.

Please send comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.** Comments sent using the Internet must contain ''Comments to Policy Statement Number PS–ACE100–2002–001'' in the subject line. Commenters should format in Microsoft Word 97 or ASCII any file attachments that are sent using the Internet.

Send comments using the following format:

—Organize comments issue-by-issue. For example, discuss a comment about the analysis and a comment about speed limits as two separate issues.

—For each issue, state what specific change you are requesting to the proposed policy memorandum.

—Include justification (for example, reasons or data) for each request.

If sending your comments using the Internet will cause you extreme hardship, you may send comments using the U.S. Mail, overnight delivery, or facsimile machine. You should mark your comments, ''Comments to Policy Statement PS–ACE100–2002–001'' and send two copies to the above address in the section **FOR FURTHER INFORMATION CONTACT.**

What Would Be the General Effect of This Proposed Policy?

The FAA is presenting this information as a set of guidelines suitable for use. However, we do not intend for this proposed policy to become a binding norm; it does not form a new regulation, and the FAA would not apply or rely on it as a regulation.

The FAA Aircraft Certification Offices (ACO's) and Flight Standards District Offices (FSDO's) that certify changes in type design and approve alterations in normal, utility, and acrobatic category airplanes should try to follow this policy when appropriate. In addition, as with all advisory material, this statement of policy identifies one means, but not the only means, of compliance.

Because this proposed general statement of policy only announces what the FAA seeks to establish as policy, the FAA considers it an issue for which public comment is appropriate. Therefore, the FAA requests comments on the following proposed general statement of policy relevant to compliance with § 23.251 of the Federal Aviation Regulations (14 CFR 23.251), and other related regulations.

Summary

Section 23.251 must be addressed when approving replacement propellers. While flight testing to V-dive may not be required to show compliance for slow, low performance airplanes, it is normally necessary for higher-performance airplanes because they are more likely to inadvertently exceed their maximum speed.

Background

We recently received a large number of supplemental type certification (STC) applications for replacement propeller installations on single engine airplanes with a reciprocating engine. The propellers are type certificated under 14 CFR part 21, § 21.29 (accepted under the bilateral agreement with the exporting country). The applicant questioned whether the airplanes modified with these propellers should be required to fly to dive speed under part 23, § 23.251 as part of the STC program in addition to showing compliance to § 23.33 for propeller overspeed.

Propeller overspeeds can occur during high-speed flight, such as the dive test. Overspeeding refers to a condition where the engine or propeller RPM limit is exceeded; typically because the airplane is going fast enough to drive the propeller (and engine) beyond the engine limits. The intent of § 23.33 is to ensure that propeller overspeeds did not occur within the normal flight envelope. This intent differs from that in the V–Dive requirements, § 23.251, which were intended to address airframe vibration and buffeting. The intent of these requirements are supported by the Flight Test Report Guides for both CAR 3 and early part 23 (FAA Form 8110–11 and 8110–18) which had an allowance for the use of a different propeller for the dive test if the production propeller would overspeed the engine beyond that allowed by the engine manufacturer. This practice of allowing different propellers supports that the original intent of § 23.251 was not an engine/propeller control test, but an airframe test addressing vibration and buffeting.

Service history for light, low-speed (typically 2–4 place) reciprocating engine powered airplanes has validated the testing limits used for both the § 23.33 and § 23.251 requirements. This airplane class is typically slow enough that it is unlikely the pilot would inadvertently exceed V_{NE}. Furthermore, in most cases, at dive speed, the air is driving the propeller and there are not any pressure pulses from the propeller to affect the airframe. The other concern is the propeller overspeeding the engine. Finally, the frequency of the propeller and engine RPM are typically far from any airframe harmonic frequency.

Propellers on multiengine and turboprop airplane installations are more critical than on light, low-speed airplanes and applicants should consider including a dive test for these certification programs. Previous dive tests on a turbine powered, multiengine airplane uncovered a problem with the engine/propeller control system. While § 23.251 is not intended to address propeller or engine control problems directly, this problem was severe enough to warrant a design change because of safety considerations. In addition, It is typically easier and therefore more likely that the pilot of a larger, multiengine airplane or turbine powered airplane will inadvertently exceed V_{NE} or V_{MO} in normal operation. Additionally, there have been propeller/turbine engine runaways caused by over-speeding during the V-dive test. Performing the V-dive test for the propeller installation program would insure that a propeller/engine problem is not discovered inadvertently during follow-on non-propulsion based airplane modifications requiring test pilots to demonstrate the airplane out to V-dive.

Policy

Part 23, § 23.251 requires that the aircraft be free of vibration and buffeting that could interfere with the pilot's ability to safely fly the aircraft, at all speeds up to V_D, in all approved airplane configurations. Compliance with § 23.251 is typically shown with a flight demonstrating that all design analysis and margins related to airframe vibration and buffeting, including those established for the propeller/engine/airframe, are adequate to provide a safe airplane up to its dive speed.

Section 23.251 must be addressed when approving replacement propellers. While dive testing the airplane is one way to demonstrate compliance to § 23.251, it may not be necessary for light, low-speed airplanes that are unlikely to inadvertently exceed the maximum speed of the airplane. Conversely, dive testing should be performed for higher-performance airplanes because they are more likely to inadvertently exceed their maximum speed.

For light, low-speed airplanes, should the applicant choose not to perform a dive test, then other means of compliance acceptable to the FAA must be provided. One way of addressing § 23.251 is for an applicant to provide evidence of positive service history or that the new propeller/engine combination has been tested on a previous program to the same or a higher speed being requested. Applicants have also shown compliance with § 23.251 by analysis and by limiting V_D to a lower value such as V_{NE}. V_{NE} now becomes the new V_D, and a new V_{NE} is established at a lower speed.

Issued in Kansas City, Missouri, on January 29, 2002.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2720 Filed 2–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed [Preliminary] Airworthiness Criteria for Airworthiness Certification of Transport Category Airships

AGENCY: Federal Aviation Administration, DOT.

ACTION: Extension of comment period.

SUMMARY: This notice announces the extension of the comment period for the notice of availability and request for comments for the initiation of a Federal Aviation Administration (FAA) proposed airworthiness criteria for transport category airships. The FAA is extending the comment period to allow companies and individuals adequate time to complete their comments to the proposed criteria.

DATES: The comment period is being extended from February 5, 2002, to April 5, 2002.

ADDRESSES: Copies of the proposed airworthiness criteria for transport

category airships may be requested from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. The proposed airworthiness criteria is available on the Internet at the following address: *http://www.faa.gov/programs _ rsvp2/smart/faa_home_page/certification/ aircraft/small_airplane _ directorate_news_proposed.html.*

Send all comments on the proposed airworthiness criteria for transport category airships to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mike Reyer or Karl Schletzbaum, Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy, ACE–111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4131 (M. Reyer); or (816) 329–4146 (K. Schletzbaum); fax: (816) 329–4090; e-mail: *karl.schletzbaum@faa.gov or michael.reyer@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA issued a notice of availability and request for comments on Proposed Airworthiness Criteria for Airworthiness Certification of Transport Category Airships on September 28, 2001 (66 FR 51090, October 5, 2001). The FAA is extending the comment period to give all interested persons the opportunity to comment on the proposed criteria.

Issued in Kansas City, Missouri on January 23, 2002.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2630 Filed 2–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement Number ANM–01–04; System Wiring Policy for Certification of Part 25 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of final policy.

SUMMARY: In this document, the FAA addresses public comments that were submitted in response to a previously published general statement of policy that is applicable to the type certification process of transport category airplanes. The policy provides guidance to FAA certification teams for the type design data needed. The policy is necessary to correct deficiencies associated with the submittal of design data and instructions for continued airworthiness involving airplane system wiring for type design, amended design, and supplemental design changes.

FOR FURTHER INFORMATION CONTACT: Gregory Dunn, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane and Flight Crew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2799; fax (425) 227–1320; e-mail: *gregory.dunn@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2001, the FAA published in the **Federal Register** (66 FR 34983) a general statement of policy comprising guidance to FAA personnel for reviewing certain certification plans for transport category airplanes. Specifically, the policy statement provides internal guidance to FAA certification teams that will enable them to more thoroughly examine all required information submitted in the type design data package for compliance with wire installation safety standards. This policy will also advise applicants what information needs to be provided in their type design data package to avoid delays in the certification process caused by incomplete or ambiguous information.

The safety standards for civil transport category airplanes are specified in Title 14, Code of Federal Regulations (CFR), part 25. If an applicant demonstrates that a particular design (*i.e.*, a particular model) complies with these standards, the FAA issues it a design approval. The drawings and other data that describe that design are known as the ''type design.'' When an applicant submits the necessary documents required for type certification by the FAA, the compilation of those documents is known as the ''type design data package.''

Based on certification projects submitted to the FAA for review in recent years, the FAA has become aware that there is some confusion among applicants as to the definition of ''type design,'' especially with respect to the inclusion of drawings and specifications necessary to define the wiring configuration associated with equipment installation. In a number of recent certification projects, type design data packages that were submitted did not include wiring diagrams showing the source and destination of all wire associated with the installation. Also, wire installation drawings showing airplane wire routing, grounding, shielding, clamping, conduits, etc., either were missing or lacked sufficient detail. The wiring diagrams and installation drawings did not contain the necessary information intended by the relevant regulations. These drawing packages did not adequately and clearly define the configuration of the model to be certificated. In addition, instructions for continued airworthiness, as required by the regulations, were not defined.

Current Regulatory Requirements

The type and quality of data required for type design data packages and requirements for instructions for continuing airworthiness are indicated in the regulations. The pertinent sections of 14 CFR are as follows:

Section (§) 21.31 (''Type design''): This section defines and describes ''type design.''

§ 21.33 (''Inspection and tests''): This section, specifically § 21.33(b), provides additional insight as to the contents of the type design data package.

§ 21.21 (''Issue of type certificate: normal, utility, acrobatic, commuter, and transport category aircraft; manned free balloons, special classes of aircraft, aircraft engines; propellers''): This section lists pertinent requirements for a type certificate.

§ 21.50 (''Instructions for continued airworthiness and manufacturer's maintenance manuals having airworthiness limitations sections''): This section requires applicants to submit instructions for continued airworthiness as part of their type design data package. Paragraph 21.50(b) is relevant to this policy statement.

§ 21.101 (''Designation of applicable regulations'') and *§ 21.115* (''Applicable requirements''): These sections make it clear that these data requirements apply to changes to type certificates.

Procedures for accomplishing the evaluation and approval of airplane type design data can be found in FAA Order 8110.4B, ''Type Certification,'' dated April 24, 2000. This document gives comprehensive guidance on what constitutes a design package and what is necessary to make acceptable findings of compliance.

Identified Problems

Ambiguous Definition of Configuration

As mentioned above, the FAA has identified a number of recently submitted type design data packages that did not meet the intent of § 21.31(a). Specifically, these packages did not completely define the

certification configuration. For example, these packages did not completely define specific routing and installation of wiring on the airplane, which then left an inordinate portion of the installation to the discretion of the installer.

The routing of wiring is an important aspect not only to the system being modified, but also to other systems that can be affected by that wiring. It is important that the routing of wiring strictly follow the criteria established by the FAA in the certification basis, as reflected in the holder's original or subsequently approved type design. This requires installation drawings and instructions that completely define the required routing and installation with sufficient detail to allow repeatability of the installation.

System Safety Assessment

A system safety assessment is done as part of the installation of any equipment on the airplane. This typically consists of a functional hazard analysis, failure mode and effects analysis, zonal analysis, or other safety analyses appropriate to the system being installed. In the past, insufficient emphasis has been placed on an examination of failures of wiring external to the actual line replaceable units being installed. Failure of wiring in bundles due to chafing, contamination, or other causes may affect the continued safe operation of the airplane.

References to General Guidance

Problems occur when applicants overly rely on ''standard practices'' or other general guidance for installation details. Often, type design data packages make references to FAA Advisory Circular (AC) 43–13, ''Acceptable Methods, Techniques, and Practices—Aircraft Inspection and Repair,'' for installation instructions. That guidance is general in nature and offers applicants multiple options for compliance. Because the installer can choose from a number of options for installation details, it is difficult for the FAA to find that the configuration complies with the criteria established by the FAA in the certification basis for a previously approved type design. An installer could make inappropriate choices of method, depending upon his or her previous experience and training.

The practice of referencing general guidance, on those occasions when safety assurances and certification criteria necessitate strict adherence to specified certification standards, could result in an incomplete definition of the installation configuration. This clarification of FAA policy does not mean that data packages cannot reference AC 43–13 or similar documents, but the applicant is required to provide installation instructions which are unambiguous.

Omission of Manufacturing Process Specifications

There also have been cases where crucial manufacturing process specifications were omitted in the type design data packages pertaining to wiring installation details. This has led to insufficient control of the production of parts, and consequent airworthiness problems related to faulty parts manufacturing. This omission error frequently occurs when the type design approval holder routinely uses a complex process, but has not carefully defined the process in the type design data. As a consequence, it can result in approval of replacement parts that may not comply with necessary but undefined processing requirements.

Modifications Not Compatible With Original Type Design Standards

Another common problem occurs when a modifier is unaware of, or does not specify, installation and routing practices that are compatible with the certification standards established for the original type design.

Some manufacturers provide an abbreviated version of their installation and routing specifications in the maintenance manual that they prepare for their products. These specifications may not be readily available to modifiers. This can result in ''inadvertent non-compliance'' with certification requirements. One example of this kind of inadvertent non-compliance would be the installation of a power wire for a modification in a wire bundle containing critical wiring that the original manufacturer was required to isolate from other systems. This type of situation can be prevented by the applicant using experienced design engineers, doing physical inspections of the airplanes to be modified to ensure compatibility, and using the original airplane manufacturer's wiring installation guidelines.

Instructions for Continued Airworthiness

A review of past certification projects indicates that the maintenance aspects of system wire external to the installed equipment is not being adequately addressed. The integrity of the wiring is typically left to those doing general airplane maintenance that relies on visual inspections. However, visual inspections may not be adequate for wiring routed in metal or opaque conduits, wire in high vibration areas, or wire located in difficult to inspect areas. Equipment installers need to address any special maintenance requirements for the airplane wiring associated with equipment installation.

Disposition of Comments

The FAA received comments on the policy statement from four commenters: two representing industry groups, one an aviation safety inspector, and one a private citizen. The comments generally fall within four specific subject areas. These are addressed below.

1. Editorial Changes for Clarification of Meaning

One commenter suggests that the terms ''complete'' and ''completely,'' ''strictly,'' ''precise,'' and ''definitive,'' used in the Statement of FAA Policy could be regarded as an absolute requirement, overly precise, or unclear. The commenter also requests that certain sentences be reworded.

The FAA accepts these comments with some modifications. The intent of this policy is to define the type design using drawings which are unambiguous with respect to important design details. It is not the intent of the FAA to require that these drawings contain every minute detail. Tests and analyses must be sufficiently detailed so that conformity can be accomplished.

In response to this commenter:

- The following sentence in paragraph 1 has been deleted: ''These packages should completely define the certification configuration.''
- The sentence in paragraph 2, which begins ''Installation drawings that completely define the configuration typically will identify: * * *'' has been changed to the following: ''Installation drawings should identify the configuration. Such drawings typically will identify: * * *''
- The sentence in paragraph 7 which begins ''These tests and analyses require complete * * *'' is changed to ''These tests and analyses should define the parts so that: * * *''
- The sentence in paragraph 8 that contains ''A complete definition * * * requires a drawing package that clearly and completely identifies: * * *'' is changed to ''The definition of the parts, including wiring and wire installation hardware, requires a drawing package that clearly identifies: * * *''
- The word ''strictly,'' as used in the fourth sentence in the first paragraph, beginning ''It is important that the routing of wiring strictly follow the intent of the criteria * * *'' is deleted.

• The word ''definitive'' in the last sentence in paragraph 5 is deleted and the rest of the sentence is rewritten for clarity. The sentence now reads, ''This, in turn, requires a knowledge of the configuration through design control and an understanding of the airplane manufacturer's relevant wire installation practices or procedures, especially any requirements that pertain to wire separation.''

• In paragraph 6, ''definitive drawings'' is changed to ''engineering drawings'' in order to more accurately reflect the intended meaning, and, in the same paragraph, in the last sentence, the word ''precise'' is removed from ''precise location or routing of the wiring'' and the phrase now reads ''location or routing of the wiring.''

A second commenter requests deletion, addition, or revision of sentences for clarification. Specifically, this commenter requests the following changes:

• Remove the following sentence in the ''Background'' section under ''One-Only Approvals'': ''The certification regulations for one-only approvals permit the use of photographs and other similar data to document the modification.'' The commenter notes that this sentence implies that photographs are not acceptable for multiple approvals.

The FAA accepts this comment with modification. The sentence is revised as follows: ''The certification regulations for one-only approvals often use photographs and other similar data to document the modification.''

• Add the following sentence to the end of ''References to General Guidelines'' section: ''This clarification of FAA policy does not mean that data packages cannot reference AC 43–13 or similar documents, but the applicant is required to provide installation instructions which are unambiguous.''

The FAA concurs and the sentence is added as submitted.

• Modify the last sentence of paragraph 5 of ''Statement of FAA Policy'' to read, ''This, in turn, requires definitive knowledge of the configuration through design control and an understanding of the airplane manufacturer's wire installation rules, especially any requirements that pertain to wire separation, as described by the airplane manufacturer in the maintenance manual.''

The FAA does not concur. The purpose of this sentence is to address the need to understand the manufacturer's design as well as installation requirements. These requirements are not necessarily found in the maintenance manuals. However, as noted earlier, the sentence is revised to address a previous commenter's request to remove the word ''definitive.''

2. Consideration for modifications in process

One commenter requests that the policy give reasonable consideration to modification programs presently in process.

The FAA concurs with this comment. It is the Transport Airplane Directorate's position that we will not impose new policy on an applicant for projects well on the way to completion, unless there is a safety concern that calls for an Airworthiness Directive. Consequently, the following sentence is added to the section entitled ''Effect of This Statement of Policy'': ''This policy applies to any new project initiated after July 2, 2001, the date of the original publication of this notice in the **Federal Register**. However, the applicant is encouraged to incorporate the guidance in this policy into any present project where feasible.''

3. Electrical Load

One commenter suggests that the policy should address the need to improve the currency and quality of the airline operator's electrical load report.

The FAA does not concur. The policy is meant to address only those aspects of Part 21 related to type design data and continuing airworthiness for Part 25 airplanes. It is not the intent of this policy to address all design aspects of wire installations on airplanes.

4. Wire Types and Inspections

Another commenter submitted the following three comments relating to wire types and wire inspections:

• The policy should address approved wire types.

The FAA does not concur. As required by other regulations, wire must meet its intended function, pass applicable qualification testing, not pose a hazard to the airplane, and be properly maintained.

• Issues relating to the mixing of wire types are not addressed.

Mixing of wire types is not addressed in this policy statement. Wires in a bundle must be securely clamped and bound and be compatible with their environment (i.e., vibration, temperature, etc.). These details are addressed in the design and installation requirements of the wire. These requirements are called out in the installation drawings.

• Visual inspections were found to be totally inadequate in discerning wiring cracks.

The FAA does not concur. Generally, visual inspections are a very valuable tool in assessing the condition of wire. Additional tools are necessary to detect microscopic wiring cracks. This is an area of research and, currently, non-destructive inspection (NDI) techniques are being developed and/or evaluated. The policy addresses the need for specific wire inspection requirements.

Additional Changes

The words ''when available'' were added to the last sentence in the section on ''Process Specifications and Modifications Compatible with Original Standards,'' for clarification.

Conclusion

After due consideration of the public comments submitted, the FAA has modified the general statement of policy to add clarification. The final policy, as modified, and without preamble, appears below.

Statement of FAA Policy

Unambiguous Definition of Configurations

Type design data packages should meet the intent of § 21.31(a). Specifically, routing and installation of wiring on the airplane should be addressed. It is important that the routing of wiring follow the intent of the criteria established by the FAA in the certification basis as reflected in the original or subsequently approved type design approval holder's design. The installer should provide with each application for design approval the following:

• Wiring diagrams showing source and destination of all airplane wiring associated with equipment installation.

• Installation drawings.

Installation drawings should identify the configuration. Such drawings will typically identify:

• Equipment locations.
• Wiring routings.
• Mounting and support details.
• Other such details of features.

System Safety Assessment

Certain airworthiness criteria require failure analyses (i.e., failure mode and effect analysis, zonal analysis, or other safety analysis) to demonstrate that a failure of the system under consideration:

• Does not, in itself, constitute an unacceptable hazard.

• Does not result in damage to other systems that are essential to safety.

The system safety assessment should include an assessment of the effects of failures of the airplane wire and its associated wire bundle for equipment

installed on the airplane. The analysis should consider the possible effects wire system failures would have on systems required for safe flight and landing due to damage in collocated wiring bundles and the possibility of smoke and/or fire events.

Failure of other systems must not damage a system being modified if the modified system is essential to safety. Such analysis requires that any possible interaction between systems be examined. This, in turn, requires a knowledge of the configuration through design control and an understanding of the airplane manufacturer's relevant wire installation practices or procedures, especially any requirements that pertain to wire separation.

Specific Installation Drawings Instead of General References

The FAA expects the applicant to provide engineering drawings instead of merely statements such as ''install in accordance with industry standard practices,'' or ''install in accordance with AC 43.13.'' The FAA considers such statements inadequate because the standard practices cannot define the location or routing of the wiring.

Process Specifications and Modifications Compatible with Original Standards

As noted in § 21.21, certain of the airworthiness requirements require analysis or tests to define the strength, durability, and life of components associated with the installation of wiring in the airplane (i.e., connectors, brackets, wire constraints, grommets, ground terminations, etc.). These tests and analyses should define the parts so that:

- Conformity of the parts to the type design may be verified.
- The characteristics of the parts important for test or analysis may be determined.

The airplane wiring parts specification provides the basis for necessary stress, durability, and life analysis. The definition of the parts, including wiring and wire installation hardware, requires a drawing package that clearly identifies:

- Shape.
- Material.
- Production processes.
- Any other properties affecting strength or functionality of each part.
- The arrangement of each part in the final assembly.

As an example, the FAA expects drawings to identify the material specification, heat treatment, corrosion protection or other finish, and any other important characteristic of each part subject to test or analysis for showing compliance with the airworthiness requirements. Much of this information can be provided by reference on the drawings to material or process specifications; the references then become part of the drawing and, consequently, part of the type design data package.

Modifiers of aeronautical products should use practices that reflect the certification criteria applicable to the original airplane manufacturer (OAM). The applicant should demonstrate that installation specifications and routing practices for the wiring used by modifiers is either the same as, or compatible with, those that are used presently for showing compliance to the type design certification requirements. Specifically, wire separation, wire types, wire bundle sizes, brackets, and clamping should be consistent with the approved standards. This may require the applicant and/or modifier to:

- Obtain or determine the applicable OAM design standards and/or practices for a given installation.
- Do a physical inspection of the airplanes to be modified to ensure compatibility.
- Develop processes and procedures to address compatibility between the original installation and the modification.

Modifiers and installers should use the airplane manufacturer's maintenance manuals, such as Maintenance Manual Chapter 20 (''Standard Practices Airframe''), Maintenance Manual Chapter 70 (''Standard Practices Engines''), or Chapter 20 (''Standard Practices Wiring'') as the primary source of wiring installation information, when available.

Instructions for Continued Airworthiness

Paragraph 21.50(b) of the regulations requires that instructions for continued airworthiness (ICA) be supplied by the modifier for modifications to aircraft and related products. The ICA for any specific wiring maintenance should be addressed where § 25.1529 is included in the certification basis.

Assessment of wire condition relies heavily on visual inspection. Consequently, the ICA should address inspectability of wire in conduits and difficult to inspect areas of the airplane. Where wire cannot be inspected visually, the ICA should address wire removal for inspection, when necessary, and the use of inspection techniques that do not rely on visual inspection alone. For example, wire in metal conduits may require repeated inspections for wear.

The FAA expects applicants for modifications to provide airworthiness instructions for the proposed changes in a format compatible with other maintenance instructions for the aircraft involved.

Effect of This Statement of Policy

The general policy stated in this document is not intended to establish a binding norm. It does not constitute a new regulation and the FAA would not apply or rely upon it as a regulation. Those tasked with the responsibility of airplane certification should generally attempt to follow this policy, when appropriate. In determining compliance with certification standards, each certification office has the discretion not to apply these guidelines where it determines that they are inappropriate. However, the certification office should strive to implement this guidance to the fullest extent possible to facilitate standardization and ensure that wiring installation details are adequately addressed during certification. Applicants should expect that the certificating officials will consider this information when making findings of compliance relevant to certification actions. Applicants also may consider the material contained in this policy statement as supplemental to that currently contained in 14 CFR part 21 when developing a means of compliance with the relevant certification standards.

This policy applies to any new project initiated after July 2, 2001, the date of the original publication of this notice in the **Federal Register**. However, the applicant is encouraged to incorporate the guidance in this policy into any present project where feasible.

Finally, as with all advisory material, this statement of policy identifies one means, but not the only means, of compliance.

Issued in Renton, Washington, on January 28, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2718 Filed 2–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–43 (Sub–No. 171X)]

Illinois Central Railroad Company—Abandonment Exemption—in McLean County, IL

On January 16, 2002, Illinois Central Railroad Company (IC) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad, known as the Heyworth Spur, extending from milepost 783.42 to the end of the line at milepost 786.5 in Heyworth, McLean County, IL, a distance of approximately 3.08 miles. The line traverses U.S. Postal Service ZIP Code 61745 and includes no stations.[1]

Based on information in its possession, IC states that the line does not contain federally granted rights-of-way. Any documentation in IC's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 6, 2002.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $1,000. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than February 25, 2002. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–43 (Sub-No. 171X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Thomas J. Litwiler, Two Prudential Plaza, Suite 3125, 180 North Stetson Avenue, Chicago, IL 60601–6721. Replies to the IC petition are due on or before February 25, 2002.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at "*www.stb.dot.gov.*"

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: January 28, 2002.

Vernon A. Williams,

Secretary.

[FR Doc. 02–2522 Filed 2–4–02; 8:45 am]

BILLING CODE 4915–01–P

[1] The Heyworth Spur is a single-track, stub-ended line that is located within, and in the immediate vicinity of, the village of Heyworth. It extends from the south side of the village through the village to the end of the line, at milepost 786.5, north of the village. The Heyworth Spur forms the northern portion of IC's Clinton-Heyworth branch line, which connects at Clinton with IC's secondary main line between Gilman and Springfield, IL. IC states that Heyworth will remain a station on its Clinton-Heyworth branch after abandonment of the Heyworth Spur.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 1040–SS, 1040–PR, and Anejo H–PR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040–SS, U.S. Self-Employment Tax Return; Form 1040–PR, Planilla Para La Declaracion De La Contribucion Federal Sobre El Trabajo Por Cuenta Propia—Puerto Rico; and Anejo H-PR, Contribuciones Sobre El Empleo De Empleados Domesticos.

DATES: Written comments should be received on or before April 8, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (CAROL.A.SAVAGE@irs.gov.), Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 1040–SS, U.S. Self-Employment Tax Return, Form 1040–PR, Planilla Para La Declaracion De La Contribucion Federal Sobre El Trabajo Por Cuenta Propia—Puerto Rico; and Anejo H–PR, Contribuciones Sobre El Empleo De Empleados Domesticos.

OMB Number: 1545–0090.

Form Number: Forms 1040–SS, 1040–PR, and Anejo H–PR.

Abstract: Form 1040–SS is used by self-employed individuals in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands to report and pay self-employment tax and provide proper credit to the taxpayer's social security account. Form 1040–PR is a Spanish version of Form 1040–SS for use in Puerto Rico. Anejo H–PR is used to compute household employment taxes. Form 1040–SS and Form 1040–PR are also used by bona-fide residents of Puerto Rico to claim the additional child tax credit.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations and farms.

Estimated Number of Responses: 430,400.

Estimated Time Per Respondent: 7 hours, 31 minutes.

Estimated Total Annual Burden Hours: 3,238,252.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–2745 Filed 2–4–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the electronic process for selling/issuing, servicing, and making payments on or redeeming U.S. Treasury securities.

DATES: Written comments should be received on or before April 8, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or e-mail to *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: New Treasury Direct.

OMB Number: None.

Abstract: The information is requested to establish a new account and process transactions.

Current Actions: None.

Type of Review: New.

Affected Public: Individuals.

Estimated Number of Respondents: 1.93 million.

Estimated Total Annual Burden Hours: 231,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 30, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 02–2657 Filed 2–4–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0085]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Board of Veterans' Appeals (BVA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information required in processing appeals from denial of VA benefits and in regulation of representatives' fees.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 8, 2002.

ADDRESSES: Submit written comments on the collection of information to Sue Hamlin, Board of Veterans' Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *sue.hamlin@mail.va.gov.* Please refer to ''OMB Control No. 2900–0085'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Sue Hamlin at (202) 565–5686.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, BVA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of BVA's functions, including whether the information will have practical utility; (2) the accuracy of BVA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Appeal to Board of Veterans' Appeals, VA Form 9.
b. Withdrawal of Services by a Representative.
c. Filing of Representative's Fee Agreements and Motions for Review of Such Agreements.
d. Motion for Review of Representative's Charges for Expenses.
e. Request for Changes in Hearing Date.
f. Motion for Reconsideration.

OMB Control Number: 2900–0085.

Type of Review: Extension of a currently approved collection.

Abstract:

a. Appeal to Board of Veterans' Appeals, VA Form 9, may be used by appellants to complete their appeal to the Board of Veterans' Appeals (BVA) from a denial of VA benefits. The information is used by BVA to identify the issues in dispute and prepare a decision responsive to the appellant's contentions and the legal and factual issues raised.

b. Withdrawal of Services by a Representative: When the appellant's representative withdraws from a case, both the appellant and the BVA must be informed so that the appellant's rights may be adequately protected and so that the BVA may meet its statutory obligations to provide notice to the current representative.

c. Filing of Representative's Fee Agreements and Motions for Review of Such Agreements: Agreements for fees charged by individuals or organizations for representing claimants and appellants before VA are filed with, and reviewed by, the Board of Veterans' Appeals. The information is used to determine whether such fees are excessive or unreasonable.

d. Motion for Review of Representative's Charges for Expenses: Expense reimbursements claimed by individuals and organizations for representing claimants and appellants before VA have been monitored for fairness for many years. The information is used to review changes by claimants' representatives for expenses to afford protection to such claimants from overreaching by unscrupulous representatives and is useful in monitoring fees charged by representatives and to ensure that fee limitations are not avoided by mischaracterizing fees as expenses.

e. Request for Changes in Hearing Date: VA provides hearings to appellants and their representatives, as required by basic Constitutional due-process and by Title 38 U.S.C. 7107(b). From time to time, hearing dates and/or times are changed, hearing requests withdrawn and new hearings requested after failure to appear at a scheduled hearing. The information is used to comply with the appellants' or their representatives' requests.

f. Motion for Reconsideration: Decisions by BVA are final unless the Chairman orders reconsideration of the decision either on the Chairman's initiative, or upon motion of a claimant. The Board Chairman, or his designee, uses the information provided in deciding whether reconsideration of a Board decision should be granted.

Affected Public: Individuals or households, Business or other for profit, and Not for profit institutions.

Estimated Total Annual Burden: 39,782 hours.

a. Appeal to Board of Veterans' Appeals, VA Form 9—32,500 hours.
b. Withdrawal of Services by a Representative—183 hours.
c. Filing of Representative's Fee Agreements and Motions for Review of Such Agreements—283 hours.
d. Motion for Review of Representative's Charges for Expenses—4 hours.
e. Request for Changes in Hearing Date—1,761 hours.
f. Motion for Reconsideration—877 hours.

Estimated Average Burden Per Respondent

a. Appeal to Board of Veterans' Appeals, VA Form 9—1 hour.
b. Withdrawal of Services by a Representative—20 minutes.
c. Filing of Representative's Fee Agreements and Motions for Review of Such Agreements—1 hour (contract modifications), 10 minutes (basic filing)—2 hours (filing motion or response).
d. Motion for Review of Representative's Charges for Expenses—4 hours (2 hours for motion and 2 hours for response to motion).
e. Request for Changes in Hearing Date—15 minutes (basic request)—1 hour (requests requiring preparation of a motion).
f. Motion for Reconsideration—1 hour.

Frequency of Response: On occasion.

Estimated Total Number of Respondents: 39,782.

a. Appeal to Board of Veterans' Appeals, VA Form 9—32,500.
b. Withdrawal of Services by a Representative—550.
c. Filing of Representative's Fee Agreements and Motions for Review of Such Agreements—1,279.
d. Motion for Review of Representative's Charges for Expenses—2.
e. Request for Changes in Hearing Date—4,574.
f. Motion for Reconsideration—877.

Dated: January 15, 2002.
By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–2697 Filed 2–4–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Spark M. Matsunaga Department of Veterans Affairs Medical and Regional Office Center, Honolulu, Hawaii

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Designation and Intent to Award.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) is designating the Spark M. Matsunaga VA Medical and Regional Office Center, Honolulu, HI, for an enhanced-use leasing development. The Department intends to enter into a 5-year lease of real property with a competitively selected lessee/developer who will finance, design, develop, maintain and manage a transitional housing and homeless services facility, all at no cost to VA.

FOR FURTHER INFORMATION CONTACT: Jake Gallun, Office of Asset Enterprise Management (004B), Department of Veterans Affairs, 810 Vermont Avenue, NW. Washington, DC 20420, (202) 273–8862.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.,* specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: January 25, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 02–2698 Filed 2–4–02; 8:45 am]

BILLING CODE 8320–01–M

Notices

Federal Register
Vol. 67, No. 24
Tuesday, February 5, 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

Food Safety and Inspection Service

[Docket No. 01–045N]

Codex Alimentarius Commission: 3rd Session, Ad Hoc Intergovernmental Task Force on Foods Derived From Biotechnology

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice, correction.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA) published a document in the **Federal Register** of January 10, 2002, are sponsoring two public meetings on Wednesday, January 9, 2002, and on Tuesday, February 12, 2002, to present and receive comment on draft United States positions on all issues coming before the 2nd Session of the Ad Hoc Intergovernmental Task Force on Foods Derived From Biotechnology, which will be held in Yokohama, Japan, March 4–8, 2002. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 3rd Session, Ad Hoc Intergovernmental Task Force on Foods Derived From Biotechnology.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250–3700, Telephone (202) 205–7760, Fax (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Clerkin at the above number.

Correction

In the **Federal Register** of January 10, 2002, in FR Docket No. 01–045N, on page 1327, in the first column, under **DATES:**, correct the ''day'' to read Tuesday, February 12, 2002.

Done at Washington, DC on: January 31, 2002.

F. Edward Scharbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 02–2742 Filed 2–4–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lewis Run Project, McKean County, Pennsylvania

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: Reference is made to our notice of intent to prepare an environmental impact statement for the Lewis Run Project (FR Document. 00–18987 filed 7/27/00) published in the **Federal Register**, Volume 65, No. 146, Friday, July 28, 2000, pages 46421–22.

In accordance with Forest Service Environmental Policy and Procedures handbook 1909.15, part 21.2—*Revision of Notices of Intent*, we are revising the date that the Draft Environmental Impact Statement is expected to be filed with the Environmental Protection Agency and be available for public review and comment to March 1, 2002. Subsequently, the date the final EIS is scheduled to be completed is revised to be June 1, 2002.

FOR FURTHER INFORMATION, CONTACT: Andrea Hille, Bradford Ranger District, Star Route 1 Box 88, Bradford, PA 16701 or by telephone at 814–362–4613.

Dated: January 30, 2002.

Kevin B. Elliott,

Forest Supervisor.

[FR Doc. 02–2656 Filed 2–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Grays Harbor Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Grays Harbor Resource Advisory Committee will hold its next meeting on February 25, 2002. The meeting will be held at the Hoquiam Library at 420 Seventh Street, Hoquiam, Washington. The meeting will begin at 7 p.m. and end at approximately 9 p.m. Agenda topics are: (1) Introductions; (2) approval of minutes of previous meetings; (3) bylaw update; (4) review and select process for applications; (5) presentation of project proposals; (6) selection of recommended projects and priorities; (7) public comments; and (8) identify next meeting date and location.

All Grays Harbor Resource Advisory Committee Meetings are open to the public. Interested citizens are encourage to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, RAC Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd., Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor and Designated Federal Official, at (360) 956–2301.

Dated: January 29, 2002.

Dale Hom,

Forest Supervisor, Olympic National Forest.

[FR Doc. 02–2648 Filed 2–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100101A]

Marine Mammals; Pinniped Removal Authority

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

ACTION: Notice of extension of letter of authorization.

SUMMARY: NMFS announces a 5-year extension to the Letter of Authorization

(LOA) to the State of Washington for the lethal removal of individually identifiable California sea lions that are having significant negative impact on the status and recovery of winter steelhead that migrate through the Ballard Locks in Seattle, WA. This action is authorized under the Marine Mammal Protection Act (MMPA).

ADDRESSES: A copy of the LOA may be obtained by writing to Assistant Regional Administrator, Protected Resources Division, NMFS, 525 N.E. Oregon St., Suite 500, Portland, OR 97232–2737, or to Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Garth Griffin (503) 231–2005, or Tom Eagle (301) 713–2322, ext. 105.

SUPPLEMENTARY INFORMATION:

Electronic Access

Information related to this extension, including the state's LOA extension request, Environmental Assessments (EA), and all of the **Federal Register** notices related to issuance, modification and subsequent extension of the original LOA, is available via the Internet at the following address: http://www.nwr.noaa.gov.

Background

Pursuant to Section 120 of the MMPA, NMFS initially issued a 3-year Letter of Authorization (LOA) that was valid through June 30, 1997, to the Washington Department of Fish and Wildlife (WDFW) for the lethal removal of California sea lions that are having significant negative impact on the status and recovery of winter steelhead that migrate through the Ballard Locks in Seattle, WA. The terms and conditions of the LOA were modified following the first year of implementation. The LOA was subsequently extended, for 4 years, through June 30, 2001.

Background information on the sea lion/steelhead conflict at the Ballard Locks and findings on the environmental consequences of issuance of the original LOA, the 1996 modification of its terms and conditions, and this extension are provided in two EAs prepared by NMFS in 1995 and 1996 and an updated EA prepared in 2001 (see Electronic Access).

On September 12, 2001, the State of Washington requested that NMFS extend the LOA for an additional 5 years (with a new expiration date of June 30, 2006) citing severely depressed steelhead run returns and the need for continued authorization to quickly remove any sea lion, if necessary, that meets the criteria outlined in the LOA while the state continues management efforts to recover the run. In addition, the state noted that there are no lethal removals planned at this time and requested the authorization be extended so that, as a last resort, it can respond in a timely manner to uncontrollable sea lion predation and protect steelhead as the run recovers. The state requested no modifications to the terms and conditions of the LOA other than the extension to June 30, 2006.

NMFS published a notice (66 FR 53210, October 19, 2001) that announced the state's request, proposed to extend the LOA, and solicited public comment on the proposed extension. The public comment period closed on November 19, 2001. No comments were received from the public.

NMFS also solicited comment from members of the Pinniped-Fishery Interaction Task Force (Task Force) that had been convened upon receipt of the original application from the State of Washington, regarding the proposed extension. Five written comments were received from Task Force members. Four of the Task Force members supported the extension and one member was opposed. None of the comments contained substantive new information.

Comments supporting the extension were in general agreement that the steelhead run is severely depressed and that the state must be authorized to respond to predatory animals swiftly. One member noted that further extension of the LOA is justified because neither of the 1996 Task Force criteria for determining the success or failure of the authorization had been met.

The comment against the extension also agreed that the status of the steelhead run is precarious but opposed the extension based on the view that sea lion predation is not having a significant negative impact on the status and recovery of the steelhead run. Further, the opposing comment questioned whether the non-lethal measures taken to date to reduce sea lion predation on steelhead have been adequate to meet the threshold for issuance of a lethal removal authorization under Section 120 of the MMPA. This opposing view was raised during Task Force deliberations from 1994 to 1996 and considered by NMFS in issuance and modification of the LOA, and NMFS concluded that any sea lion predation was, and any future predation would be, a significant adverse impact on the steelhead run and that all feasible non-lethal deterrents had been attempted.

NMFS considered the comments received from the Task Force members while conducting its review of the environmental consequences of the proposed extension and when making its decision to extend the LOA. The available information documents that steelhead spawning escapements have remained far below the goal set for the watershed and declined to record lows in 2000 and 2001 indicating a worsening condition that could lead to stock failure. In contrast, the California sea lion population is robust and continuing to grow coastwide. In the index areas of Puget Sound sea lion numbers were lower in 2001 than the peak years of 1986 and 1995 but have remained relatively consistent in Shilshole Bay near the entrance to the Lake Washington Ship Canal. Sea lions continue to forage occasionally at the Locks and have been seen taking salmonids there in spite of non-lethal deterrence measures that are ongoing. The precarious state of the steelhead population and the continuing presence of sea lions in the area heightens the concern that sea lions may enter the Locks area to forage during the steelhead run and threaten stock recovery.

One unidentified sea lion was observed taking a salmonid downstream of the railroad bridge during the 2000 steelhead run. Sea lions were recently observed in the Locks area during the 2001 coho salmon run, and one marked sea lion was observed taking coho salmon in the ensonified zone in September 2001. This raises concerns over the possibility that one of these sea lions may occur during the 2002 steelhead run, and it may have already developed a tolerance to the acoustic devices.

Sea lion presence at the Ballard Locks declined from 5.18 percent of hours observed in 1997 to 0.25 percent of hours observed in 2000. No sea lions were seen during approximately 274 hours of observations conducted from February through May, 2001 (WDFW unpublished data). The observation period overlapped with the smolt out-migration timing in May. The absence of sea lions in May is in contrast to the 1995 migration season when sea lion attendance at the Locks was highest during the smolt out-migration, and predatory sea lions were observed preying on smolt in the ensonified zone 50-60 percent of the time they were present at the Ballard Locks.

An estimated eight steelhead were lost to sea lion predation in 1997, based on observations by biologists monitoring the steelhead run, and two in 1998. From 1999 through 2001, any steelhead

kills that were seen or reported occurred outside of the observation periods and, therefore, could not be used to estimate sea lion predation mortality for those years.

NMFS Action

Section 120 of the MMPA lists 4 factors that NMFS must consider in evaluating an application for approval or denial. These factors are as follows:

1. Population trends, feeding habits, the location of the pinniped interaction, how and when the interactions occurs, and how many individual pinnipeds are involved;

2. Past efforts to nonlethally deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success;

3. The extent to which such pinnipeds are causing undue injury or impact to, or imbalance with, other species in the ecosystem, including fish populations; and

4. The extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

NMFS considered these factors in the initial application and the modification to the initial LOA and a detailed description of these considerations was included in the 1995 and 1996 EAs. The 2001 EA briefly discusses relevant new information in these considerations and concludes that LOA should be extended because there is no substantial change in the system since the initial evaluation. The range-wide pinniped population has increased although the seasonal distribution of animals in Puget Sound has decreased. Steelhead numbers have continued to decline, and any predation continues to have a significant adverse impact on the run. Based on these considerations, the state's request, the available information on the critically depressed steelhead run, the continued presence of sea lions in the Lake Washington Ship Canal and Locks area, and consideration of comments from Task Force members (no public comments were received), NMFS has extended the LOA for 5 years to June 30, 2006. No other changes were made to the terms and conditions of the LOA. As required by the National Environmental Policy Act, NMFS has prepared an EA of the environmental consequences of extending the existing LOA. A copy of the LOA and accompanying EA is available via the Internet (see Electronic Access).

Dated: January 30, 2002.

David Cottingham,

Acting Director, Office of Protected Resources National Marine Fisheries Service

[FR Doc. 02–2727 Filed 2–4–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Wednesday, February 13, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–2833 Filed 2–1–02; 11:56 am]

BILLING CODE 6351–01

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Request for Public Comment

AGENCY: Corporation for National and Community Service.

ACTION: Policy guidance document.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') is republishing for additional public comment policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

DATES: This guidance was effective January 16, 2001. Comments must be submitted on or before March 7, 2002. The Corporation will review all comments and will determine what modifications to the policy guidance, if any, are necessary.

ADDRESSES: Interested persons should submit written comments to Ms. Wilsie Y. Minor; Office of General Counsel, Corporation for National and Community Service, 1201 New York Ave. NW., Washington, DC 20525. Comments may also be submitted by facsimile at 202–565–2796.

FOR FURTHER INFORMATION CONTACT: Ms. Wilsie Y. Minor; Office of General Counsel, Corporation for National and Community Service, 1201 New York Ave. NW., Washington, DC 20525. Telephone 202–606–5000, Ext.129; TDD: 202–565–2799. Arrangements to receive the policy in an alternative format may be made by contacting Wilsie Y. Minor.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance.

The purpose of this policy guidance is to clarify the responsibilities of recipients of federal financial assistance from the Corporation, and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. The policy guidance reiterates the Corporation's longstanding position that in order to avoid discrimination against LEP persons on the grounds of national origin, recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide, free of charge.

This document was originally published on January 16, 2001. See 66 FR 3548. The document was based on the policy guidance issued by the Department of Justice entitled ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency.'' 65 FR 50123 (August 16, 2000).

On October 26, 2001 and January 11, 2002, the Assistant Attorney General for Civil Rights issued to federal departments and agencies guidance memoranda, which reaffirmed the Department of Justice's commitment to ensuring that federally assisted programs and activities fulfill their LEP responsibilities and which clarified and answered certain questions raised regarding the August 16th publication. The Corporation is presently reviewing its original January 16, 2001, publication in light of these clarifications, to determine whether there is a need to clarify or modify the January 16th guidance. In furtherance of those memoranda, the Corporation is republishing its guidance for the purpose of obtaining additional public comment.

The policy guidance includes examples of promising practices that provide access to LEP persons in the various service programs. It also explains further who is covered by this guidance. The text of the complete guidance document appears below.

Providing Access to Limited-English Proficient (LEP) Persons to the Programs and Activities of Grantees of the Corporation for National Service

A. Overview

1. What Does the Document Do?

This policy guidance does not create new obligations but rather clarifies the existing responsibilities of Corporation for National Service (hereinafter Corporation) grantees to take reasonable steps to provide access to their programs and activities for persons with limited English proficiency (LEP). This document:

(a) Discusses the policies, procedures and other steps that Corporation grantees can take to provide access by LEP persons to national service programs and to other programs and activities of our grantees.

(b) Clarifies that failure to take one or more of these steps does not necessarily mean noncompliance with Title VI of the Civil Rights Act of 1964 or with Executive Order 13166.

(c) Provides that the Corporation's Equal Opportunity (EO) Office will determine compliance on a case-by-case basis, and that assessments will take into account:

- Number or proportion of LEP individuals in the service area;
- Frequency of contact with LEP language groups;
- Nature and importance of the program or activity; and
- Total resources available to the recipient.

(d) Provides that small grantees and those with limited resources will have flexibility in achieving compliance.

(e) Applies to all beneficiaries of our grantees' programs or activities.

In this document, ''beneficiary'' refers to:

- Clients, former clients, and client applicants of a grantee's programs or activities;
- Members of the public who receive or are eligible to receive benefits or services from our grantees; and

Participants, former participants, and participant applicants for positions as a service member or volunteer.

Our grantees' programs or activities include:

- Federally assisted programs such as AmeriCorps*State/National;
- Part-time programs such as Foster Grandparents or participants in Learn and Serve America; and
- Part federally-conducted/part federally-assisted programs such as AmeriCorps*VISTA or AmeriCorps*NCCC.

Our grantees' programs or activities include not merely the national service programs operated by the grantees, but in most cases they include all operations of the organization. (See Legal Underpinnings below for an explanation of a grantee's ''programs and activities''.)

2. Why Do Our Grantees Need To Ensure Their Programs or Activities Provide Services to LEP Persons?

Grantees must comply with various civil rights statutes, including Title VI of the Civil Rights Act of 1964 which prohibits denial of services to and other forms of discrimination against persons on the basis of national origin, color, and race. Often, language identifies national origin. Language barriers may be rooted in intentional discrimination. Most frequently, failure to provide language assistance to LEP persons on the basis of national origin leads to actions having the effect of discrimination. Such actions have consistently been held to violate Title VI. (*See* Legal Underpinnings below for more information on Title VI, and on Executive Order 13166 which clarifies Title VI in the LEP context.)

English is the predominant language of the United States. According to the 1990 Census, English is spoken by 95% of its residents. Of the U.S. residents who speak languages other than English at home, the 1990 Census reports that 57% above the age of four speak English ''well to very well.'' However, the U.S. is also home to millions of national origin minority individuals who are ''limited English proficient'' (LEP). That is, they cannot speak, read, write or understand the English language at a level that permits them to interact effectively with teachers and education officials, health care providers, social service agency staff, police and emergency workers, officials of public benefit programs, etc.

Because of these language differences and their inability to speak or understand English, LEP persons are often excluded from programs, experience delays or denials of services, or receive care and services based on inaccurate or incomplete information. Federal agencies have found that persons who lack proficiency in English frequently are unable to obtain basic knowledge of how to access various benefits and services for which they are eligible. Agencies have also found that LEP persons are sometimes exploited by unscrupulous persons or unwittingly are pawns in frauds against benefit programs.

3. What Is Our Policy on Ensuring Our Grantees' Programs or Activities Provide Access to Their Services to LEP Persons?

It is our policy to ensure that our grantees fully comply with the requirements of the various civil rights acts and requirements applicable to federal grantees, including Title VI of the Civil Rights Act of 1964 and Executive Order 13166. One aspect of compliance is to ensure that our grantees take reasonable steps to provide meaningful access for LEP persons to their program or activities, including provision of language interpretive services within the parameters set forth in this policy document.

B. Legal Underpinnings of This Policy

1. What Are the Basic Requirements Under Title VI in the LEP Context?

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000–d) prohibits discrimination on the basis of race, color, or national origin in programs and activities that receive federal financial assistance. Recipients of federal financial assistance (referred to as ''grantees'' in this policy) may not, on the basis of race, color, or national origin:

- Provide services, financial aid, or other benefits that are different or provide them in a different manner;
- Restrict an individual's enjoyment of an advantage or privilege enjoyed by others;
- Deny an individual the right to participate in federally assisted programs; and
- Defeat or substantially impair the objectives of federally assisted programs.

A grantee whose policies, practices or procedures exclude, limit, or have the effect of excluding or limiting, the participation of any LEP person in a federally assisted program or activity on the basis of national origin may be engaged in discrimination in violation of Title VI. In order to ensure compliance with Title VI, grantees must take reasonable steps to ensure that LEP persons who are eligible for their programs or activities have access to the services they provide. The most important step in meeting this obligation is for grantees to provide the language assistance necessary to ensure such access and to do so at no cost to the LEP person.

2. What Does Executive Order 13166 Require in the LEP Context? Does It Impose Requirements Beyond Those of Title VI?

On August 11, 2000, the President issued Executive Order 13166 entitled ''Improving Access to Services for Persons with Limited English Proficiency.'' The purpose of this Executive Order is to eliminate, to the maximum extent possible, limited English proficiency as an artificial barrier to full and meaningful participation by beneficiaries in federally assisted programs and activities. It clarifies existing Title VI responsibilities for grantees regarding access for LEP persons, but does not impose additional requirements. On August 16, 2000, the Department of Justice issued policy guidance which may be found at 65 FR 50123 or www.usdoj.gov/crt/cor.

3. Who Are Grantees? What Is Federal Financial Assistance?

In this document, a grantee is any entity receiving federal financial assistance from us to operate a federally assisted program. Grantees include, but are not limited to, the State Commissions, AmeriCorps*VISTA and Senior Corps sponsors, State Educational Agencies, and AmeriCorps*NCCC projects. Grantees also include other direct recipients, service sites and intermediary service programs (entities between the primary grantee and the service sites).

For example, the Corporation funds a grant to a state agency. The state agency provides funding to non-profits or local governments throughout the state. These organizations place volunteers with local organizations. Each level is a grantee for civil rights purposes.

Federal financial assistance includes funds, property or services, including technical assistance, provided to non-federal organizations to promote activities serving the public interest. For civil rights purposes, it also includes aid that enhances the ability to improve or expand allocation of a grantee's own resources. This may be through the services of, or training by, service members or volunteers or federal personnel at no cost or at less than full market value. Therefore, assignment of service members or volunteers (including VISTA or NCCC)—whether supported, in whole or in part, under a Corporation grant or through an Education Award Program—is a form of federal financial assistance.

The definition of the ''program or activity'' receiving federal financial assistance is quite broad and for most organizations extends beyond their national service program. For example, it includes all operations of a department, agency or district of a State or local government; a college, university, local education agency; and an entire corporation or private organization which is principally engaged in providing education, health care, housing, social services, or parks and recreation when any part of these entities receives federal financial assistance.

A grantee may receive financial assistance directly from us or through another grantee. A grantee may be a Native American tribe. While tribes have sovereign immunity in many respects, when they receive federal financial assistance, by the terms of the grant, they agree to comply with the civil rights requirements in the operation of their national service programs.

4. Who Are Beneficiaries? Why Are They Beneficiaries? What Rights Do They Have?

Service members and volunteers are beneficiaries of federally assisted programs. They receive a stipend, an allowance for living expenses, an education award or post-service stipend, child care or child care allowance, and/or health care coverage, or cost reimbursements paid in whole or in part, directly or indirectly, by the Corporation. Former service members or volunteers and service member and volunteer applicants are also beneficiaries as it relates to their connection to a national service program funded by the Corporation.

The persons served by the service members and volunteers (including AmeriCorps*NCCC members) are beneficiaries of federally assisted programs. They receive benefits, be it tutoring, housing, employment, or substance abuse counseling, immunizations, personal living assistance, etc. which they would not have but for the national service programs funded in whole or in part by the Corporation. Persons previously served or applying to be served by service members and volunteers are also beneficiaries.

The persons served, eligible to be served, or previously served by other programs and activities of the grantee are also beneficiaries of federally assisted programs. They receive benefits from a recipient of federal financial assistance, so by definition they are beneficiaries. Similarly, members of the public who receive or are eligible to receive benefits or services from our grantees are beneficiaries.

All beneficiaries of federal financial assistance have the right not to be subjected to prohibited discrimination. In the LEP context, this means they have the right to have the grantee take reasonable steps to provide meaningful access to its programs and activities to enable LEP persons to participate. All beneficiaries also have the right to file a discrimination complaint with the Corporation if he or she believes discrimination has occurred.

5. Can We Presume That Service Members or Volunteers Must Be Proficient in English?

No. Programs should assess whether individuals with limited English proficiency can effectively serve in their programs with or without language assistance. Programs may not deny access on the basis of lack of English proficiency unless providing language assistance would fundamentally alter the nature of their program or unreasonably burden the organization. There may be programs where the member or volunteer must be proficient in English, but in some of the Corporation's programs such as Senior Companions, limited English proficiency may not hinder the ability to serve. Individuals who speak the language of one of the minority groups within a community, even when they are LEP, may effectively help to serve the community.

6. If a Grantee Is Covered by a State or Local ''English-only'' Law, Must It Still Comply With the Title VI Obligation and Corporation Guidance Interpreting That Obligation?

Yes. State and local laws may provide additional obligations to serve LEP individuals, but cannot compel grantees to violate Title VI. For instance, given our constitutional structure, State or local ''English-only'' laws do not relieve an entity that receives federal funding or other financial assistance from its responsibilities under federal anti-discrimination laws. Entities in States and localities with ''English-only'' laws are certainly not required to accept federal funding—but if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients of federal assistance. Failing to make federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

C. LEP Requirements

1. What Are the Basic Requirements Under Title VI for LEP Persons?

The basic requirement is to provide meaningful access for LEP persons to a grantee's programs and activities. There is no ''one size fits all'' solution for providing meaningful access, and our assessment of a grantee's compliance will be made on a case-by-case basis. A grantee will have considerable flexibility in determining precisely how to fulfill this obligation, and we will focus on the grantee's end result. The key to providing meaningful access is to ensure that the grantee and the LEP person can communicate effectively. Effective communication means the LEP person is:

- Able to understand the services and benefits available;
- Able to receive those benefits for which he or she is eligible; and
- Able to effectively communicate the relevant circumstances of his or her situation to the service provider.
- The type of language assistance provided depends on a variety of factors, including:
- Number or proportion of LEP individuals in the service area;
- Frequency of contact with LEP language groups;
- Nature and importance of the program or activity; and total resources available to the recipient.

2. What Are the Basic Elements of an Effective Language Assistance Program?

Effective language assistance programs usually contain four elements:

- Assessment;
- Comprehensive written policy;
- Staff training; and
- Monitoring.

Failure to incorporate or implement one or more elements does not necessarily mean noncompliance with Title VI, and we will focus on whether meaningful access is achieved. Further, if implementation of one or more accessibility options would be so financially burdensome as to defeat the legitimate objectives of a grantee's program, the grantee will not be found in noncompliance with Title VI.

3. How Does a Grantee Assess the Language Needs of the Affected Population (the First Key for Ensuring Meaningful Access to LEP Persons)?

A grantee assesses language needs by considering a variety of factors, including the total resources and size of the recipient/covered entity, the number or proportion of the eligible LEP population it serves, the nature and importance of the program or service, including the objectives of the program, the total resources available to the recipient/covered entity, and the frequency with which particular languages are encountered and the frequency with which LEP persons come into contact with the program.

Assessing the number or proportion of the eligible LEP population may be done through review of census data, client utilization data from client files, data from local school systems and community agencies and organizations, or other sources. Grantees are encouraged to identify local organizations that serve the LEP populations in their community. Collaborations with these organizations may not only assist in assessing language needs, but may improve outreach to and recruitment from the communities they serve.

4. What Should Be Included in a Comprehensive Written Policy and Procedures on Language Access (the Second Key for Ensuring Meaningful Access to LEP Persons)?

Presuming the assessment reveals more than merely a few LEP persons being served or eligible to be served or likely to be directly affected by the program, a grantee should develop and implement a language assistance policy, including implementation procedures. The policy should be comprehensive and should be in writing. It should address periodic staff training and monitoring the effectiveness of the program. Ideally, a range of oral language assistance options should be included, and it should provide for translation of vital written materials in certain circumstances. (*See* D.2.)

The implementation procedures should be comprehensive, should be in writing, and should include:

- How to identify and assess the language needs of LEP persons, and to record this information in individual client files, as applicable;
- How to notify LEP persons, in a language they can understand, of their right to receive free language assistance;
- Identify where in the program or activity language assistance is likely to be needed;
- Identify what resources are likely to be needed, their location, and their availability;
- How to access these resources to provide language assistance in a timely manner.

5. How Does a Grantee Effectively Train Its Staff Regarding the Policy and Procedures (the Third Key for Ensuring Meaningful Access to LEP Persons)?

A grantee must disseminate its policy to all employees, especially to those likely to have contact with LEP persons. It must also periodically train its employees. Effective training ensures that employees are knowledgeable and aware of LEP policies and procedures, are trained to work effectively with in-person and telephone interpreters, and understand the dynamics of interpretation between clients, providers and interpreters. Training should be part of the orientation for new employees, and all employees in client contact positions need to receive additional training. For AmeriCorps*State/National grantees, State Commissions request Professional Development and Training Funds (PDAT) funds to provide professional development and training for AmeriCorps staff. To support the LEP initiatives, funds might be used for activities that train AmeriCorps staff about best practices for working with LEP members, and for building the language capacity of LEP AmeriCorps members.

6. How Does a Grantee Effectively Monitor and Evaluate Its Language Assistance Program To Ensure It Provides Meaningful Access to LEP Persons (the Fourth Key for Ensuring Meaningful Access to LEP Persons)?

A grantee should monitor its language assistance program at least annually. As part of the monitoring, the grantee should seek feedback from clients and advocates. The monitoring and evaluation should:

- Assess the current LEP makeup of its service area and frequency of contact with LEP language groups;
- Assess the current communication needs of LEP applicants and clients;
- Determine whether existing assistance is meeting the needs of such persons;
- Evaluate whether staff is knowledgeable about the policy and procedures and how to implement them; and
- Determine whether sources of and arrangements for assistance are still current and viable.

D. Specific LEP Implementation Methods, Their Pros and Cons

1. What Does a Grantee Need To Know About Providing Trained and Competent Interpreters?

Meaningful access to programs and activities includes providing trained

and competent interpreters and other oral language assistance services in a timely manner. This may include taking some or all of the following steps:

• Bilingual Staff—Hire bilingual staff for critical direct client contact positions (such as emergency room intake personnel). Bilingual staff must be trained and must demonstrate competence as interpreters.

• Staff Interpreters—Hire paid staff interpreters, especially when there is a frequent and/or regular need for interpreting services. These persons must be competent and readily available.

• Contract Interpreters—Use contract interpreters, especially when there is an infrequent need for interpreting services, when less common LEP language groups are in the service areas, or when there is a need to supplement in-house capabilities on an as-needed basis. Contract interpreters must be readily available and competent.

• Community Volunteers—Use community volunteers. While volunteers may be cost-effective, to use them effectively, grantees must enter into formal arrangements for interpreting services with community organizations so the organizations are not subjected to ad hoc requests for assistance. Volunteers must be competent as interpreters and understand their obligation to maintain client confidentiality. Additional language assistance must be provided where competent volunteers are not readily available during all hours of service. (Note: Except in the conditions explained at the end of this section, use of family member volunteers, especially children, is never appropriate, and, even if a child speaks English, the parent must be able to fully understand in order to provide informed consent for medical services or participation in program activities.)

• Telephone Interpreter Lines—Utilize a telephone interpreter service line, as a supplemental system or when a grantee encounters a language that it cannot otherwise accommodate. Such a service often offers interpreting assistance in many different languages and usually can provide the service in quick response to a request. However, the interpreters may not be familiar with the terminology peculiar to the particular program or service. (Note: this should not be the only language assistance option used, except where other language assistance options are unavailable (e.g., in a rural clinic visited by an LEP patient who speaks a language that is not usually encountered in the area).)

In order to provide effective services to LEP persons, a grantee must ensure that it uses persons who are competent to provide interpreter services. Competency does not necessarily mean formal certification as an interpreter, though certification is helpful, but competency requires more than self-identification as bilingual. The competency requirement contemplates:

• Demonstrated proficiency in both English and the other language;

• Orientation and training that includes the skills and ethics of interpreting (e.g. issues of confidentiality);

• Fundamental knowledge in both languages of any specialized terms or concepts peculiar to the grantee's program or activity;

• Sensitivity to the LEP person's culture; and

• A demonstrated ability to accurately convey information in both languages.

A grantee may expose itself to liability under Title VI if it requires, suggests, or encourages an LEP person to use friends, minor children, or family members as interpreters, as this could compromise the effectiveness of the service. Use of such persons could result in a breach of confidentiality or reluctance on the part of individuals to reveal personal information critical to their situations. In a medical setting, this reluctance could have serious, even life threatening, consequences. In addition, family and friends usually are not competent to act as interpreters, since they are often insufficiently proficient in both languages, unskilled in interpretation, and unfamiliar with specialized terminology.

If, after a grantee informs an LEP person of the right to free interpreter services, the person declines such services and requests the use of a family member or friend, the grantee may use the family member or friend, if the use of such a person would not compromise the effectiveness of services or violate the LEP person's confidentiality. The grantee should document the offer and declination in the LEP person's file. Even if an LEP person elects to use a family member or friend, the grantee should suggest that a trained interpreter sit in on the encounter to ensure accurate interpretation.

2. What Does a Grantee Need to Know About Providing Translation of Written Materials?

An effective language assistance program may include providing translation of certain written materials. For instance, written materials routinely provided in English to applicants, clients and the public should be available in regularly encountered languages other than English. Spanish, Chinese, Vietnamese, Tagalog, and Korean are the major languages spoken by non-English speaking persons in the U.S. It is particularly important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be directly affected by the grantee's program. Examples of vital documents include:

• Applications for benefits or services;

• Consent forms;

• Documents containing important information regarding participation in a program (such as descriptions of eligibility for tutoring, assignment of a Senior Companion, instructions for filing for reimbursement of expenses, application for health care or child care benefits);

• Notices pertaining to the reduction, denial or termination of services or benefits, or to the right to appeal such actions or that require a response from beneficiaries;

• The member contract, job description, and an explanation of the Grievance Procedure;

• Notices advising LEP persons of the availability of free language assistance; and

• Other outreach materials.

In contrast, documents prepared for a selected portion of the public, such as laws, regulations, and detailed policy manuals, may not be a priority for translation and perhaps only short summaries of the contents are needed.

When making decisions about doing written translation of documents, it is important to consider the level of literacy in the ethnic community's first language. If a document is translated in writing for a community with high rates of first language illiteracy, access for LEP individuals may still be denied. Meaningful access may require making the information available in an oral format.

It is important to ensure that the person translating the materials is well qualified. Verbatim translations may not accurately or appropriately convey the substance of what is contained in the written materials. An effective way to address this potential problem is to reach out to community-based organizations to review translated materials to ensure that they are accurate and easily understood by LEP persons. Recent technological advances have made it easier to store translated documents. It is advisable to maintain a data base of translated documents, to

avoid the cost and time of repeated translations of the same document.

3. Is Corporation Funding Available to Assist With the Cost of Translation?

The cost of translation may be an allowable cost of a grant. Grant funds are not available for AmeriCorps*NCCC project sponsors.

4. What Does a Grantee Need To Know About Effectively Notifying LEP Persons of Their Right to Language Assistance and of the Availability of Language Assistance Free of Charge?

For a language assistance program to be effective, LEP persons need to know they have the right to receive language assistance, and that the language assistance will be provided at no charge to them. Effective notification methods include, but are not limited to:

• Posting and maintaining signs in regularly encountered languages other than English in waiting rooms, reception areas and other initial points of entry. In order to be effective, these signs must inform applicants and beneficiaries of their right to free language assistance services and invite them to identify themselves as persons needing such services.

• Including statements about the services available and the right to free language assistance services, in appropriate non-English languages, in brochures, booklets, outreach and recruitment information and other materials that are routinely disseminated to the public.

• Providing this information to advocacy organizations, faith-based organizations, and societies providing services to LEP persons in the community.

5. What Other Innovative Methods Are There To Provide Meaningful Access to LEP Persons?

• Simultaneous Translation—This allows a grantee and client to communicate using wireless remote headsets while a trained competent interpreter, located in a separate room, provides simultaneous interpreting services. The interpreter can be miles away, and thereby reduces delays since the interpreter does not have to travel to the grantee's facility. In addition, a grantee that operates more than one facility can deliver interpreter services to all facilities using this central bank of interpreters, as long as each facility is equipped with the proper technology.

• Language Banks—In several parts of the country, both urban and rural, community organizations and providers have created community language banks that train, hire and dispatch competent interpreters to participating organizations, reducing the need to have on-staff interpreters for low demand languages. These language banks are frequently nonprofit and charge reasonable rates. This approach is particularly appropriate where there is a scarcity of language services or where there is a large variety of language needs.

• Language Support Office—This is an office that tests and certifies all in-house and contract interpreters, provides agency-wide support for translation of forms, client mailings, publications and other written materials into non-English languages, and monitors the policies of the agency and its vendors that affect LEP persons.

• Multicultural Delivery Project—This is a project that finds interpreters for immigrants and other LEP persons. It uses community outreach workers to work with LEP clients and can be used by employees in solving cultural and language issues. A multicultural advisory committee helps to keep the county in touch with community needs.

• Pamphlets—The pamphlets are intended to facilitate basic communication between clients and staff as they await receipt of interpreter services. They are not intended to replace interpreters but may aid in increasing the comfort level of LEP persons as they wait for services.

E. Compliance Monitoring

1. By What Mechanisms Does the Corporation Ensure Its Grantees Comply With These LEP Requirements?

The Corporation uses or may use a variety of mechanisms to monitor compliance with civil rights requirements, including LEP requirements, by its grantees. These include review of grant application submissions, pre-award and/or post-award compliance reviews (desk audit or on-site), discrimination complaint investigations, and information gathered during outreach and technical assistance activities. Other federal agencies often provide far more monetary federal assistance to its grantees than does the Corporation. Each federal agency extending federal financial assistance maintains mechanisms to ensure compliance with Title VI and its implementing regulations. Compliance determinations by larger federal agencies are given great weight by the Corporation, and grantees receiving substantial federal financial assistance from agencies such as the U.S. Department of Health and Human Services, the U.S. Department of Education, the U.S. Department of Veteran's Affairs, the U.S. Department of Justice, and the U.S. Department of Housing and Urban Development should make sure to be familiar with the Title VI enforcement mechanisms of all federal agencies. If the Corporation receives a complaint alleging failure to provide effective access to LEP persons, we may refer it for processing to a larger federal agency who also funds the grantee. However, under these circumstances, we maintain our authority to independently determine a grantee's compliance.

2. What Can Happen to a Grantee if Its Actions Are Determined by the Corporation's EO Office To Be Discriminatory?

The Corporation is obligated to take appropriate action regarding any grantee that does not comply with the civil rights laws, implementing regulations and policies. If the Equal Opportunity Director finds that a grantee has discriminated, it is in noncompliance with the civil rights laws. If the grantee refuses to voluntarily correct the noncompliance, the Corporation may pursue a number of options, including suspension, termination or the discontinuation of aid. The ultimate sanction may be termination of all federal funding to the program or activity.

However, the purpose of the civil rights laws is to achieve compliance with the laws, not to terminate federal funding to programs. Therefore, we make great efforts to encourage our grantees to voluntarily comply with the laws.

3. What Responsibilities and Liabilities Do Primary Grantees Have When a Subgrantee Discriminates?

A primary grantee extends federal financial assistance to subgrantees. A primary grantee has continuing oversight responsibilities for ensuring the operations of each of its subgrantees comply with the civil rights laws. When reviewing grant proposals, the primary grantee should consider whether applicants for subgrants have identified a means for providing access to LEP persons. During the term of the grant, the primary grantee should monitor the provision of meaningful access in the same manner that it monitors compliance with other grant provisions.

When a beneficiary claims a subgrantee has discriminated, the primary grantee should take action to bring the subgrantee into voluntary compliance, and take appropriate action when a subgrantee does not voluntarily comply. In cases of noncompliance,

appropriate action may include but is not limited to:

- Providing relief to the beneficiary;
- Submitting reports of any internal investigation to our EO Director for review;
- Initiating action to terminate, suspend, or refuse to grant federal financial assistance to the discriminatory subgrantee; and
- Notifying our EO Director of the subgrantee's noncompliant status so our EO Office may take appropriate action, including notifying other federal granting agencies.

4. May Our EO Director Restore Compliant Status When a Grantee Remedies Violations?

Yes. Our EO Director may restore a grantee to compliant status if it satisfies terms and conditions established by the Corporation, or if it otherwise brings itself into compliance and provides reasonable assurance of future compliance.

Examples of Promising Practices That Provide Access to LEP Persons

The Association of Farmworker Opportunity Programs AmeriCorps program recruits former farmworkers to serve as AmeriCorps members. Most members are bilingual, and many are LEP. Members are encouraged to take English as a Second Language classes as a part of their member development plan. The program provides pesticide safety training to farmworkers and their families. Members conduct the training in Spanish.

The program uses the following techniques to ensure that members understand their terms of service and benefits:

- Recruiting posters, flyers and the Member Service Contract are provided in Spanish.
- AmeriCorps project staff are bilingual (Spanish/English).
- Orientation training is provided in Spanish and English.
- Conference calls are held in Spanish when all members speak Spanish.
- Two bilingual second-year members led a team of members that communicated about their service projects exclusively in Spanish.
- Members had to be bilingual, but did not require English as the first language.
- Recruitment took place at the local field office level, and candidates were often from the farmworker community.

The Parents Making a Difference AmericCorps program recruits a diverse corps including many bilingual members to provide outreach to parents in low-income school communities. Members translate at parent-teacher conferences, call parents about absent children, and organize a wide variety of parent-oriented outreach and educational activities.

''Classroom in the Kitchen'' gives parents tips on how to support the educational growth of their children in their homes. Diverse language abilities and cultural knowledge is extremely important in this regard. The range of English proficiency is varied, allowing members to help each other, and communication about program activities is largely bilingual.

The program provides English-Second-Language classes for LEP AmericCorps members as part of their Member Development Plan. (This language support is required by the Rhode Island Commission for all AmericCorps programs, in the same vein as the GED training requirement.)

The Temple University Center for Intergenerational Learning, Students Helping in the Naturalization of Elders (SHINE) program. SHINE is a national, multicultural, intergenerational service-learning initiative in five cities. College students provide language, literacy, and citizenship tutoring to elderly immigrants and refugees. Currently, students serve as coaches in ESL/citizenship classes or as tutors in community centers, temples, churches, housing developments, and ethnic organizations.

Northeastern University, San Francisco State University, Loyola University, Florida International University and Temple University are involved with SHINE. Students participate through courses, work study, and campus volunteer organizations. SHINE program coordinators partner with local community organizations; recruit, train, place, and monitor students at community sites; and provide support and technical assistance.

Since 1997, more than 60 faculty from education, social work, anthropology, political science, modern languages, sociology, English, Latino, and Asian studies have offered SHINE as a service-learning option in their courses. Over 1,000 students provided over 25,000 hours of instruction to 3,500 older learners at 37 sites in Boston, San Francisco, Chicago, Miami, and Philadelphia.

The Albuquerque Senior Companion Program (SCP), sponsored by the City of Albuquerque, Department of Senior Affairs, serves a diverse senior population with Native American, Hispanic, and Anglo volunteers. Senior Companions assist the frail elderly with household tasks and companionship.

Ten of its volunteer stations are located on Pueblos. Each Pueblo has its own language. The program works closely with its site managers/supervisors who are bilingual employees of the individual Pueblo governments and generally are residents of the Pueblos. Senior Companions serve on their own Pueblos and walk to the homes of their clients.

Due to language and cultural barriers these supervisors assist with all areas of the program. They are familiar with the population in their individual Pueblos and use this knowledge to assist with recruitment, placement, and training. Each Pueblo celebrates ''Days of Feast'' separately. In order to honor individual feasts, the program has adjusted the ''leave time'' for Pueblo volunteers. Each volunteer is given paid leave to celebrate his or her Pueblo's feast. This is one of the ways the program remains culturally sensitive.

ACCION International, a VISTA project sponsor, is a nonprofit that fights poverty through microlending. ACCION Chicago did outreach to home-based businesses that rarely have access to capital. A VISTA found that many of the women make ends meet through programs such as Mary Kay cosmetics. The VISTA worked with the ACCION loan officer to develop a loan product specifically for these women and has organized bilingual information sessions throughout Chicago neighborhoods.

Bring New Jersey Together is an AmeriCorps program in Jersey City, New Jersey that seeks to bridge the cultural and linguistic barriers separating new Americans from the rest of the community. AmeriCorps members serve LEP community members by translating documents and escorting them to places such as medical appointments, the grocery stores, or anywhere else where a translator may be necessary. The primary languages of the program are Spanish, Russian, and Vietnamese, but also Albanian, Creole, Indian languages, and others depending on the influx of refugees.

The New Jersey Commission built a partnership with the International Institute of New Jersey, which had provided services to the immigrant community for fifty years, to establish an AmeriCorps program that served the needs of the community. The best practice aspect of this example is that program was designed in partnership with an established organization instead of starting a brand new AmeriCorps project to address this issue.

The Honolulu Chinese Citizenship Tutorial Program is a service-learning project site in the Champus Compact National Center for Community Colleges ''2+4=Service on Common Ground''. The University of Hawai'i at Monoa's College of Social Sciences collaborated with the Kapl'olani Community College, Chaminade University, the Chinese Community Action Coalition and Child and Family Service. Local bilingual college students serve as tutors (during a 10-week session) for Chinese immigrants to help them pass their citizenship exams. The immigrants are recruited by visiting adult education classes, through Chinese radio programs, flyers, and Chinese language newspapers. The Chinese Community Action Coalition provides the curriculum and resources such as Scrabble, books, word-picture matching games, and card games for constructing simple English sentences.

The tutorial sessions focus on passing the INS exam and conversational English. Many of the immigrants are senior citizens. The classes are held in Chinatown. Since the project began, about 1,000 immigrants and refugees have enrolled. Over 300 students have participated as tutors and approximately one-third of the Chinese immigrants became citizens.

Transitional House, Santa Barbara, CA., is a facility that primarily serves homeless Hispanic women. The services are tailored to meet the needs of each family to help women and their children move from homelessness and unemployment to employment and permanent housing. The VISTAs assigned to the project are bilingual. The clientele is 60% monolingual Spanish speakers.

The VISTAs are creating a Career Development Curriculum that is fully translated into Spanish and members host seminars about immigration and consumer credit counseling services. There was a need to improve communication with clients. One of the VISTAs developed ''halfsheets'', one side in Spanish, the other in English, that explain the services offered by Transition House.

The VISTAs are responsible for placement of children in daycare to enable parents to work. They accompany families to childcare providers to assist with translation and to help make the families feel at ease with placing their children in childcare.

Dated: January 30, 2002.

Wendy Zenker,

Chief Operating Officer.

[FR Doc. 02–2739 Filed 2–4–02; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–01]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub.L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–01 with attached transmittal, policy justification, Sensitivity of Technology, and Section 620C(d) of the foreign Assistance Act.

Dated: January 29, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

23 JAN 2002
In reply refer to:
I-01/011401

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-01, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Turkey for defense articles and services estimated to cost $110 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

Richard J. Millies
Acting Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-01

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser:** Turkey

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 60 million
Other	$ 50 million
TOTAL	$110 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** Two FFG-7 OLIVER HAZARD PERRY class guided missile frigates ESTOCIN (FFG-15) and SAMUEL E. MORISON (FFG-13), two MK 15 MOD 0 Close-in Weapons Systems, two MK 75 MOD 0 76mm gun mounts, two MK 13 MOD 4 guided missile launch systems, two AN/SLQ-32(V)2 Countermeasures Sets, two AN/SQR-19(V)2 Sonar Receiving Sets, two AN/SQS-56 Sonar Sets, two MK 92 Mode 2 Fire Control Systems, two AN/SPS-49(V)4 Radar Sets, upgrade modification kits for 50 SM-1 STANDARD missiles, four M2 machine guns, 10,000 20mm ammunition, sonobuoys and other related ammunition items, shipyard/port support services and post transfer activities relating to "hot ship" turnover of two PERRY class frigates from the U.S. Navy, U.S. Government and contractor engineering and logistics personnel support services, publications, repair and calibration services for shipboard equipment, publications and technical data/drawings, personnel training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Turkey in a "Safe to Steam" condition with all shipboard and weapon systems operational.

(iv) **Military Department:** Navy (SCV, SCW, AHW, AHV, AHX, AHY, BIW, BIX, and GHS, Amendment 3)

(v) **Prior Related Cases, if any:**
FMS case SCU - $ 23 million - pending acceptance by country
FMS case SCS - $ 28 million - 26May00
FMS case SCP - $ 98 million - 4Jan99

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** 23 JAN 2002

as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Turkey - FFG-7 PERRY Class Guided Missile Frigates

The Government of Turkey has requested a possible sale of two FFG-7 OLIVER HAZARD PERRY class guided missile frigates ESTOCIN (FFG-15) and SAMUEL E. MORISON (FFG-13), two MK 15 MOD 0 Close-in Weapons Systems, two MK 75 MOD 0 76mm gun mounts, two MK 13 MOD 4 guided missile launch systems, two AN/SLQ-32(V)2 Countermeasures Sets, two AN/SQR-19(V)2 Sonar Receiving Sets, two AN/SQS-56 Sonar Sets, two MK 92 Mode 2 Fire Control Systems, two AN/SPS-49(V)4 Radar Sets, upgrade modification kits for 50 SM-1 STANDARD missiles, four M2 machine guns, 10,000 20mm ammunition, sonobuoys and other related ammunition items, shipyard/port support services and post transfer activities relating to "hot ship" turnover of two PERRY class frigates from the U.S. Navy, U.S. Government and contractor engineering and logistics personnel support services, publications, repair and calibration services for shipboard equipment, publications and technical data/drawings, personnel training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Turkey in a "Safe to Steam" condition with all shipboard and weapon systems operational. The estimated cost is $110 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Turkey, while enhancing weapon system standardization and interoperability.

Turkey already has seven U.S. Navy PERRY class frigates in its Navy fleet. Turkey needs these frigates to continue its naval modernization program and enhance its Anti-Submarine Warfare (ASW) capability. The frigates will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The PERRY vessels will be transferred on a "hot ship" basis. The primary effort for transfer will be completed through the Naval Sea Systems Command. There are no prime contractors for provision of the weapon systems applicable to this platform. There are no offset agreements proposed in connection with this potential sale.

The U.S. Government and contractor technical and logistics in-country personnel requirements will be determined following consultations with representatives of the Turkish navy.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-01

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The PHALANX Close-In Weapon System crystals which contain the operating frequencies of the weapon system are considered critical technology and are classified Confidential. Select maintenance and operation publications are also classified Confidential.

2. The guidance and control system and the Target Detecting Device represent technology which if compromised could reveal areas of missile performance and potentially result in the development of countermeasures or equivalent systems capable of reducing weapon system effectiveness. This information could also be used in the development of a system with similar or advanced capabilities.

3. The SM-1 STANDARD missiles will result in the transfer of sensitive technology and information as well as classified and unclassified defense equipment and technical data. The STANDARD missile guidance section, Target Detecting Device (TDD), warhead, rocket motor, steering control section, safety and arming unit, and auto-pilot battery unit are classified Secret. Certain operating frequencies and performance characteristics are classified Secret. STANDARD missile documentation to be provided will include:

a. Parametric documents (C)
b. Missile Handling Procedures (U)
c. General Performance Data (C)
d. Firing Guidance (C)
e. Dynamics Information (C)
f. Flight Analysis Procedures (C)

4. A special tailored software program for the AN/SLQ-32 Countermeasures Set will be developed and will be classified Secret.

5. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

6. A determination has been made that Turkey can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

Certification Under § 620C(d)
Of The Foreign Assistance Act of 1961, As Amended

Pursuant to § 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (§ 1-100) and State Department Delegation of Authority No. 145 (§ 1(a)(1)), I hereby certify that the furnishing to Turkey of two FFG-7 OLIVER HAZARD PERRY-Class guided missile frigates (FFG-15 ESTOCIN and FFG-13 SAMUEL E. MORISON), two MK 15 MOD 0 Close-in Weapons Systems, two MK 75 MOD 0 76mm gun mounts, two MK 13 MOD 4 Guided Missile Launch Systems, two AN/SLQ-32(V)2 Countermeasures Sets, two AN/SQR-19(V)2 Sonar Receiving Sets, two AN/SQS-56 Sonar Sets, two MK 92 Mode 2 Fire Control Systems, two An/SPS-49(V)4 Radar Sets, upgrade modification kits for 50 SM-1 STANDARD missiles, four M2 machine guns, 10,000 rounds of 20mm ammunition, sonobuoys, and other related elements of logistics support necessary to transfer both frigates to Turkey in a "safe to steam" condition with all shipboard and weapons systems operational is consistent with the principles contained in § 620C(b) of the Act.

This certification will be made part of the notification to Congress under § 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John R. Bolton
Under Secretary of State
for Arms Control and
International Security Affairs

[FR Doc. 02–2677 Filed 2–4–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF EDUCATION

[CFDA No. 84.031S]

Office Of Postsecondary Education; Developing Hispanic-Serving Institutions Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: Assists eligible Hispanic-Serving Institutions (HSI) of higher education to expand their capacity to serve Hispanic and low-income students by enabling them to improve their academic quality, institutional management, and fiscal stability and to increase their self-sufficiency. Five-year individual development grants and cooperative arrangement grants will be awarded in FY 2002. Planning grants will not be awarded in FY 2002. For FY 2002 the competition for new awards focuses on projects designed to meet the priorities we describe in the PRIORITIES section of this application notice.

Eligible Applicants: Institutions of higher education that have been designated to receive funding under Parts A or B of Title III or under Title V of the Higher Education Act of 1965, as amended (HEA), are eligible to apply for individual development grants and cooperative arrangement grants. In addition, at the time of application, the institution must provide assurances that it has an enrollment of undergraduate full-time equivalent (FTE) students that is at least 25 percent Hispanic students, and that not less than 50 percent of the enrolled Hispanic students are low-income individuals.

Notes: 1. A grantee under the Developing Hispanic-Serving Institutions (HSI) Program, authorized under Title V of the HEA, may not receive a grant under any Title III, Part A Program. Further, an HSI Program grantee may not give up that grant in order to receive a grant under any Title III, Part A Program. Therefore, a current HSI Program grantee may not apply for a grant under any Title III, Part A Program in FY 2002.

Note: 2. An institution that does not fall within the limitation described in Note 1 may apply for a FY 2002 grant under all Title III, Part A Programs for which it is eligible, as well as under the HSI Program. An applicant may receive only one grant.

Applications Available: February 6, 2002.

Deadline for Transmittal of Applications: March 22, 2002.

Deadline for Intergovernmental Review: May 21, 2002.

Estimated Available Funds: Congress has appropriated $86 million for this program. Approximately, $70.5 million will support continuing grants. Therefore, approximately $15.5 million will be available for the new grant competition.

Estimated Range of Awards: Development Grants: $400,000–$450,000 per year. Cooperative Arrangement Grants: $550,000—$600,000 per year.

Estimated Average Size of Awards: Individual Development Grant: $425,000 per year. Cooperative Arrangement Grant: $600,000 per year.

Estimated Number of Awards: Individual Development Awards: 26. Cooperative Arrangement Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months for individual development and cooperative grants.

Page Limit: We have established mandatory page limits for both the individual development grant and the cooperative arrangement development grant applications. You must limit the application to the equivalent of no more than 100 pages for the individual development and 140 pages for the cooperative arrangement development grant, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins top, bottom, right and left.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles and headings. However, you may single space footnotes, quotations, references, captions, charts, forms, tables, figures and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the application cover sheet (ED 424), the Certification Regarding Collaborative Arrangement (ED 851S–8), Hispanic-Serving Institutions Assurance Form (ED 851S–7) and the Cooperative Arrangement Form (ED 851S–1). The page limit does, however, apply to all remaining parts of the application.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, 86, 97, 98, and 99; and (b) The regulations for this program in 34 CFR part 606.

Applicability of Executive Order 13202: Applicants that apply for construction funds under these programs must comply with the Executive Order 13202 signed by President Bush on February 17, 2001 and amended on April 26, 2001. This Executive order provides that recipients of Federal construction funds may not ''require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)'' or ''otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s).'' However, the Executive order does not prohibit contractors or subcontractors from voluntarily entering into these agreements.

Projects funded under this program that include construction activity will be provided a copy of this Executive order and will be asked to certify that they will adhere to it.

Priorities

This competition focuses on projects designed to meet the priority in section 511(d) of the HEA (29 U.S.C. 1103) (*see* 34 CFR 75.105(b)(2)(iv)).

The Secretary gives priority to an application that contains satisfactory evidence that the HSI has entered into, or will enter into, a collaborative arrangement with at least one local educational agency or community-based organization to provide that agency or organization with assistance (from funds other than funds provided under Title V of the HEA) in reducing dropout rates for Hispanic students, improving rates of academic achievement for Hispanic students, and increasing the rates at which Hispanic secondary school graduates enroll in higher education.

Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This competition also focuses on projects designed to meet the priority in section 514(b) of the HEA (20 U.S.C. 1103c) (see 34 CFR 75.105(b)(2)(iv)).

The Secretary gives priority to grants for cooperative arrangements that are geographically and economically sound or will benefit the applicant HSI.

Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

Invitational Priorities

Within the absolute priorities specified in this notice, we are particularly interested in applications that meet one or more of the following invitational priorities.

Invitational Priority 1

Cooperative arrangements between two-year and four-year institutions of higher education aiming to increase transfer and retention of Hispanic students.

Invitational Priority 2

Cooperative arrangements between institutions of higher education that develop and share technological resources in order to enhance each institution's ability to serve the needs of low-income communities or minority populations.

Invitational Priority 3

Cooperative arrangements between institutions of higher education, at least one of which does not currently have funding under the HSI Program.

Invitational Priority 4

Cooperative arrangements that involve institutional partners from more than one university or college system.

Under 34 CFR 75.105(c)(1) we do not give an application that meets one or more of the invitational priorities a competitive or absolute preference over other applications.

Special Funding Consideration: In tie-breaking situations described in 34 CFR 606.23 of the HSI Program regulations, we award one additional point to an application from an institution that has an endowment fund for which the 1998–1999 market value per full-time equivalent (FTE) student was less than the comparable average per FTE student at similar type institutions. We also award one additional point to an application from an institution that had expenditures for library materials in 1998–1999, per FTE student, that were less than the comparable average per FTE student at similar type institutions.

For the purpose of these funding considerations, an applicant must be able to demonstrate that the market value of its endowment fund per FTE student, and library expenditures per FTE student, were less than the national averages for the year 1998–1999.

If a tie still remains after applying the additional point or points, we will determine the ranking of applicants based on the lowest combined library expenditures per FTE student and endowment values per FTE student.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Developing Hispanic-Serving Institutions program " 84.031S is one of the programs included in the pilot project. If you are an applicant under the HSI, you may submit your application to us in electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is strictly voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all grant documents electronically including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 form from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner ofED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- You may access the electronic grant application for the Title V, HSI program at *http://e-grants.ed.gov*.

We have included additional information about the e-APPLICATION pilot project (*see* Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications and Further Information Contact: Sophia McArdle, Title V–Developing Hispanic-Serving Institutions Program, U.S. Department of Education, Office of Postsecondary Education, Higher Education Programs, 1990 K Street NW., 6th floor, Washington, DC 20006–8501. Telephone: (202)219–7078 or via Internet *title_five@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site, *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1101–1101d, 1103–1103g.

Dated: January 30, 2002.

Kenneth W. Tolo,

Acting Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education.

[FR Doc. 02–2702 Filed 2–4–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.031A, 84.031N, 84.031W]

Office of Postsecondary Education; Strengthening Institutions, and Alaska Native and Native Hawaiian-Serving Institutions Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Programs: The Strengthening Institutions, and Alaska Native and Native Hawaiian-Serving Institutions Programs are authorized under Title III, Part A of the Higher Education Act of 1965, as amended (HEA). These programs will be referred to collectively in this notice as the "Title III, Part A Programs." The FY 2002 competition for new planning, development, and construction grants under another Title III, Part A Program, the American Indian Tribally Controlled Colleges and Universities Program, will be announced in a separate **Federal Register** notice. Each Title III, Part A Program provides grants to eligible institutions of higher education to enable them to improve their academic quality, institutional management, and fiscal stability, and increase their self-sufficiency. The grants thereby support the elements of the National Education Goals that are relevant to these institutions' unique missions.

Eligible Applicants: To qualify as an eligible institution under either of the programs included in this notice, an accredited or preaccredited institution must, among other requirements, have a high enrollment of needy students, and its Educational and General (E&G) expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction. The complete eligibility requirements are found in 34 CFR 607.2–607.5. The regulations may also be accessed by visiting the following Department of Education Web site *http://www.gov.ed.gov/legislation/FedRegister.*

Note 1: A grantee under the Developing Hispanic-Serving Institutions (HSI) Program, authorized under Title V of the HEA, may not receive a grant under any Title III, Part A

Program. Further, an HSI Program grantee may not give up that grant in order to receive a grant under any Title III, Part A Program. Therefore, a current HSI Program grantee may not apply for a grant under any Title III, Part A Program in FY 2002.

Note 2: An institution that does not fall within the limitation described in NOTE 1 may apply for a FY 2002 grant under all Title III, Part A Programs for which it is eligible, as well as under the HSI Program. An applicant may receive only one grant.

Applications Available: February 6, 2002.

Deadline for Transmittal of Applications: March 22, 2002.

Deadline for Intergovernmental Review: May 21, 2002.

Estimated Available Funds: Congress has appropriated $73.625 million for the Strengthening Institutions Program, and $6.5 million for the Alaska Native and Native Hawaiian-Serving Institutions Program for FY 2002.

Estimated Range of Awards: $330,000—$365,000 per year for 5-year development grants under the Strengthening Institutions Program; and $30,000—$35,000 for 1-year planning grants under the Title III, Part A Programs.

Estimated Average Size of Awards: $350,000 per year for 5-year development grants under the Strengthening Institutions Program; and $32,500 for 1-year planning grants under the Title III, Part A Programs.

Estimated Number of Awards: 14 planning grants under the Title III, Part A programs; 16 development grants under the Strengthening Institutions Program; and two development grants under the Alaska Native and Native Hawaiian-Serving Institutions Program.

Project Period: 60 months for development grants and 12 months for planning grants.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the Title III, Part A Web site for further information on these programs. The address is http://www.ed.gov/offices/OPE/HEP/idues/title3a.html.

Page Limit: We have established mandatory page limits for the individual development grant, the cooperative arrangement development grant, and the planning grant applications. You must limit the narrative application to the equivalent of no more than 100 pages for the individual development grant, 140 pages for the cooperative arrangement development grant and 30 pages for the planning grant, using the following standards:

- A ''page'' is 8.5'' x 11'', on one side only, with 1'' margins top, bottom, right and left.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles and headings. However, you may single space footnotes, quotations, references, captions, charts, forms, tables, figures and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the application cover sheet (ED 424) or the assurances and certifications. However, the page limitation applies to all other parts of the application.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Special Funding Considerations: In tie-breaking situations described in 34 CFR 607.23 of the governing regulations, we award one additional point to an applicant institution that has an endowment fund for which the 1998–1999 market value per full-time equivalent (FTE) student was less than the comparable average per FTE student at similar type institutions. We also award one additional point to an applicant institution that had 1998–1999 expenditures for library materials per FTE student that were less than the comparable average per FTE student at similar type institutions.

For the purpose of these funding considerations, an applicant must demonstrate that the market value of its endowment fund per FTE student, and library expenditures per FTE student, were less than the national averages for the year 1998–1999.

If a tie remains, after applying the additional point or points, we will determine the ranking of applicants based on the lowest combined library expenditures per FTE student and endowment values per FTE student.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99; and, (b) The regulations for this program in 34 CFR part 607.

Applicability of Executive Order 13202: Applicants that apply for construction funds under these programs must comply with the Executive order 13202 signed by President Bush on February 17, 2001 and amended on April 26, 2001. This Executive order provides that recipients of Federal construction funds may not ''require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)'' or ''otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s).'' However, the Executive order does not prohibit contractors or subcontractors from voluntarily entering into these agreements.

Projects funded under this program that include construction activity will be provided a copy of this Executive order and will be asked to certify that they will adhere to it.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Title III, Part A Programs (CFDA Nos. 84.031A, 84.031N, and 84.031W) are included in the pilot project. If you are an applicant under the Title III, Part A Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is strictly voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all grant documents electronically including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application

fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Title III, Part A programs at *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications or Further Information Contact: Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW, 6th Floor, Washington, DC 20202–8513. Telephone: (202) 502–7777 or via Internet darlene.collins@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1057–1059d.

Dated: January 30, 2002.

Kenneth W. Tolo,

Acting Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education.

[FR Doc. 02–2703 Filed 2–4–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Commission on Excellence in Special Education

AGENCY: President's Commission on Excellence in Special Education, Department of Education.

ACTION: Notice of public meeting and hearings.

SUMMARY: This notice provides the dates and city locations of each meeting and hearing of the President's Commission on Excellence in Special Education (Commission). Notice of these meetings and hearings is required under section 10(a)(2) of the Federal Advisory Committee Act in order to notify the public of their opportunity to attend. Members of the general public may observe and listen to Commission proceedings at each meeting and hearing. The Commission may choose to provide a public comment period where members of the public may offer comments before the Commission. The agenda of each meeting, including whether members of the general public will have an opportunity to offer comments before the Commission, will be posted on the Commission's website.

Full Commission meetings will be held in Houston, Texas; Miami, Florida; and Washington, DC. Task force hearings will be held in Houston, Texas; Denver, Colorado; Des Moines, Iowa; San Diego, California; Los Angeles, California; Miami, Florida; New York City, New York; and Nashville, Tennessee. Task force meeting may not consist of all members of the Commission.

Date	City
February 25–27	Houston, Texas.
March 6	Denver, Colorado.
March 13	Des Moines, Iowa.
March 20	San Diego, California.
March 21	Los Angeles, California.
April 9 and 10	Miami, Florida.
April 16	New York, New York.
April 18	Nashville Tennessee.
May 30 and 31	Washington, DC.

ADDRESSES: At this time, the exact address where meetings and hearings will be held within each city is not determined. The Commission's Web site will list the location of each meeting and hearing as soon as locations are determined.

FOR FURTHER INFORMATION CONTACT: C. Todd Jones, Executive Director, at 202–208–1312 (telephone) or Troy R. Justesen, Deputy Executive Director, at 202–219–0704 (telephone), (202) 208–1593 (fax), *Troy.justensen@ed.gov* (e-mail) or via the Commission's Web site address at *http://www.ed.gov/inits/commissionsboards/whspecialeducation/sitemap.htm1.*

SUMMARY INFORMATION: The Commission was established under Executive Order 13227 (October 2, 2001) to collect information and study issues related to Federal, State, and local special education programs with the goal of recommending policies for improving the educational performance of students with disabilities. In furtherance of its duties, the Commission shall invite experts and members of the public to provide information and guidance. The Commission shall prepare and submit a report to the President outlining its findings and recommendations.

Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.,* assistive listing devices, materials in alternative formats) should notify Troy R. Justensen, at (202) 219–0704, by no later than two weeks prior to the meeting or hearing in which an accommodation is needed. Sign language interpreter service will be provided at each meeting. We will attempt to meet requests after this deadline, but cannot guarantee availability of the requested accommodation. The meeting site will be accessible to individuals with mobility impairments, including those who use wheelchairs.

Records of all Commission proceedings are available for public inspection at the President's Commission on Excellence in Special Education, 80 F Street, NW., Suite 408; Washington, DC 20208 from 9 a.m. to 5 p.m. (EST). Transcripts of each meeting will be available on the Commission's website as soon as possible after each meeting.

Dated: January 31, 2002.

C. Todd Jones,

Executive Director & Delegated functions of Assistant Secretary for Office for Civil Rights.

[FR Doc. 02–2678 Filed 2–4–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e,.* interpreting services, assistive listening devices, and/or materials in alternative format) should notify Ms. Hope M. Gray at 202–219–2099 or via e-mail at *hope.gray@ed.gov* no later than Thursday, February 28. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with liabilities. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: Thursday, March 7, 2002, beginning at 9 a.m. and ending at approximately 5 p.m.; and Friday, March 8, 2002, beginning at 8:30 a.m. and ending at approximately 12 noon.

ADDRESSES: The Universit7y of Texas at Brownsville in the Science, Engineering, and Technology Building, 80 Fort Brown, Brownville, Texas 78520.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202–7582 (202) 219–2099.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the Committee has been charged with providing technical expertise with regard to systems of need analysis and application forms, making recommendations that result in the maintenance of access to postsecondary education for low- and middle-income students; conducting a study of institutional lending in the Stafford Student Loan Program; assisting with activities related to the 1992 reauthorization of the Higher Education Act of 1965; conducting a third-year evaluation of the Ford Federal Direct Loan Program (FDLP) under the Omnibus Budget Reconciliation Act (OBRA) of 1993; and assisting Congress with the 1998 reauthorization of the Higher Education Act.

The congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. The Committee traditionally approaches its work from a set of fundamental goals: promoting program integrity, eliminating or avoiding program complexity, integrating delivery across the Title IV programs, and minimizing burden on students and institutions.

Reauthorization of the Higher Education Act has provided the Advisory Committee with a significantly expanded agenda in six major areas, such as, Performance-based Organization (PBO); Modernization; Technology; Simplification of Law and Regulation; Distance Education; and Early Information and Needs Assessment. In each of these areas, Congress has asked the Committee to: monitor progress toward implementing the Amendments of 1998; conduct independent, objective assessments; and make recommendations for improvement to the Congress and the Secretary. Each of these responsibilities flows logically from and effectively implements one or more of the Committee's original statutory functions and purposes.

The proposed agenda includes: (a) Round table discussion sessions regarding the findings of Access Denied and related research, in particular, the implications of unmet need on low-income students, (b) the role of academic preparation in access; and (c) the implications of the data and findings for federal and state policy. In addition, the Committee will discuss its plans for the remainder of fiscal year 2002 and address other Committee business. Space is limited and you are encouraged to register early if you plan to attend. You may register through Internet at *ADV.COMSFA@ed.gov* or *Tracy.Deanna.Jones@ed.gov.* Please include your name, title, affiliation, complete address (including Internet and e-mail—if available), and telephone and fax numbers. If you are unable to register electronically, you may mail or fax your registration information to the Advisory Committee staff office at (202) 219–3032. Also, you may contact the Advisory Committee staff at (202) 219–2099. The registration deadline is Tuesday, February 26, 2002.

The Advisory Committee will meet in Brownsville, Texas on Thursday, March 7, 2002, from 9 a.m. until approximately 5 p.m., and on Friday, March 8, from 8:30 a.m. until approximately 12 noon.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: January 30, 2002.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 02–2740 Filed 2–4–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–02NT15378 entitled ''Identification and Demonstration of Preferred Upstream Management Practices III (PUMP III) for the Oil Industry.'' The Department of Energy (DOE) National Energy Technology Laboratory (NETL), on behalf of its National Petroleum Technology Office (NTPO), seeks cost-shared research and development applications for identification of preferred management practices (PMP) addressing a production barrier in a region and the documentation of these practices for use by the oil industry. Applications will either address (1) The solutions to a technical barrier to production in a region through identification, demonstration, and evaluation of suitable PMP's or (2) they will apply research or analysis to overcome an environmental regulatory barrier. The near-term goal is to address regional barriers whose resolution or

removal would result in an increase in near-term oil production from onshore or offshore Federal, State, tribal or private land.

DATES: The solicitation will be available on the ''Industry Interactive Procurement System'' (IIPS) Web page located at *http://e-center.doe.gov* on or about February 4, 2002. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Mary Beth Pearse MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Rd., P.O. Box 10940, Pittsburgh, PA 15236–0940, E-mail Address: *pearse@netl.doe.gov.*

SUPPLEMENTARY INFORMATION: The National Petroleum Technology Office of the Department of Energy (DOE) Office of Fossil Energy (FE) National Energy Technology Lab (NETL) is soliciting cost-shared applications for identification of preferred management practices (PMP) addressing production and data-sharing solutions to a production barrier in a region and the documentation of these practices for use by the industry. The near-term goal is to increase current domestic oil production quickly.

The mission of the Department of Energy's Fossil Energy Oil Program is derived from the National need for increased oil production for national security, requirements for Federal Lands stewardship, and increased protection of the environment. The Oil Program develops unique technologies and processes to locate untapped oil resources; extend the life of domestic energy resources; and reduce well abandonment—all essential to maximizing the production of domestic resources while protecting the environment. The National Energy Policy in providing energy for a new century supports efforts to increase oil and gas recovery from existing wells through new technology (NEP, Chapter 5, May 2001). The Preferred Upstream Management Practices III (PUMP III) Program continues an effort to meet the NEP goal, by encouraging implementation of the most promising and environmentally protective advanced technologies for optimizing the recovery of the Nation's valuable oil resources.

The program will accept proposals for cost-shared research and development applications for identification of preferred management practices (PMP) addressing a production barrier in a region and the documentation of these practices for use by the oil industry. Applications will either address (1) The solutions to a technical barrier to production in a region through identification, demonstration, and evaluation of suitable PMP's or (2) they will apply research or analysis to overcome an environmental regulatory barrier. The near-term goal is to address regional barriers whose resolution or removal would result in an increase in near-term oil production from onshore or offshore Federal, State, tribal or private land.

Barriers can be identified as technical, physical, regulatory, environmental, or economic. The selected projects are expected to employ the following four (4) strategies in order to have a rapid impact on production: (1) Focus on regions that present the biggest potential for additional oil production quickly, (2) integrate solutions to technological, economic, regulatory, and data constraints, (3) demonstrate the validity of these practices either through field demonstration during the project or documentation of well-run successful past demonstration, and (4) use known technology transfer mechanisms.

Using a regional approach where the projects will have a wide applicability, an integrated approach scheduling tasks along parallel paths to facilitate a quicker response, and operating with existing networks, the production results in the field should be accelerated. The documentation and evaluation of the PMP will be a valuable resource to all producers in the applicable area and possibly other regions as well.

Projects will demonstrate practices and/or technologies that can increase production, increase cost savings, or rapid returns on the capital investments of the operators. New technologies/processes or under-used but effective applications of existing technologies/processes critical to a region will be demonstrated. Some proposals will develop data, systems, or methodologies that enable oil permitting agencies to make decisions more quickly and/or that are based on better scientific information about the environmental risks of a given operation.

This program expects near-term results and actions that will create data or technological resources suitable for long-term use. Teaming is encouraged and the proposal partners could include, but not be limited to, producers, producer organizations, universities, service companies, State agencies or organizations, non-Federal research laboratories, and Native American Tribes or Corporations. The DOE will make publicly available over the Internet the data on preferred practices resulting from this program. The resulting publicly available databases of the preferred practices will be interactive, Internet accessible, should include both technologies and practices, and address constraints in the exploration, production, or environmental areas.

DOE anticipates issuing financial assistance (Cooperative Agreement) awards. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how may awards will be made. Multiple awards are anticipated. Approximately $6 million of DOE funding is planned over a 2 year period for this solicitation. The program seeks to sponsor projects for a single budget/project period of 24 months or less. Due to the low risk and near-term nature of the PUMP program and the potential for a process or technology demonstration, all applicants are required to cost share at a minimum of 50% of the project total for projects submitted under Area 1 and 20% of the project total for projects submitted under Area 2. Details of the cost sharing requirement, and the specific funding levels are contained in the solicitation.

Once released, the solicitation will be available for downloading from the IIPS internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751, or e-mail the Help Desk personnel at IIPS *HelpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business.* Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on 28 January 2002.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 02–2711 Filed 2–4–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–17: Fusion 2002 Summer Study, Snowmass Village, CO, Supplemental Travel Funding

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting applications for supplemental travel funding.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Science (SC), U.S. Department of Energy hereby announces its interest in receiving applications for supplemental travel funding for existing grants to allow researchers and graduate students who are members of the fusion energy science community to participate in the Snowmass 2002 Fusion Energy Sciences Summer Study to be held July 8–19, 2002, Snowmass Village, Colorado. Preference will be given to requests to supplement existing grants funded at levels less than $500,000 per year.

DATES: To permit timely consideration for awards in Fiscal Year 2002, formal applications in response to this notice should be received on or before March 14, 2002.

ADDRESSES: Completed formal applications referencing Program Notice 02–17, should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 02–17. The above address must also be used when submitting applications by U.S. Postal Service Express, any other commercial mail delivery service or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold H. Kritz, U.S. Department of Energy, Office of Fusion Energy Sciences, Science Division, SC–55 (GTN), 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–2027. e-mail: *Arnold.Kritz@science.doe.gov.*

SUPPLEMENTARY INFORMATION: The objective of the supplemental travel funding is to encourage broad participation by fusion science researchers in the Snowmass 2002 Fusion Energy Sciences Summer Study. This funding is intended to supplement existing grants funded by the Office of Fusion Energy Sciences. Preference will be given to requests to supplement grants with an annual budget of less than $200,000. Principal Investigators of existing grants may submit requests for supplemental funding to support travel, up to a maximum of $2500 per person, for any researcher or graduate student supported by their grant. Requests for travel funds for both researchers and graduate students can be included in the same application for supplemental funding.

It is expected that $60,000 will be available to support supplemental travel for faculty and research staff. In order to encourage student participation in the meeting, an additional $20,000 is expected to be available to support graduate student travel, with preference given to students nearing completion of their Ph.D. degree.

The request for supplemental funding should include a page for each traveler, not to exceed 300 words, describing how the Summer Study relates to the traveler's research and what the traveler is likely to contribute to the Summer Study. The supplemental travel funding for each proposed traveler will be reviewed competitively with awards based on the applicant's likely level of participation in the Meeting as well as potential benefit to the fusion program resulting from the applicant's attendance at the Fusion 2002 Summer Study Meeting. Additional information about the objectives of the Fusion 2002 Summer Study at Snowmass can be obtained from the Web site at: *http://lithos.gat.com/snowmass/*

The request for each traveler should indicate the Snowmass Working Group, or Groups, in which the traveler expects to participate. Briefly describe how the individual's research will enable him/her to contribute to the topic of the specified Snowmass Working Group(s) and/or how the participation in the program of the Snowmass Working group(s) will benefit the individual's fusion research program. A listing of the Snowmass working groups can be found on the Web at: *http://lithos.gat.com/snowmass/working.html.* The request should also include a vitae for each traveler. The relationship between the traveler's research experience and the goals of the Snowmass meeting will be considered in evaluating the request. In the budget justification specify for each traveler the breakdown for travel, lodging and per diem costs.

Applicants are expected to use the following ordered format to prepare applications.

- Face Page Form (DOE F 4650.2)
- Budget Page Form (DOE F 4620.1)
- Page with Budget Explanation
- One page for each traveler, not to exceed 300 words per traveler, describing how the Summer Study relates to the travelers research and what the traveler is likely to contribute to the Summer Study
- Biographical sketches or vitae, including relevant publications (limit two pages per traveler)

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605 which is available on the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications.

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 January 29, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–2712 Filed 2–4–02; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–338–001, et al.]

Portland General Electric Company, et al.; Electric Rate and Corporate Regulation Filings

January 29, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ER02–338–001]

1. Portland General Electric Company

Take notice that on January 24, 2002, Portland General Electric Company (PGE) filed with the Federal Energy Regulatory Commission (Commission) amendments to its revised tariff sheets to its Open Access Transmission Tariff and certain information requested by the Commission regarding its proposed energy imbalance charge in the above-referenced proceeding.

PGE requests that the Commission make the amended tariff sheets effective as of March 1, 2002.

Comment Date: February 14, 2002.

[Docket No. ER02–698–001]

2. Pleasants Energy, LLC

Take notice that on January 24, 2002, Pleasants Energy, LLC filed an Amended Service Agreement No. 1 with Dominion Nuclear Marketing I, Inc., and Dominion Nuclear Marketing II, Inc., under FERC Electric Tariff, Original Volume No.1.

Pleasants Energy, LLC requests an effective date for the Amended Service Agreement No. 1 of December 5, 2001, the date requested in Docket No. ER02–698–000. Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, and the Public Service Commission of West Virginia.

Comment Date: February14, 2002.

[Docket No. ER02–818–000]

3. LG&E Capital Trimble County LLC

Take notice that on January 24, 2002, LG&E Trimble County LLC, (TCLC) submitted for filing, pursuant to section 205 of the Federal Power Act, and Part 35 of the Federal Energy Regulatory Commission (Commission) regulations, an application for authorization to engage in the sale of electric energy and capacity at market-based rates, waiver of certain Commission regulations, and certain blanket approvals under such regulations. TCLC proposes, among other things, to own, operate and sell the power output from two 152 megawatt combustion turbine electric units located in Trimble County, Kentucky.

Comment Date: February 14, 2002.

[Docket No. ER02–819–000]

4. Entergy Services, Inc.

Take notice that on January 24, 2002, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc (Entergy Arkansas), tendered for filing a First Revised Long-Term Market Rate Sales Agreement between Entergy Arkansas and City of Benton, Arkansas for the sale of power under Entergy Services' Rate Schedule SP.

Comment Date: February 14, 2002.

[Docket No. ER02–820–000]

5. Pedricktown Energy, Inc.

Take notice that on January 24, 2002, Pedricktown Energy, Inc. (Peddricktown) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for an order accepting its FERC Electric Rate Schedule No. 1, granting certain blanket approvals, including the authority to sell electricity at market-based rates, and waiving certain regulations of the Commission. Pedricktown requested expedited Commission consideration. Pedricktown requested that its Rate Schedule No. 1 become effective upon the earlier of the date the Commission authorizes market-based rate authority, or 30-days from the date of this filing. Pedricktwon also filed its FERC Electric Rate Schedule No. 1.

Comment Date: February 14, 2002.

[Docket No. ER02–821–000]

6. Louisville Gas and Electric Company/ Kentucky Utilities Company

Take notice that on January 24, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral transmission service agreement with LG&E Energy Services. This agreement allows LG&E Energy Services to take firm point-to-point transmission service from LG&E/KU.

Comment Date: February 14, 2002.

[Docket No. ER02–822–000]

7. Louisville Gas and Electric Company/ Kentucky Utilities Company

Take notice that on January 24, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral transmission service agreement with LG&E Energy Services. This agreement allows LG&E Energy Services to take firm point-to-point transmission service from LG&E/KU.

Comment Date: February 14, 2002.

[Docket No. ER02–823–000]

8. Louisville Gas and Electric Company/ Kentucky Utilities Company

Take notice that on January 24, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral transmission service agreement with Cincinnati Gas and Electric Company, PSI Energy, Inc. (Cinergy). This agreement allows Cinergy to take firm point-to-point transmission service from LG&E/KU.

Comment Date: February 14, 2002.

[Docket No. ER02–824–000]

9. Louisville Gas and Electric Company/ Kentucky Utilities Company

Take notice that on, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral transmission service agreement with Cincinnati Gas and Electric Company, PSI Energy, Inc. (Cinergy). This agreement allows Cinergy to take firm point-to-point transmission service from LG&E/KU.

Comment Date: February 14, 2002.

[Docket No. ER02–825–000]

10. Louisville Gas and Electric Company/ Kentucky Utilities Company

Take notice that on January 24, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral transmission service agreement with Dynegy Marketing and Trade (Dynegy). This agreement allows Dynegy to take firm point-to-point transmission service from LG&E/KU.

Comment Date: February 14, 2002.

[Docket No. ER02–826–000]

11. Louisville Gas and Electric Company/ Kentucky Utilities Company

Take notice that on January 24, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral transmission service agreement with Dynegy Marketing and Trade (Dynegy). This agreement allows Dynegy to take firm point-to-point transmission service from LG&E/KU.

Comment Date: February 14, 2002.

[Docket No. ER02–827–000]

12. PJM Interconnection, L.L.C.

Take notice that on January 24, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to the currently effective Reliability Assurance Agreement Among Load Serving Entities (RAA) to provide an exception, for the addition of Rockland Electric Company (Rockland) as a party to the RAA, to the RAA requirement to recalculate the Forecast Pool Requirement and RAA parties' capacity obligations which normally is required whenever an entity becomes a party to the RAA such that the boundaries of the PJM control area are expanded.

PJM requests a waiver of the Commissions' regulations to permit an effective date of March 1, 2002 for the amendments. Copies of this filing were served upon all RAA signatories, Rockland, and each state electric utility regulatory commission in the PJM control area.

Comment Date: February 14, 2002.

13. Wellhead Power Gates, LLC

[Docket No. ER02–828–000]

Take notice that on January 24, 2002, Wellhead Power Gates, LLC (Applicant)

tendered for filing under its market-based rate tariff a long-term service agreement with the California Department of Water Resources.

Comment Date: February 14, 2002.

14. Duke Energy Hot Spring, LLC

[Docket No. EG02–78–000]

Take notice that on January 25, 2002, Duke Energy Hot Spring, LLC (Duke Hot Spring) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Duke Hot Spring states that it is a Delaware limited liability company that will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities to be located in Hot Spring County, Arkansas. The eligible facilities will consist of an approximately 620 MW natural gas-fired, combined cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment Date: February 19, 2002.

15. American Transmission Company LLC

[Docket No. ER02–829–000]

Take notice that on January 24, 2002, American Transmission Company LLC (ATCLLC) tendered for filing an executed Distribution-Transmission Interconnection Agreement between ATCLLC and Manitowoc Public Utilities. ATCLLC requests an effective date of June 25, 2001.

Comment Date: February 14, 2002.

16. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–830–000]

Take notice that on January 24, 2002, pursuant to section 205 of the Federal Power Act and Section 35.16 of the Commission's regulations, 18 CFR 35.16 (2001), the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Succession for certain Transmission Service Agreements and Network Transmission Service and Operating Agreements held by the Minnesota Power & Light Company (Minnesota Power).

Copies of this filing were sent to all applicable customers under the Minnesota Power Open Access Transmission Tariff by placing a copy of the same in the United States mail, first-class postage prepaid.

Comment Date: February 14, 2002.

17. Wellhead Power Panoche, LLC

[Docket No. ER02–832–000]

Take notice that on January 24, 2002, Wellhead Power Panoche, LLC (Applicant) tendered for filing under its market-based rate tariff a long-term service agreement with the California Department of Water Resources.

Comment Date: February 14, 2002.

18. California Independent System Operator Corporation

[Docket No. ER02–834–000]

Take notice that on January 24, 2002, the California Independent System Operator Corporation (ISO) tendered for filing Second Revised Service Agreement No. 276 Under ISO Rate Schedule No. 1, which is a Participating Generator Agreement (PGA) between the ISO and Delano Energy Company, Inc. The ISO has revised the PGA to update the list of generating units listed in Schedule 1 of the PGA. The ISO requests that the agreement be made effective as of January 4, 2002.

The ISO states that this filing has been served on Delano Energy Company, Inc. and the California Public Utilities Commission.

Comment Date: February 14, 2002.

19. Entergy Services, Inc.

[Docket No. ER02–839–000]

Take notice that on January 25, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., tendered for filing the Thirtieth Amendment to the Power Coordination, Interchange and Transmission Service Agreement between Entergy Arkansas, Inc., and Arkansas Electric Cooperative Corporation, dated March 1, 2001. The Thirtieth Amendment modifies Exhibit A to Appendix A of Rate Schedule No. 82 by establishing a new point of delivery.

Comment Date: February 15, 2002.

20. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–841–000]

Take notice that on January 25, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral transmission service agreement with LG&E Energy Services This agreement allows LG&E Energy Services to take firm point-to-point transmission service from LG&E/KU.

Comment Date: February 15, 2002.

21. Pinnacle West Capital Corporation

[Docket No. ER02–842–000]

Take notice that on January 25, 2002, Pinnacle West Capital Corporation (PWCC) tendered for filing a Service Agreement, Rate Schedule FERC No. 6, under PWCC's Rate Schedule FERC No. 1 for service to Aha Macav Power Service (AMPS).

A copy of this filing has been served on AMPS.

Comment Date: February 15, 2002.

22. Boston Edison Company

[Docket No. ER02–843–000]

Take notice that on January 25, 2002, Boston Edison Company (Boston Edison) tendered for filing a Related Facilities Agreement between Boston Edison and Mirant Kendall, LLC (Mirant Kendall). Boston Edison requests an effective date of March 26, 2002.

Boston Edison states that it has served a copy of the filing on Mirant Kendall and the Massachusetts Department of Telecommunications and Energy.

Comment Date: February 15, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2728 Filed 2–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project 2342–011, Washington]

PacifiCorp; Notice of Incorporation of 1996 Condit Hydroelectric Project Final Environmental Impact Statement Into the Record of the Proceeding for Project No. 2342–011

January 30, 2002.

Take notice that the Condit Hydroelectric Project Final Environmental Impact Statement issued in the relicensing proceeding for Project No. 2342–005 on October 31, 1996, is incorporated into the record of the proceeding for Project No. 2342–011.

For further information, please contact Nicholas Jayjack at (202) 219–2825.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2730 Filed 2–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11566–000 Maine]

Ridgewood Maine Hydro Partners, L.P.; Notice of Availability of Draft Environmental Assessment

January 30, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486,52 F.R. 47879), the Office of Energy Projects has reviewed the application for license for the Damariscotta Mills project, located on the Damariscotta River, in Lincoln, County, Maine, and has prepared a Draft Environmental Assessment (DEA) for the project. There are no federal lands occupied by the project works or located within the project boundary.

The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link—select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Any comments should be filed within 45 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix the Project No. 11566 to the comments. Comments 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.

For further information, contact Michael Spencer at 202–219–2846.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2732 Filed 2–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2596–004]

Rochester Gas and Electric Corporation; Notice of Availability of Final Environmental Assessment

January 30, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Commission's Division of Hydropower Administration and Compliance, Office of Energy Projects has reviewed an application to surrender the license for the Station 160 Hydroelectric Project. The Station 160 Project is located on the Genesee River in Livingston County, New York.

A Final Environmental Assessment (FEA) has been prepared by staff for the proposed surrender. In the FEA, staff finds that approval of the application, to include certain actions recommended by Commission staff, would not constitute a major federal action significantly affecting the quality of the human environment.

The FEA was written by staff in the Commission's Office of Energy Projects. Copies of the FEA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The FEA 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).

For further information, contact B. Peter Yarrington at (202) 219–2939.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2731 Filed 2–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

January 30, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No.:* P–1494–236.

c. *Date Filed:* June 26, 2001.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola Project.

f. *Location:* The project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. This project does not utilize Federal or Tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Bob Sullivan, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. *FERC Contact:* Shannon Dunn at *shannon.dunn@ferc.gov*, or telephone (202) 208–0853.

j. *Deadline for filing comments, motions, or protests:* March 4, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Please include the project number (P–1494–236) on any comments or motions filed.

k. *Description of Project:* Grand River Dam Authority, licensee for the Pensacola Project, requests approval to grant permission to The Queens, LLC to replace one existing dock with two slips, install 10 new docks with 271 slips, and install two new breakwaters. The proposed project is near Sailboat Bridge on Grand Lake in Section 22, Township 25 North, Range 23 East, Delaware County.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.gov. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2729 Filed 2–4–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7137–8]

Agency Information Collection Activities: Continuing Collection; Comment Request; Water Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Water Quality Standards Regulation, EPA ICR Number 0988.08, OMB Control Number 2040–0049. The current ICR expires July 31, 2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 8, 2002.

ADDRESSES: United States Environmental Protection Agency; Standards and Health Protection Division (4305), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A hard copy of an ICR may be obtained without charge by calling the identified information contact individual for each ICR in the **FOR FURTHER INFORMATION CONTACT** section. An ICR can also be accessed electronically at *http://www.epa.gov/icr.*

FOR FURTHER INFORMATION CONTACT: Robert Van Brunt, (202) 260–2630, fax (202) 260–9830, e-mail *vanbrunt.robert@epa.gov,* and refer to ICR No. 0988.08.

SUPPLEMENTARY INFORMATION: *Affected entities:* States, Territories and Commonwealths (the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) and Tribes that establish and submit to EPA for review new or revised water quality standards pursuant to section 303 of the Clean Water Act (CWA).

Title: Water Quality Standards, EPA ICR Number 0988.08, OMB Control Number 2040–0049. The current ICR expires July 31, 2002.

Abstract: Water Quality Standards are provisions of State, Tribal, and Federal law which consist of designated uses for waters of the United States, numeric or narrative water quality criteria to protect the designated uses, and an antidegradation policy to protect existing uses and high quality waters. State and Tribal water quality standards are the foundation for restoring and maintaining the quality of the Nation's waters under the CWA. They are used in several ways including serving as water quality goals for each waterbody, evaluating water quality to determine attainment of CWA goals, helping Federal, State, Tribal, and local governments develop water quality management plans and objectives, and helping State and local governments plan for and protect water supplies.

States are required by Federal law to establish water quality standards. CWA section 303(c) requires States and certain Indian Tribes (those Tribes that have received EPA authorization to administer the water quality standards program and have had their water quality standards approved by EPA) to review and, if appropriate, revise their water quality standards regulations once every three years and to submit to EPA the results of the review. EPA then reviews each State and Tribal submission of new or revised water quality standards for approval or disapproval.

The Water Quality Standards (WQS) Regulation (40 CFR part 131) is the EPA regulation governing the implementation of the water quality standards program. The WQS Regulation describes requirements and procedures for the States and Tribes to develop, review, and revise their water quality standards and EPA procedures for reviewing new or revised water quality standards or for EPA to establish water quality standards under section 303(c)(4) of the CWA. The regulation requires, in some cases, the development and submission of information to EPA. The following paragraphs describe the information collection requirements in 40 CFR part 131.

Section 131.6 establishes minimum requirements for a State or Tribe to submit any new or revised water quality standards to EPA after conducting the review required every three years by section 303(c) of the CWA. The information to be submitted consists of:

(a) Use designations for water bodies consistent with sections 101(a)(2) and 303(c)(2) of the CWA;

(b) methods used and analyses conducted to support water quality standards revisions;

(c) water quality criteria sufficient to protect the designated uses;

(d) an antidegradation policy consistent with 40 CFR 131.12;

(e) certification by the Attorney General or other appropriate legal authority that the water quality standards were duly adopted pursuant to State or Tribal law; and

(f) information which will aid EPA in determining the adequacy of the scientific basis of the water quality standards and information on general policies that may affect the implementation of the standards.

Section 131.8 specifies information that an Indian Tribe must submit to EPA in order to determine whether a Tribe is qualified to administer the Water Quality Standards Program. The application must include the following information: (a) Evidence that the Tribe is recognized by the Secretary of the

Interior; (b) a statement that the Tribe is currently carrying out substantial governmental duties and powers over a Federal Indian Reservation; (c) a statement of the Tribe's authority to regulate the quality of the reservation's waters; and (d) a narrative statement describing the capability of the Tribe to administer an effective water quality standards program.

Section 131.7 describes a dispute resolution mechanism that will assist in resolving disputes that arise between States and Tribes over water quality standards on common waterbodies. Implementation of this provision includes collection of information by EPA to determine if initiation of a formal EPA dispute resolution action is justified. Although States and Tribes are not required to request formal EPA dispute resolution action, information collection is necessary where a State or Tribe formally requests EPA intervention.

Additionally, § 131.20 establishes public participation requirements during State and Tribal review and revision of water quality standards. States and Tribes shall hold public hearings at least once every three years for the purpose of reviewing water quality standards and, as appropriate, modifying and adopting standards. Proposed water quality standards revisions and supporting analyses shall be made available to the public before the hearing.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Burden Statement: The existing estimated annual public reporting and recordkeeping burden for this collection of information is estimated to average 2,293 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States, Territories and Commonwealths, and Tribes.

Estimated Number of Respondents: 83.

Frequency of Response: Once every three years for water quality standards submittal to EPA; once per Tribal application for the water quality standards program; once per dispute resolution request.

Estimated Total Annual Hour Burden: 190,336 hours.

Estimated Total Annualized Cost Burden (O&M and capital/startup costs only): $0.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: January 28, 2002.

Elizabeth Southerland,

Acting Director, Office of Science and Technology.

[FR Doc. 02–2709 Filed 2–4–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–28]

Fact Sheet Regarding the Implementation of the Nationwide Programmatic Agreement With Respect to Collocating Wireless and Broadcast Facilities on Existing Towers and Structures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this public notice and the attached Fact Sheet (Appendix A), we present guidance for the implementation of the March 16, 2001 Nationwide Programmatic Agreement (Programmatic Agreement) which applies to wireless and broadcast facilities and that streamlines procedures for review of collocations of antennas under the National Historic Preservation Act (NHPA).

FOR FURTHER INFORMATION CONTACT: Ivy Harris, Wireless Telecommunications Bureau, at (202) 418–0621.

SUPPLEMENTARY INFORMATION: The Wireless Telecommunications Bureau previously announced the execution of this Programmatic Agreement by *Public Notice* released March 16, 2001. The Nationwide Programmatic Agreement was executed by the Federal Communications Commission, the National Conference of State Historic Preservation Officers, and the Advisory Council on Historic Preservation. *See* Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with Respect to Co-Locating Wireless Antennas on Existing Structure, *Public Notice,* DA 01–691 (rel. Mar. 16, 2001), 66 FR 17554 (Apr. 2, 2001).

This *Public Notice* (including the Fact Sheet) is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW, Washington DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington DC 20036, (202) 857–3800. The document is also available via the Internet at: *http://www.fcc.gov/wtb/siting.* The Appendix A appears at the end of this document.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix A—January 10, 2002

Table of Contents

Section	Page no.
1. Background, Purpose and Scope of the Agreement	2
2. General Operation of the Agreement	3
3. Definitions	4
4. Collocation on Towers Constructed on or before March 16, 2001	5
5. Collocation on Towers Constructed after March 16, 2001	6
6. Collocation on Buildings and Non-Tower Structures outside Historic Districts	7
7. Tribal Lands and Tribal Consultation	8
8. Federal Property	10
9. Need for Applicants to File Environmental Assessments	10
10. Filing Instructions/ULS	11
11. Disposition of Pending Matters	11
12. Complaints	12

The Federal Communications Commission (FCC or Commission), the Advisory Council on Historic Preservation (ACHP or Council), and the National Conference of State Historic Preservation Officers (NCSHPO) entered into a Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (the ''Agreement'') on March 16, 2001.[1] The Agreement applies to wireless and broadcast facilities and is intended to streamline procedures for review of collocations of wireless and broadcast antennas and associated equipment (herein ''antennas'') on existing towers and other structures under the National Historic Preservation Act (NHPA).[2]

This Fact Sheet provides guidance regarding the implementation of the Agreement for Commission broadcast and wireless service licensees, applicants, tower companies, and tower owners (collectively, ''applicants''). This Fact Sheet also provides guidance to State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), and other interested parties. The guidance set forth in this Fact Sheet does not amend or act as a substitute for the text of the Agreement or the Commission's rules. The guidance also does not amend or act as a substitute for the ACHP's rules (except to the extent the Agreement itself substitutes for the ACHP's rules). The complete text of the Agreement is available on the Wireless Telecommunications Bureau (''WTB'') Web site at *http://wireless.fcc.gov/siting/*, or by contacting the WTB by e-mail at *wtb_towersiting@fcc.gov* or by phoning Ivy Harris at (202) 418–0621 for wireless-related inquiries; or on the Mass Media Bureau (''MMB'') Web site at *http://www.fcc.gov/mmb/mmb_siting.html,* or by contacting the MMB by e-mail at *mmb_siting@fcc.gov*, or by phoning Marva Dyson at (202) 418–2870 for broadcast-related inquiries.

(1) Background, Purpose, and Scope of the Agreement

Under section 106 of the NHPA (16 U.S.C. 470f), federal agencies are required to take into account the effects of federal undertakings on historic properties. The Commission's environmental rules require licensees and applicants to evaluate whether proposed facilities may affect historic properties that are listed or eligible for listing in the National Register of Historic Places (''National Register''). See 47 CFR 1.1307(a)(4). Consistent with section 106, this evaluation process includes consultation with the relevant State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO), as well as compliance with other procedures set out in the ACHP rules, 36 CFR part 800, subpart B. The Commission becomes directly involved in the consultation process when an applicant determines that a proposed facility will have an adverse effect or when there is a dispute between the applicant and the SHPO/THPO regarding whether a proposed facility will have an adverse effect.[3] Where a facility may have an adverse effect on a historic property, the Commission's rules require submission of an Environmental Assessment (EA) prior to construction.[4]

The purpose of the Agreement is to streamline the procedures associated with section 106 review and the Commission's rules in order to facilitate access to advanced telecommunications services by all Americans in a manner that is consistent with the NHPA's goal of preserving the nation's historic properties and with the pro-competitive and deregulatory goals of the Communications Act of 1934, as amended. According to one industry source, the number of wireless cell sites in the United States increased from a total of 913 in 1985 to 104,288 in 2000.[5] This explosive growth in the number of wireless communications facilities has imposed strains on all parties to the historic preservation review process and led to delays in deployment. Additionally, Congress has mandated that all television stations convert to digital transmission by the end of 2006. While television broadcasters will likely attempt to collocate their digital facilities in the interest of economy and expedition, the transition may necessitate the construction of some new towers to support the digital antennas. However, not all facilities construction is alike in its potential to affect adversely historic properties. In particular, the addition of an antenna to a pre-existing tower or other structure that is not itself a historic property (*i.e.,* collocation) ordinarily should not have an adverse effect on historic properties. The Agreement therefore exempts collocated antennas from the review process under the NHPA unless they fall within a set of exceptions designed to encompass potential problematic situations. The Agreement is intended to encourage the collocation of future antennas on existing structures, create an incentive for parties to comply with section 106 on a going-forward basis, and, where reasonably possible from a network and coverage perspective, to encourage applicants to locate their facilities away from historic properties.

The Agreement governs only the review of collocations under the NHPA for effects on historic properties listed, or eligible for listing, in the National Register. New tower construction and the replacement of existing towers are not exempted from review under the Agreement. The Agreement does not affect the review of collocations to determine compliance with other aspects of the FCC's environmental rules or other federal, state, or local laws.

(2) General Operation of the Agreement

Stipulations III, IV, and V form the core of the Agreement's provisions for collocations. The general effect of these provisions is to exempt all collocations of antennas from the section 106 review process, unless an exception stated in Stipulation III, IV, or V applies. *Thus, unless an exception is applicable, collocations shall not be submitted to the SHPO for review.* A more detailed discussion of these three stipulations is included in the fourth, fifth, and sixth sections of this Fact Sheet.

We note that the Agreement governs only section 106 review of the collocation itself. Nothing in the Agreement affects the rights, if any, of the FCC, ACHP, SHPOs, THPOs, tribal governments, or members of the public to challenge any underlying tower that has an adverse effect on a historic property, independent of the collocation process.

A. *Pre-Existing Towers.* Stipulation III governs collocation on all towers constructed on or before the date of the Agreement, March 16, 2001. Stipulation III allows for collocation on those towers without the collocation having to undergo consultation and review under section 106 of the NHPA, whether or not the underlying tower has previously undergone section 106 review, unless the collocation is subject to one of the exceptions listed in Stipulation III (see section 4, below, ''Collocation on Towers Constructed on or before March 16, 2001'').

B. *Newly Constructed Towers.* Stipulation IV covers collocations on towers built after March 16, 2001. Stipulation IV allows for collocation on those towers without the collocation having to undergo section 106 consultation and review, unless the collocation is subject to one of the exceptions listed in Stipulation IV (*see* section 5, below, ''Collocation on Towers Constructed after March 16, 2001''). For towers built after March 16, 2001, one of these exceptions

[1] *Public Notice,* Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with Respect to Collocating Wireless Antennas on Existing Structures, DA 01–691, rel. March 16, 2001.

[2] 16 U.S.C. 470 *et seq.*

[3] *See also* Memorandum from John M. Fowler, Executive Director, Advisory Council on Historic Preservation, to Federal Communications Commission, State Historic Preservation Officers, and Tribal Historic Preservation Officers, dated September 21, 2000 (confirming authority to delegate) (ACHP Delegation Memo).

[4] 47 CFR 1.1307(a)(4). No EA is required for a finding of ''no effect'' or ''no adverse effect.'' *See* Section 9, *infra.*

[5] *Cellular Telecommunications Industry Association Semi-Annual Wireless Survey,* Table (''Cell Sites''), December 31, 2000.

occurs when the underlying tower has not completed section 106 review. If the underlying tower has not gone through section 106 review, an applicant cannot collocate on that tower without a written concurrence with a finding of ''no effect'' or ''no adverse effect'' on historic properties from the relevant SHPO, the ACHP, or the FCC, or an agreement on mitigation of adverse effects and subsequent approval under the FCC's rules.

C. *Buildings and Non-Tower Structures outside Historic Districts.* Stipulation V governs collocations of antennas on buildings and non-tower structures outside historic districts. Stipulation V allows for collocations on buildings and non-tower structures without the collocation having to undergo section 106 review, unless the collocation is subject to one of the exceptions listed in Stipulation V (*see* section 6, below, ''Collocation on Buildings and Non-Tower Structures outside Historic Districts'').

(3) Definitions

Collocation: ''Collocation'' means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. Under the Agreement, the term ''collocation'' includes excavation and the placement of equipment necessarily or reasonably associated with the mounting or installation of an antenna.

Tower: ''Tower'' is any structure built for the sole or primary purpose of supporting antennas and their associated facilities used to provide FCC-licensed services.[6] A water tower, utility tower, or other structure built primarily for a purpose other than supporting FCC-licensed services is not a ''tower'' for purposes of the Agreement, but is a non-tower structure.

Substantial increase in the size of the tower: Although Stipulations III and IV permit collocation on towers without the collocation having to undergo section 106 consultation and review, this authorization is limited by, among other things, the size and scope of the collocation. Thus, if the collocation will result in a ''substantial increase in the size of the tower,'' the collocation must go through section 106 consultation and review. A ''substantial increase in the size of the tower'' occurs under one or more of the following circumstances:

(1) The height of the tower will be increased by more than the greater of: (a) 10% of the height of the tower; or (b) the height extension needed to accommodate one additional antenna array with a separation of 20 feet from the nearest existing antenna. Thus, a 150-foot tower may be increased in height by up to 15 feet without constituting a substantial increase in size. If there is already an antenna at the top of the tower, the tower height may be increased by up to 20 feet plus the height of a new antenna to be located at the new top of the tower.

(2) More than four new equipment cabinets or more than one new equipment shelter will be added.

(3) The width of the tower will be increased by more than the greater of: (a) 20 feet in any direction from the edge of the tower; or (b) the width of the tower structure at the level of the appurtenance. For example, if the width of the tower structure at the level of the appurtenance is 40 feet, the appurtenance can protrude up to 40 feet from the edge of the tower at that point without constituting a substantial increase in the size of the tower.

(4) Excavation will occur outside the current tower site, defined as the area within the boundaries of the leased or owned property surrounding the tower at the time of the proposed collocation, and including any access or utility easements related to the site.

A collocation may exceed the size limits in the first category without requiring section 106 review if the additional height is necessary to avoid radio interference with or from existing antennas. A collocation may exceed the size limits in the third category without requiring section 106 review if the additional width is necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable. If a complaint is filed regarding a specific collocation that exceeds the size limits set out in the Agreement, the Commission may require the applicant to explain why one of these exceptions is applicable to the collocation.

(4) Collocation on Towers Constructed on or Before March 16, 2001 (Stipulation III)

For towers constructed on or before March 16, 2001, the Agreement generally allows collocation without consultation or review under section 106 and subpart B of 36 CFR part 800. There are four situations involving the mounting of antennas on such towers, however, that still require review:

(1) the mounting of the antenna will result in a substantial increase in the size of the tower (see section 3, Definitions, above); or,

(2) prior to the collocation, the tower has been determined by the FCC to have an effect on one or more historic properties, unless such effect has been found to be not adverse through a ''no adverse effect'' finding, or if found to be adverse or potentially adverse, has been resolved, such as through a conditional ''no adverse effect'' determination, a Memorandum of Agreement, a programmatic agreement, or otherwise in compliance with section 106 and subpart B of 36 CFR part 800; or,

(3) the tower is the subject of a pending environmental review or related proceeding before the FCC involving compliance with section 106 of the National Historic Preservation Act; or,

(4) the collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO or the Council supported by substantial evidence that the collocation has an adverse effect on one or more historic properties.

For purposes of the third exception, a ''review or related proceeding'' commences with respect to wireless facilities or tower registration when the FCC's WTB assigns it a file number and contacts the tower owner, tower manager, or the owner's authorized agent (herein collectively the ''tower owner'') in response to a SHPO adverse effect letter, a complaint from a member of the public, or otherwise. Similarly, a ''review or related proceeding'' commences with respect to broadcast facilities when (1) due to the proximity of historic properties, an applicant cannot certify compliance with the FCC's environmental rules and submits an Environmental Assessment with its application to the MMB; or (2) the FCC receives a SHPO adverse effect letter or a complaint from a member of the public. A review is ''pending'' from the time it commences until the FCC dismisses, closes, or otherwise resolves the matter. Simple receipt by the Commission of a letter from a SHPO alleging that its ability to consult about a tower or collocation prior to construction may have been foreclosed does not in itself establish that a review is pending.

To determine whether a review is pending on a particular tower, an interested party should contact the tower owner. In addition, the FCC will soon make available a database listing pending section 106 reviews and related proceedings for both wireless and broadcast services. Potential collocators are encouraged to consult the FCC database in addition to contacting the tower owner; however, parties should not rely solely on the database. Any party that follows these steps in good faith to determine the pendency of a proceeding will be considered to have complied with the intent of the Agreement.

A tower is considered to be constructed on or before March 16, 2001 if the structure reached its initial intended height above ground, or was available for the mounting of collocations, by March 16, 2001. For towers that must be registered with the FCC under part 17 of the Commission's rules,[7] the completion date will be the date reported to the Commission on FCC Form 854 as the date of completion of construction.[8]

(5) Collocation on Towers Constructed After March 16, 2001 (Stipulation IV)

The Agreement generally allows collocation on towers constructed after March 16, 2001, without consultation or review of the collocation under section 106 and subpart B of 36 CFR part 800. There are four situations involving the mounting of antennas on such towers, however, that still require review:

(1) The section 106 review process for the tower and any associated environmental reviews have not been completed; or,

(2) The collocation will result in a substantial increase in the size of the tower (see section 3, Definitions, above); or,

(3) Prior to the collocation, the tower has been determined by the FCC to have an effect

[6] This may include a tower on which no antennas have been located prior to the collocation at issue, if the principal purpose for constructing the tower was to support FCC-licensed antennas.

[7] *See* 47 CFR 17.1 *et seq.* These rules require that antenna structures located close to airports or that are greater than 200 feet in height comply with painting and lighting specifications designed to ensure aircraft navigation safety. The FCC requires certain antenna structure owners to register structures with the Commission.

[8] *See* 47 CFR 17.57.

on one or more historic properties, unless such effect has been found to be not adverse through a ''no adverse effect'' finding, or if found to be adverse or potentially adverse, has been resolved, such as through a conditional ''no adverse effect'' determination, a Memorandum of Agreement, a programmatic agreement, or otherwise in compliance with section 106 and Subpart B of 36 CFR part 800; or,

(4) The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO, or the Council supported by substantial evidence that the collocation has an adverse effect on one or more historic properties.

We emphasize that pursuant to Subsection (1) of Stipulation IV, above, a tower built after March 16, 2001, may benefit from the collocation provisions of the Agreement only if that tower has completed the section 106 review and related historic preservation review under the FCC's NEPA rules.[9] Typical evidence of a completed section 106 review would include a SHPO's written concurrence with a finding of ''no effect'' or ''no adverse effect'' or an executed Memorandum of Agreement. Where a SHPO has an express policy of allowing applicants to presume concurrence if no objection is received within 30 days of receipt of the applicant's finding, a tower owner may document completion of the section 106 review by retaining an appropriate memorandum, together with a copy of the submission to the SHPO and proof of the date of submission, in the company file.

If a tower constructed after March 16, 2001 did not go through section 106 review prior to construction, an applicant cannot collocate on that tower unless the tower owner first either: (1) Obtains written concurrence with a finding of ''no effect'' or ''no adverse effect'' on historic properties from either the relevant SHPO, the ACHP, or the FCC, or (2) executes a Memorandum of Agreement on mitigation of adverse effects and thereafter submits an EA and completes the approval process under the FCC's rules.[10]

(6) Collocation on Buildings and Non-Tower Structures Outside Historic Districts (Stipulation V)

For buildings and non-tower structures, the Agreement allows collocation without consultation or review under Section 106 in some circumstances. Collocation without section 106 review is more limited in these cases to account for the fact that the building or non-tower structure itself could be a historic property. There are four situations involving the mounting of antennas on buildings and non-tower structures that require review:

(1) the building or structure is over 45 years old;[11] or,

(2) the building or structure is (a) inside the boundary of a historic district, or (b) outside (but within 250 feet of) the boundary of a historic district and the antenna is visible from ground level anywhere within the historic district; or

(3) the building or structure is either (a) a designated National Historic Landmark or (b) listed in or eligible for listing in the National Register of Historic Places;[12] or,

(4) the collocation licensee or the owner of the building or structure has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO or the Council supported by substantial evidence that the collocation has an adverse effect on one or more historic properties.

For collocations on buildings and non-tower structures after March 16, 2001, the ACHP or the relevant SHPO or THPO may notify the FCC that it has determined that the collocation of the antenna or its associated equipment has resulted in an adverse effect on historic properties listed or eligible for listing in the National Register. The FCC will then act accordingly.

Subsection A.2. of Stipulation V applies where the building or other non-tower structure on which the antenna is to be mounted is located outside, but within 250 feet of the boundary of, a historic district, and the antenna to be collocated will be clearly visible when viewed from an eye level of five to six feet above the ground from any point within the boundary of the historic district.

(7) Tribal Lands and Tribal Consultations

The terms of the Agreement do not apply on ''tribal lands'' as defined under § 800.16(x) of the Council's regulations, 36 CFR 800.16(x) (''Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.'').[13] Thus, any collocation on tribal lands must be reviewed and approved by the appropriate tribal authorities, which may include a THPO.[14] The FCC recognizes that Indian Tribes, as domestic dependent nations, ''exercise inherent sovereign powers over their members and territory.''[15]

Although the Agreement exempts most collocations outside tribal lands from section 106 review, an Indian Tribe[16] or Native Hawaiian organization[17] may initiate consultation directly with the FCC or with its licensees, tower companies and applicants when a collocation outside tribal lands may affect historic properties that are of religious or cultural significance to that Indian tribe or Native Hawaiian organization. Where a collocation is not exempt from section 106 review under the Agreement, the applicant must make a good faith effort to identify Indian tribes and Native Hawaiian organizations whose historic properties may be affected and involve those entities in the Section 106 process as provided in the ACHP rules.[18]

The excavation of Indian or Native Hawaiian artifacts, burial mounds, or other religious sites has the potential to cause a significant environmental effect and thus requires the preparation of an EA.[19] If an

[9] 47 CFR 1.1307(a)(4).

[10] Where there has been an adverse effect finding, a Memorandum of Agreement (''MOA'') is typically signed by the applicant, the relevant SHPO (and/or the ACHP), and the FCC. *See* 36 CFR 800.6(b)(1),(2). The MOA is then submitted to the Commission with an Environmental Assessment (''EA''), which upon approval by the Commission results in the issuance of a Finding of No Significant Impact (''FONSI''). *See* 47 CFR 1.1308.

[11] Suitable methods for determining the age of a building include, but are not limited to: (1) obtaining the opinion of a consultant who meets the Secretary of Interior's Professional Qualifications Standards (36 CFR part 61); or (2) consulting public records.

[12] The National Register is the Nation's official list of cultural resources officially deemed worthy of preservation. *See* the National Park Service's cultural resources page on the National Register: *http://www.cr.nps.gov/nr/about.htm.* Authorized under the NHPA, the National Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archeological resources. Properties listed in the Register include districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, engineering, and culture. The National Register is administered by the National Park Service, which is part of the U.S. Department of the Interior. Included among the nearly 73,000 listings that make up the National Register are: (1) All historic areas in the National Park System (*http://www.nps.gov/*); (2) over 2,300 National Historic Landmarks (*http://www.cr.nps.gov/nhl*), which have been designated by the Secretary of the Interior because of their importance to all Americans; and, (3) properties across the country that have been nominated by governments, organizations, and individuals because they are significant to the nation, to a state, or to a community. Interested parties may begin their research by using the following National Register Web site: *http://www.cr.nps.gov/nr/research/.* Other useful resources include the ACHP Web site at *http://www.achp.gov;* the various State Historic Preservation Offices, accessible through the ACHP Web site at *http://www.achp.gov/shpo.html;* the various Tribal Historic Preservation Offices, accessible through: *http://www.achp.gov/thpo.html;* and the Bureau of Indian Affairs Web site at *http://www.doi.gov/bia/areas/agency.html.*

[13] For a discussion of the definition of ''dependent Indian communities,'' *see Alaska* v. *Native Village of Venetie Tribal Government,* 522 U.S. 520 (1998).

[14] For an online map of Indian lands in the United States, visit the Bureau of Indian Affairs' Web site, ''US Indian Lands,'' located at: *http://www.gdsc.bia.gov/products/indland.htm.*

[15] In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement,* 16 FCC Rcd. 4078, 4080 (2000)(*FCC Tribal Policy Statement*).

[16] Section 301(4) of the NHPA defines ''Indian tribe'' or ''tribe'' as ''an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act [43 U.S.C. 1602], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' 16 U.S.C. 470w(4).

[17] Section 301(18) of the NHPA defines ''Native Hawaiian organization'' as ''any organization which—(A) serves and represents the interests of Native Hawaiians; (B) has as a primary and stated purpose the provision of services to Native Hawaiians; and (C) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians. The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kupuna O Hawai'i Nei, an organization incorporated under the laws of the State of Hawaii.'' 16 U.S.C. 470w(18).

[18] *See* 36 CFR 800.2(c)(2)(ii).

[19] *See* 47 CFR 1.1307(a)(5)(an EA is required where an undertaking ''may affect Indian religious

Continued

existing tower site is known to contain any Indian or Native Hawaiian archeological, religious, or cultural property that may be significantly affected by excavation or other work undertaken in connection with a collocation otherwise categorically excluded from environmental processing, an EA must be submitted prior to any new excavation or other work within that site. Similarly, if Indian or Native Hawaiian remains or other artifacts are discovered during excavation, the party must immediately cease construction and prepare an EA.[20]

We emphasize that when licensees, tower companies, and other applicants consult with tribal authorities they are acting as delegates of the FCC, which has a government-to-government relationship with tribes. The FCC recognizes ''the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions.'' [21] Thus, tribal authorities may request FCC participation in consultation on any matter at any time. Consistent with the FCC's trust relationship with federally recognized Indian tribes, applicants in undertaking all construction activities should be sensitive to the religious and cultural traditions of Indian peoples, and should endeavor to avoid actions that would adversely affect the preservation of those traditions. In particular, applicants are reminded that any information regarding historic properties or sacred sites to which Indian tribes attach significance may be highly confidential, private, and sensitive, and shall be treated accordingly in conformance with tribal wishes.

(8) Federal Property

The terms of the Agreement do not alter any section 106 responsibilities that federal agencies other than the FCC may have with regard to the collocation of antennas. Thus, licensees and applicants that wish to collocate an antenna on property owned or managed by a federal agency must continue to follow the procedures set forth by that agency for ensuring compliance with section 106.[22]

(9) Need for Applicants To File Environmental Assessments

Section 1.1307 of the Commission's rules sets forth nine categories of facilities that may significantly affect the environment and thus require the preparation of an EA prior to construction.[23] Subsection (4) of § 1.1307(a)(4) sets forth the category related to historic preservation: ''Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places [citation omitted].'' [24]

Section 1.1307(a)(4) is intended to implement the NHPA. Therefore, applicants should not file an EA with the Commission under § 1.1307(a)(4) if a SHPO has concurred in a proposed finding of ''no effect'' or ''no adverse effect'' on a property listed or eligible for listing in the National Register. In addition, if a collocation is exempted by the Agreement from section 106 review, then § 1.1307(a)(4) of the Commission's rules does not apply to the collocation. Therefore, applicants should only file an EA for a collocation under § 1.1307(a)(4) when the collocation falls within one of the Agreement's exceptions (*e.g.,* ''substantial increase in size'') and the collocation will adversely affect a historic property. Failure to file an EA when required to do so is a violation of the Commission's rules and may subject the licensee, applicant, or tower company/owner to a forfeiture or fine assessed pursuant to sections 501 to 503 of the Communications Act, or other sanctions.[25]

Note 1 to § 1.1306 of the Commission's NEPA rules categorically excludes the mounting of antennas on an existing building or antenna tower from the requirement to file an EA unless: (1) the collocation may affect historic properties under §§ 1.1307(a)(4); or (2) under § 1.1307(a)(2) the collocation would result in human exposure to RF emissions in excess of the Commission's RF limits set forth in § 1.1307(b).[26] Note 1 also states that the use of existing buildings or towers is an environmentally desirable alternative to the construction of new facilities. Accordingly, no proposed or constructed wireless facility, including antennas and their supporting towers or other structures, that has completed processing under section 106 or the Commission's environmental rules shall be required to be processed again for a collocation, except: (1) for section 106 review, where the addition of a collocated antenna and its related facilities cause a substantial increase in the size of the tower as defined in the Agreement; or (2) for review under the Commission's environmental rules, where modification of the facility is not categorically excluded from the Commission's NEPA rules.

(10) Filing Instructions/ULS

The instructions for FCC Form 601 (Schedule D & Schedule I (Microwave only)) and FCC Form 854 will be updated to reflect the Agreement's impact on the requirement to file an EA. Likewise, the instructions and worksheets for the FCC Forms used for broadcast construction permits and licenses will be amended to reflect the provisions of the Agreement.[27] Until those changes have been put in effect and approved by the United States Office of Management & Budget, parties that are required to file Forms 601 and 854 or any of the relevant broadcast forms should complete the current versions. Where a collocation is exempt from review under the terms of the Agreement, filers should answer ''No'' to the question whether the action may significantly affect the environment and thus require an EA, unless an EA is required under a provision other than § 1.1307(a)(4). During this interim period, we encourage filers to assist the FCC's WTB and MMB licensing staff by indicating, in a brief statement, that the antenna falls within the terms of the March 16, 2001 Collocation Agreement. Additionally, the MMB anticipates releasing a *Public Notice* advising permittees, licensees, and prospective applicants of their rights and responsibilities under the terms of the Collocation Agreement until the forms and instructions can be amended. Applicants should no longer file Form 601 or 854 solely in order to file an EA under § 1.1307(a)(4) for a facility that is exempted from section 106 review under the Agreement.

(11) Disposition of Pending Matters

The Commission has before it certain pending reviews of collocations that, if undertaken after March 16, 2001, would have fallen within the terms of the Agreement. Consistent with the principles underlying the Agreement, these collocations ordinarily will not have an adverse effect on properties listed or eligible for listing in the National Register. Accordingly, licensees, applicants, and tower companies/owners are invited to inform the Commission of pending reviews of collocations that would be covered by the Agreement, where none of the exceptions in Stipulation III or V applies. If Commission staff agrees that the exceptions in Stipulation III or V do not apply, the licensee, applicant,

sites''); *see also Public Notice,* ''Wireless Telecommunications Bureau Announces that Sprint Spectrum L.P., D/B/A SPRINT PCS Has Voluntarily Relocated a Wireless Telecommunications Tower Constructed on an Indian Burial Mound,'' DA 01–1600 (rel. July 6, 2001).

[20] *See* 47 CFR 1.1312(d) (''If, following the initiation of construction. * * *, [a] licensee or applicant discovers that the proposed facility may have a significant environmental effect, it shall immediately cease construction. * * *''); *see also* 36 CFR 800.13 (procedures for post-review discoveries).

[21] *FCC Tribal Policy Statement,* 16 FCC Rcd. at 4080.

[22] *See* 47 CFR 1.1311(e) (providing that an EA need not be submitted to the Commission if another federal agency has assumed responsibility for environmental review).

[23] *See* 47 CFR 1.1307(a), 1.1307(b).

[24] *See* 47 CFR 1.1307(a)(4). Other categories are wilderness areas, wildlife preserves, endangered species, Indian religious sites, floodplains, surface features, high intensity lights in residential neighborhoods, and excessive radiofrequency exposure.

[25] *See* 47 U.S.C. 501, 502, 503; 47 CFR 1.80; and, The Commission's Forfeiture Policy Statement and Amendment of § 1.80 of the Rules to Incorporate the Forfeiture Guidelines, *Report and Order,* 12 FCC Rcd 17087, 62 FR 43474 (Aug. 14, 1997), *recon. denied* 15 FCC Rcd 303, 65 FR 4891 (Feb. 2, 2000).

[26] Note 1 to § 1.1306 of the Commission's NEPA rules, 47 CFR 1.1306, states in part that: ''[t]he provisions of § 1.1307(a) of this part requiring the preparation of EAs do not encompass the mounting of antenna(s) on an existing building or antenna tower unless § 1.1307(a)(4) of this part is applicable. Such antennas are subject to § 1.1307(b) of this part and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in § 1.1307(b) of this part.''

[27] FCC Forms 301 (Full-service Commercial Broadcast Construction Permit), 302–AM/–FM/–CA/–TV (Full-service Commercial Broadcast License), 318 (Low Power FM Construction Permit), 319 (Low Power FM License), 340 (Noncommercial Educational Broadcast Construction Permit), 346 (Low Power TV, TV Translator, or TV Booster Construction Permit); 345 (Low Power TV, TV Translator, or TV Booster License), 349 (FM Translator or FM Booster Construction Permit) and 350 (FM Translator or FM Booster License).

or tower company/owner will be notified that further processing under the NHPA and § 1.1307(a)(4) is not required.

(12) Complaints

The Agreement notes that persons may file a complaint with the FCC stating that a particular collocation ''has an adverse effect on one or more historic properties.'' The Agreement states that any such complaint must be: (1) In writing; and (2) supported by substantial evidence describing how the effect from the particular collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register. The Commission will promptly review all complaints so labeled, and will promptly open a case and notify the collocating licensee or tower owner if it determines that the complaint has presented substantial evidence that a proposed collocation at a specifically identified site will have an adverse effect on a specifically identified historic property.

The person(s) filing the complaint should provide contact information including name, address, phone number, and an email address (optional but helpful to the staff). All complaints regarding tower registration or wireless services should be mailed to Federal Communications Commission, Wireless Telecommunications Bureau, Commercial Wireless Division, 445 12th Street, SW, Washington, DC 20554. The complaints should be marked: ''ATTENTION: NHPA COLLOCATION COMPLAINT.'' All complaints regarding broadcast facilities should be mailed to Federal Communications Commission, Mass Media Bureau, Chief, Audio Services Division (for radio antennas)/ Chief, Video Services Division (for television antennas), 445 12th Street, SW, Washington, DC 20554. These complaints also should be marked: ''ATTENTION: NHPA COLLOCATION COMPLAINT.'' If a person is filing a complaint electronically, please e-mail the complaint to *wtb_towersiting@fcc.gov* or *mmb_siting@fcc.gov*, as appropriate.

Copies of the Programmatic Agreement and this Fact Sheet are available for inspection and duplication during regular business hours in the Reference Information Center, 445 Twelfth Street, SW, Courtyard Level, Washington, DC 20554. Copies may also be obtained from Qualex International, 445 Twelfth Street, SW, Room CY-B402, Washington, DC 20554; phone number: (202) 863–2893. Copies are also posted on the Commission's Web site at *http://wireless.fcc.gov/siting* and *http://www.fcc.gov/mmb/mmb_siting.html*. For further information, contact Ivy Harris at (202) 418–0621 for inquiries regarding wireless services, or Marva Dyson at (202) 418–2870 for inquiries regarding broadcast services. Send e-mail questions concerning implementation of the Agreement to: *wtb_towersiting@fcc.gov* or *mmb_siting@fcc.gov*, as appropriate.

[FR Doc. 02–2705 Filed 2–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 4:32 p.m. on Thursday, January 31, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director John M. Reich (Appointive), seconded by Director John D. Hawke, Jr. (Comptroller of the Currency), concurred in by Director James E. Gilleran (Director, Office of Thrift Supervision), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: February 1, 2002.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 02–2843 Filed 2–1–02; 12:35 pm]

BILLING CODE 6714–01–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR D–260]

Public Buildings Space

This notice contains GSA Bulletin FPMR D–260 which announces the redesignation of 12 Federal Buildings. The text of the bulletin follows:

To: Heads of Federal Agencies.

Subject: Redesignations of Federal Buildings.

1. *Purpose*. This bulletin announces the redesignations of 12 Federal Buildings.

2. *Expiration date*. This bulletin expires June 14, 2002. However, the building redesignations announced by this bulletin will remain in effect until canceled or superseded.

3. *Redesignations*. The former and new names of the buildings being redesignated are as follows:

Former name	New name
United States Courthouse, 201 West Broad Avenue, Albany, GA 31701..	C.B. King United States Courthouse, 201 West Broad Avenue, Albany, GA 31701.
Federal Building and United States Courthouse, 1300 South Harrison Street, Fort Wayne, IN 46802..	E. Ross Adair Federal Building and United States Courthouse, 1300 South Harrison Street, Fort Wayne, IN 46802.
United States Courthouse, 500 Pearl Street, New York, NY 10007	Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007.
Department of State, 2201 C Street, NW., Washington, DC 20520	Harry S. Truman Federal Building, 2201 C Street, NW., Washington, DC 20520.
United States Courthouse, One Courthouse Way, Boston, MA 02210 ...	John Joseph Moakley United States Courthouse, One Courthouse Way, Boston, MA 02210.
Federal Building and United States Courthouse, 504 West Hamilton Street, Allentown, PA 18101.	Edward N. Cahn Federal Building and United States Courthouse, 504 West Hamilton Street, Allentown, PA 18101.
Federal Building, 6230 Van Nuys Boulevard, Los Angeles, CA 91401 ..	James C. Corman Federal Building, 6230 Van Nuys Boulevard, Los Angeles, CA 91401.
United States Courthouse, 40 Centre Street, New York, NY 10007	Thurgood Marshall United States Courthouse, 40 Centre Street, New York, NY 10007.
Federal Building and United States Courthouse, 121 West Spring Street, New Albany, IN 47150.	Lee H. Hamilton Federal Building and United States Courthouse, 121 West Spring Street, New Albany, IN 47150.
Federal Building and United States Courthouse, 100 1st Street, SW, Minot, ND 58701.	Judge Bruce M. Van Sickle Federal Building and United States Courthouse, 100 1st Street, SW, Minot, ND 58701.

Former name	New name
Federal Building and United States Courthouse, 315 S. McDuffie Street, Anderson, SC 29621.	G. Ross Anderson, Jr. Federal Building and United States Courthouse, 315 S. McDuffie Street, Anderson, SC 29621.
Federal Building and United States Courthouse, 550 West Fort Street, Boise, ID 83724.	James A. McClure Federal Building and United States Courthouse, 550 West Fort Street, Boise, ID 83724.

Dated: January 30, 2002.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02–2659 Filed 2–4–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–02–23]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Use of a Reader Response Form by Workers Notified if Results of Epidemiologic Studies—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). The mission of NIOSH is to promote safety and health at work for all people through research and prevention.

NIOSH routinely notifies subjects about the results of epidemiologic studies and the implications of the results. The overall purpose of the proposed project is to gain insight into the effectiveness of NIOSH worker notification, in order to improve the quality and usefulness of the Institute's worker notification activities. Researchers from the NIOSH Division of Surveillance, Hazard Evaluations and Field Studies (DSHEFS) propose to provide notified workers with a Reader Response Form as an evaluation instrument for routinely assessing individual letter notification materials sent to them by NIOSH.

The results of this ongoing evaluation activity will be used to refine notification activities by standardizing and streamlining written notification materials, and to develop materials which are more readable, understandable, and informative to notified workers, their families, and other stakeholders. The findings from these evaluations may also allow the NIOSH worker notification program to help alleviate any negative impacts and enhance any positive impacts of risk communications.

The objective of the Reader Response Form, therefore, is to provide a structured reporting form which will capture the recipients' responses concerning the effectiveness of the NIOSH notification efforts and their impact on workers and other stakeholders.

The average number of letter-type notifications is estimated at 8,000 per year. Each form is estimated to take less than 10 minutes to complete. There are no cost to respondents other than their time to complete the Reader Response Form.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden per response (in hours)	Total burden (in hours)
Reader Response Form	8000	1	10/60	1,333

Dated: January 29, 2002.

Nancy E. Cheal,

Acting Associate Director for Program, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–2646 Filed 2–4–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Exploratory Developmental Grant (R21) Program, RFA OH–02–001

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Exploratory Developmental Grant (R21) Program, RFA OH–02–001.

Times and Dates: 8 a.m.-8:30 a.m., February 19, 2002 (Open), 8:40 a.m.-5 p.m., February 19, 2002 (Closed), 8 a.m.-5 p.m., February 20, 2002 (Closed).

Place: Loews L'Enfant Plaza Hotel, 480 L'Enfant SW., Washington DC 20024.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the

Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA OH–02–001.

FOR FURTHER INFORMATION CONTACT: Pervis Major, Ph.D., Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, M/S B228, telephone (304) 285–5979.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 30, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–2658 Filed 2–4–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0097]

Determination of Regulatory Review Period for Purposes of Patent Extension; REFACTO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for REFACTO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit written comments and petitions 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: Claudia V. Grillo, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product REFACTO (novel procoagulant proteins). REFACTO is indicated for the control and prevention of hemorrhagic episodes and for short-term routine and surgical prophylaxis in patients with hemophilia A. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for REFACTO (U.S. Patent No. 4,868,112) from the Genetics Institute, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 11, 2001, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of REFACTO represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for REFACTO is 1,751 days. Of this time, 987 days occurred during the testing phase of the regulatory review period, while 764 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: May 23, 1995. The applicant claims March 14, 1994, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 23, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* February 2, 1998. FDA has verified the applicant's claim that the product license application (PLA) for REFACTO (PLA 98–0137) was initially submitted on February 2, 1998.

3. The date the application was approved: March 6, 2000. FDA has verified the applicant's claim that PLA 98–0137 was approved on March 6, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,475 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written or electronic comments and ask for a redetermination by April 8, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 5, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information 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. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 28, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–2671 Filed 2–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

National Park Service

Concessions Management Advisory Board Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting of Concessions Management Advisory Board.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), notice is hereby given that the Concessions Management Advisory Board will hold its next meeting February 27 and 28, 2002 in Washington, DC. The meeting will be held at the Melrose Hotel located at 2430 Pennsylvania Avenue, NW, Washington, DC. The meeting will convene from 8:30 a.m. until 5 p.m. daily.

SUPPLEMENTARY INFORMATION: The Advisory Board was established by Title IV, Section 409 of the National Park Omnibus Management Act of 1998, November 13, 1998 (Public Law 105–391). The purpose of the Board is to advise the Secretary and the National Park Service on matters relating to management of concessions in the National Park System.

The Advisory Board will consider procedural matters and will be briefed and hold discussions on the proposed (Category III) simplified concession contracting procedures. The Board will also discuss its organizational and administrative procedures.

The meeting will be open to the public, however, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least 2 weeks before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however, we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Interested persons may make oral/written presentations to the Advisory Board during the business meeting or file written statements. Such requests should be made to the Director, National Park Service, Attention: Manager, Concession Program, at least 7 days prior to the meeting. Further information concerning the meeting may be obtained from National Park Service, Concession Program, 1849 C Street NW, Room 7313, Washington, DC 20240, Telephone, 202/565–1210.

Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting, in room 7313, Main Interior Building, 1849 C Street, NW, Washington, DC.

Dated: January 22, 2002.

Fran P. Mainella,

Director, National Park Service.

[FR Doc. 02–2713 Filed 2–4–02; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–437]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences with Respect to Certain Products Imported From AGOA Countries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: On January 17, 2002, the Commission received a request from the United States Trade Representative (USTR) for an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of providing advice concerning possible modifications to the Generalized System of Preferences (GSP) with respect to certain products from beneficiary sub-Saharan African countries under the African Growth and Opportunity Act (AGOA). Following receipt of the request, the Commission instituted investigation No. 332–437, *Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences with Respect to Certain Products Imported from AGOA Countries*, for the purpose of providing advice as follows:

(1) With respect to unwrought manganese flake as described by the USTR in its notice published in the **Federal Register** of January 24, 2002 (67 F.R. 3530), advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of United States import duties only for countries designated as beneficiary sub-Saharan African countries under the African Growth and Opportunity Act (AGOA) in general note 16 of the Harmonized Tariff Schedule of the United States (HTS). The USTR requested that the Commission, in providing its advice, assume that the benefits of the GSP would continue to apply to imports that would be normally excluded from receiving such benefits by virtue of the competitive need limits specified in section 503(c)(2)(A) of the Trade Act of 1974 (1974 Act) (19 U.S.C. 2463(c)(2)(A)). The USTR noted that an exemption from the application of the competitive need limits for the beneficiary AGOA countries is provided for in section 503(c)(2)(D) of the 1974 Act (19 U.S.C. 2463(c)(2)(D); and

(2) With respect to prepared or preserved pears as described in HTS subheading 2008.40.00, advice as to the probable economic effect on United States industries producing like or directly competitive articles and on consumers of the removal of the article from eligibility for duty-free treatment under the GSP. The USTR noted that the article is currently eligible for GSP only for countries designated as beneficiary AGOA countries in general note 16 of the HTS. As requested by USTR, the Commission will seek to provide its advice not later than April 25, 2002.

EFFECTIVE DATES: January 29, 2002.

FOR FURTHER INFORMATION CONTACT: Project Manager, Douglas Newman (202–205–3328; *newman@usitc.gov*) in the Commission's Office of Industries. For information on legal aspects of the investigation contact William Gearhart of the Commission's Office of the

General Counsel (202–205–3091; *wgearhart@usitc.gov*). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information about the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS On-Line) at *http://dockets.usitc.gov/eol/public/*.

Public Hearing: A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on March 6, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on February 20, 2002. In addition, persons appearing should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on February 21, 2002. Posthearing briefs should be filed with the Secretary by the close of business on March 13, 2002. In the event that no requests to appear at the hearing are received by the close of business on February 20, 2002, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after February 20, 2002, to determine whether the hearing will be held.

Written Submissions: In lieu of or in addition to appearing at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on March 13, 2002. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). The Commission may include some or all of such confidential business information submitted in its report to the USTR. All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Commission.

Issued: January 31, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–2701 Filed 2–4–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–454]

Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation With Respect to Certain Patent Claims

In the Matter of Certain Set-Top Boxes and Components Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting a motion to terminate the investigation with respect to all allegations contained in the complaint relating to U.S. Letters Patent 5,253,066 (the '066 patent), claims 8 and 10 of U.S. Letters Patent 5,479,268 (the '268 patent), and claims 19 and 35 of U.S. Letters Patent 5,809,204 (the '204 patent).

FOR FURTHER INFORMATION CONTACT: Mary Elizabeth Jones, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3106. Copies of the subject ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TTD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 16, 2001, based on a complaint by Gemstar-TV Guide International, Inc. of Pasadena, California, and StarSight Telecast, Inc. of Fremont, California, alleging violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain set-top boxes and components thereof by reason of infringement of claims 18–24, 26–28, 31–33, 36, 42–43, 48–51, 54, 57–61, and 66 of U.S. Letters Patent 5,253,066 (the '066 patent); claims 1, 3, 8, and 10 of U.S. Letters Patent 5,479,268 (the '268 patent); and claims 14–17, 19, and 31–35 of U.S. Letters Patent 5,809,204 (the '204 patent).

On November 19, 2001, complainants Gemstar-TV Guide International, Inc. and StarSight Telecast, Inc. moved to termination the investigation with respect to all allegations contained in the complaint relating to the '066 patent, claims 8 and 10 of the '268 patent, and claims 19 and 35 of the '204 patent. Respondents EchoStar Communications Corporation and SCI Systems, Inc. opposed termination of the investigation as to the '066 patent.

On November 20, 2001, the presiding ALJ issued an ID (Order No. 44) granting the motion. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

By order of the Commission.

Issued: January 30, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–2647 Filed 2–4–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Management Service Providers Association, Inc.

Notice is hereby given that, on November 20, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Management Service Providers Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Oculan, Raleigh, ND has been added as a party to this venture. Also, Bangalore Labs Ltd., Bangalore, INDIA; CAT Technology, Inc., Los Gatos, CA; Connected, Natick, MA; EMC Corporation, Hopkinton, MA; Freshwater Software, Inc., Boulder, CO; Managed Objects, McLean, VA; Mission Critical Linux, Inc., Lowell, MA; NetSolve, Inc., Austin, TX; NetTasking, Inc., Singapore, *Singapore;* RiverSoft Technologies Ltd., San Francisco, CA; Tally Systems Corporation, Lebanon, NH; and Telenisus Corporation, Rolling Meadows, IL have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Management Service Providers Association, Inc. intends to file additional written notification disclosing all changes in membership.

On October 20, 2000, Management Service Providers Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 24, 2000 (65 FR 70613).

The last notification was filed with the Department on August 16, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 25, 2001 (66 FR 49043).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–2650 Filed 2–4–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2186–02]

Immigration and Naturalization Service; First Meeting of the Data Management Improvement Act of 2000 Task Force

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting

Committee meeting: Immigration and Naturalization Service (INS) Data Management Improvement Act of 2000 (DMIA) Task Force.

Date and time: Wednesday, February 20, 2002, 1 to 5 p.m.

Place: Immigration and Naturalization Service Headquarters, 425 I Street NW., Washington, DC 20536, Shaughnessy Conference Room, Sixth Floor.

Status: Open. First meeting of the INS DMIA Task Force.

Purpose: In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. app. 2 , DMIA, Public Law 106–215, and 41 CFR Part 102–3, the Attorney General in consultation with the Secretary of State, the Secretary of Commerce, and the Secretary of the Treasury established a Task Force to carry out the duties described in section 3(c) of the DMIA. *See* 66 FR 3616–01 (January 16, 2001). Subsequent to the initial filing of the Task Force Charter with Congress in December 2000, Congress amended the DMIA to state that the Attorney General shall also consult with the new Office of Homeland Security in establishing the DMIA Task Force. *See* USA Patriot Act of 2001, Public Law 107–56, section 415 (October 26, 2001)

The Task Force will evaluate and make recommendations on:

(1) How the Attorney General can efficiently and effectively carry out section1 10 of the Illegal Immigration Reform and Immigrant Responsibility act of 1996 (IIRIRA) (8 U.S.C. 1221 note), Public Law 104–208, as amended by DMIA, section 2.

(2) How the United States can improve the flow of traffic at airports, seaports, and land border ports-of-entry through:

(A) Enhancing systems for data collection and data sharing, including the integrated entry and exit data system described in IIRIRA, section 110 (as amended), by better use of technology, resources, and personnel;

(B) Increasing cooperation between the public and private sectors:

(C) Increasing cooperation among Federal agencies and among Federal and State agencies; and

(D) Modifying information technology systems while taking into account the different data systems, infrastructure, and processing procedures at airports, seaports, and land border ports-of-entry; and

(3) The cost of implementing each of the Task Forces recommendations.

Composition of Task Force: in accordance with the DMIA, section 3(b), the task force consists of the attorney general (or his designee) as chairperson and 16 representatives from Federal, State, and local agencies with interests in immigration and naturalization; travel and tourism; transportation; trade; law enforcement; national security; or the environment; and private sector representatives of affected industries and groups.

Summary of Agenda As this is the first meeting of the DMIA Task Force, the principal purpose of the meeting will be to introduce the members to each other and to discuss future activities of the Task Force. There also will be an overview of the requirements of the DMIA and a designated period of time for public comment. The DMIA Task Force will be chaired by Michael D. Cronin, Acting Executive Associate Commissioner, INS Office of Programs, on behalf of the Attorney General.

Public participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating and to arrange for appropriate clearance into the building. 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 the DMIA Task Force. 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: Debbie Hemmes, Immigration and Naturalization Service, 425 I Street NW., Room 7236, Washington, DC 20536; telephone: (202) 305–9863; fax: (202) 616–7612; e-mail: *Deborah.Hemes@usdoj.gov.*

Dated: January 28, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–2800 Filed 2–1–02; 10:33 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

President's Council on the 21st Century Workforce; Notice of Establishment

Establishment of the Council: This notice is published in accordance with the provisions of the Federal Advisory Committee Act and advises of the establishment of the President's Council on the 21st Century Workforce. Section 2 of Executive Order 13218, issued on June 20, 2001, provides for the establishment of the Council. The Council is to terminate 2 years from the date of the executive order unless extended by the President prior to such date.

Purpose of the Council: The Council is to provide information and advice to the President (through the Secretary of Labor), to the Office of the 21st Century Workforce (within the Department of Labor), and to other appropriate Federal officials addressing to issues related to the 21st century workforce. These activities are to include: (1) Assessing the effects of rapid technological changes, demographic trends, globalization, changes in work processes, and the need for new and enhanced skills for workers, employers, and other related sectors of society; (2) examining current and alternate approaches to assisting workers and employers in adjusting to and benefitting from such changes, including opportunities for workplace education, retraining, access to assistive technologies and workplace supports, and skills upgrading; (3) identifying impediments to the adjustment to such changes by workers and employers and recommending approaches and policies that could remove those impediments; (4) assisting the Office of the 21st Century Workforce in reviewing programs carried out by the Department of Labor and identifying changes to such programs that would streamline and update their effectiveness in meeting the needs of the workforce; and (5) analyzing such additional issues relating to the workforce and making such reports as the President or the Secretary of Labor may request.

Composition of the Council: The membership of the Council will consist of the Secretary of Labor and Director of the Office of Personnel Management, serving as *ex officio* members, and not more than thirteen additional members appointed by the President. These additional members are to include individuals who represent the views of business and labor organizations, Federal, State, and local governments, academicians and educators, and such other associations and entities as the President determines are appropriate. The Secretary of Labor is to be the Chairperson of the Council. The Council is to meet at least two times a year.

Federal Advisory Committee Act and Charter: The Council will function solely as an advisory body and in compliance with the Federal Advisory Committee Act. The charter of the Council will be filed in accordance with that Act and copies of the charter will be available upon request.

Comments: Interested persons are invited to submit comments regarding the establishment of the Council. Such comments should be addressed to Shelley Hymes, Director of the Office of the 21st Century Workforce, 200 Constitution Avenue, NW., Room S–2514, Washington, DC 20210.

Signed at Washington, DC, this 29th day of January, 2002.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 02–2644 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,813B and NAFTA–5176]

Greenwood Mills, Lindale Manufacturing Company, Lindale, Georgia; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Greenwood Mills, Lindale Manufacturing Co., Lindale, Georgia. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–39,813B and NAFTA–5176 Greenwood Mills, Lindale Manufacturing Company, Lindale, Georgia (January 4, 2002)

Signed at Washington, DC, this 24th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2680 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,873; Iomega Corp., Ogden, UT
TA–W–40,315; BPB America, Meridian, MS
TA–W–40,546; Midland Steel Products Co., Janesville, WI
TA–W–40,332; Creative Leather and Vinyl, Brookfield, WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,465; Baltic Dyeing and Finishing, Passaic, NJ
TA–W–40,590; Alfa Laval, Inc., Formerly Known as Tri-Clover, Kenosha, WI
TA–W–39,333; Republic Paperboard Co LLC, Denver Mill, Commerce City, CO
TA–W–39,960; B-Way Corp., Elizabeth, NJ
TA–W–40,328; Drexel Heritage Furnishings, Inc., Machine Shop, Morganton, NC

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–40,235; Ericsson, Research Triangle Park, NC

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–40,381; Four Seasons Fashion Manufacturing, New York, NY
TA–W–39,381; Electrolux Home Products, Nashville, AR
TA–W–39,673; Magnolia International Corp., Harlingen, TX

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–39,343; Covenant Mill, Inc., Cherryville, NC: May 14, 2000.
TA–W–39,546; Revere Copper Products, Inc., Rome, New York: June 15, 2000.
TA–W–39,786; Alltrista Zinc Products, LP, Greenville, TN: June 26, 2000.
TA–W–40,175; Bethlehem Steel Corp., Burns Harbor Div., Chesterton, IN: October 9, 2000.
TA–W–40,427; National Ring Traveler Co., d/b/a/ Anchor Clover Chain Co., Pawtucket, RI: November 21, 2000.
TA–W–40,481; Artex International, Inc., Highland, IL: October 20, 2000.
TA–W–40,487; Scientific Atlanta, Inc., Atlanta Manufacturing Div., Norcross, GA: October 22, 2000.
TA–W–40,494; Accuride International, Inc., South Bend, IN: December 17, 2000.
TA–W–40,523; Parallax Power Components LLC, Goodland, IN: December 17, 2000.
TA–W–40,553 & A,B,C,; Aalfs Manufacturing, Glenwood, AR, Mena, AR, Arkadelphia, AR, Malvern, AR: November 14, 2000.
TA–W–40,553D; Aalfs Manufacturing, Sioux City, IA: October 9, 2001.
TA–W–39,024; Premier Circuit Assembly, Springhope, NC: March 31, 2000.
TA–W–39,744; American Steel Foundry, Alliance, OH: June 25, 2000.
TA–W–39,877; Sweetheart Cup Co., Springfield, MO: August 9, 2000.
TA–W–38,951; Findley Industries, Inc., Botkins Div., Botkins, OH: March 20, 2000.
TA–W–39,894; Del-Met Corp., Portland, TN: August 1, 2000.
TA–W–40,041 & A; Magee Apparel Co., Magee, MS and Hawley, PA: August 23, 2000.
TA–W–40,072; Converter Concepts, Memphis, MO: September 11, 2000.
TA–W–40,242; Complex Tooling and Molding, Inc., Boulder, CO: October 9, 2000.
TA–W–40,292; Exolon-ESK Co., Tonawanda, NY: April 13, 2001.
TA–W–40,367; B/E Aerospace, Inc., Litchfield, CT: November 5, 2000.
TA–W–40,373; Siemens Energy and Automation, Inc., Osceola, IA: November 9, 2000.
TA–W–39,452; Athens Furniture Industries, Inc., Athens, TN: June 1, 2000.
TA–W–40,471; FCI USA, Inc., Cypress, CA: October 23, 2000.
TA–W–40,490; Schmalbach-Lubeca Plastic Containers USA, Inc., Erie, PA: November 5, 2000.
TA–W–40,512; Robert Mitchell Co., Inc., Douglas Brothers Div., Portland, ME: December 14, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of January, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05035; Hassell Fabrication, Inc., Ashland, OR
NAFTA–TAA–05395; Superior Uniform Group, Inc., McGehee Industries, McGehee, AR
NAFTA–TAA–05491; Creative Leather and Vinyl, Brookfield, WI
NAFTA–TAA–05549; Western Log Homes, Chiloquin, OR
NAFTA–TAA–05616; Midland Steel Products Co., Janesville, WI
NAFTA–TAA–05023; Magnolia International, Harlingen, TX
NAFTA–TAA–05019; Rivers West Apparel, Manti, UT
NAFTA–TAA–05572; Regal Manufacturing Co., Textured Yarn Department, Hickory, NC
NAFTA–TAA–04838; Republic Paperboard Co LLC, Denver Mill, Commerce City, CO

The workers firm does not produce an article as required for certification under section 250(a), Subchapter D, Chapter 2, Title II, the Trade Act of 1974, as amended.

NAFTA–TAA–05139; Garan Manufacturing Corp., Adamsville, TN

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05160; Alltrista Zinc Products, L.P., Greeneville, TN: August 2, 2000.
NAFTA–TAA–05545; Daniel Woodhead Co., Northbrook, IL: November 16, 2000.
NAFTA–TAA–05667; Accuride International, Inc., South Bend, IN: December 17, 2000.
NAFTA–TAA–05714; Artex International, Inc., Highland, IL: Janaury 4, 2001.
NAFTA–TAA–05245; Eagle Picher Industries, Construction Equipment Div., Lubbock, TX: August 22, 2000.
NAFTA–TAA–05660 & A; Vanity Fair Intimates, LP, Monroeville Distribution, Monroeville Cutting, Monroeville Administration, Monroeville, AL and Atmore Sewing, Atmore, AL: December 10, 2000.
NAFTA–TAA–05662; Robert Mitchell Co., Inc., Douglas Brothers Div., Portland, ME: December 19, 2000.
NAFTA–TAA–05722; Siemens Energy and Automation, Inc., Osceola, IA: January 4, 2001.
NAFTA–TAA–05657; USNR, Woodland Div., Woodland, WA: December 12, 2000.
NAFTA–TAA–05632 & A; VF Jeanswear Limited Partnership, Pine Springs Facility, Rojas Facility, Plaza Facility and Riverside Facility, El Paso, TX and VF Jeanswear Limited Partnership, Fabens Facility, Fabens, TX: November 17, 2000.
NAFTA–TAA–05642; Imperial Home Décor Group, Old Stone Mill, Adams, MA: December 11, 2000.
NAFTA–TAA–05592; VF Jeanswear Limited Partnership, Jackson Facility, Jackson, TN: November 27, 2000.
NAFTA–TAA–05557; Teleflex, Inc., Waterbury, CT: November 14, 2000.
NAFTA–TAA–05343; Corning Cable Systems, Optical Assemblies Plant, Hickory, NC: September 20, 2000.
NAFTA–TAA–05195; Sweetheart Cup Co.,

Springfield, MO: August 13, 2000.
NAFTA–TAA–05472; Design and Cut, Inc., Cartersville, GA: October 18, 2000.
NAFTA–TAA–05411; Schmalbach-Lubeca Plastic Containers USA, Inc., Erie, PA: October 9, 2000.
NAFTA–TAA–04921; Findlay Industries, Inc., Botkins Div., Botkins, OH: May 30, 2000.

I hereby certify that the aforementioned determinations were issued during the month of January, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 25, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2679 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,351]

AG Green Industries, Mexico, Missouri; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at AP Green Industries, Mexico, Missouri. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–39,351; AP Green Industries Mexico, Missouri (January 24, 2002)

Signed at Washington, DC, this 24th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2683 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,453]

The Arnold Engineering Company Ferrite Products Division Sevierville, TN; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 19, 2001, a company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on September 25, 2001, and published in the **Federal Register** on October 11, 2001 (66 FR 51973).

The company supplied an additional list of customers. The company believes these customers reduced their purchases from the subject plant and began importing ceramic hard ferrite magnets during the relevant time period. The Department of Labor will conduct a survey of these additional customers to determine if imports contributed importantly to the declines in employment at the subject plant.

Conclusion

After careful review of the application, I conclude that the claim to sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 8th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2689 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39, 216]

Bon L Campo L.P. El Campo, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 7, 2001, in response to a worker petition which was filed on behalf of workers at Bon L Campo L.P., El Campo, Texas.

During the full period of this investigation, no knowledgeable company official was located and no further information became available regarding the potential eligibility of this worker group. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Dated: Signed in Washington, DC, this 28th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of, Trade Adjustment Assistance.

[FR Doc. 02–2690 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,599]

Dyna-Craft Industries, Inc., Apollo, Pennsylvania; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Dyna-Craft Industries, Inc., Apollo, Pennsylvania. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–39,599; Dyna-Craft Industries, Inc. Apollo, Pennsylvania (January 24, 2002)

Signed at Washington, DC, this 24th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2686 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,329; TA–W–39,329A]

Dystar L.P., Mt. Holly, North Carolina; DyStar L.P., Headquarters Office, Charlotte, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on December 7, 2001, applicable to workers of DyStar L.P., Mt.

Holly, North Carolina. The notice was published in the **Federal Register** on December 26, 2001 (66 FR 66426).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations occurred at the Headquarters Office, Charlotte, North Carolina location of DyStar L.P. The Charlotte, North Carolina workers provide administrative support function services for the subject firm's production facilities including Mt. Holly, North Carolina.

Based on these findings, the Department is amending this certification to include workers of DyStar L.P., Headquarters Office, Charlotte, North Carolina.

The intent of the Department's certification is to include all workers of DyStar L.P. who were adversely affected by increased imports.

The amended notice applicable to TA–W–39,329 is hereby issued as follows:

All workers of DyStar L.P., Mt. Holly, North Carolina (TA–W–39,329) and DyStar L.P. Headquarters Office, Charlotte, North Carolina (TA–W–39,329A) who became totally or partially separated from employment on or after May 15, 2000, through December 7, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 15th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–2688 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,453]

The Arnold Engineering Company, Ferrite Products Division, Sevierville, Tennessee; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 19, 2001, a company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on September 25, 2001, and published in the **Federal Register** on October 11, 2001 (66 FR 51973).

The company supplied an additional list of customers. The company believes these customers reduced their purchases from the subject plant and began importing ceramic hard ferrite magnets during the relevant time period. The Department of Labor will conduct a survey of these additional customers to determine if imports contributed importantly to the declines in employment at the subject plant.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 18th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2689 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,642]

Imerys Pigments and Additives Group, Dry Branch, Georgia; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 28, 2002 in response to a worker petition which was filed on behalf of workers at Imerys Pigments and Additives Group, Dry Branch, Georgia.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA–W–40,509). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 28th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–2693 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,997]

Keokuk Ferro-Sil, Inc. Keokuk, Iowa; Notice of Revised Determination on Reconsideration

By letter of November 14, 2001, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on October 31, 2001, based on the finding that a survey of customers indicated that increased imports did not contribute importantly to worker separations. The denial notice was published in the **Federal Register** on November 9, 2001 (66 FR 56711).

The company alleged that 75% ferrosilicon is competitive with 50% ferrosilicon and therefore imports of 75% ferrosilicon should be considered as impacting the subject plant workers.

The Department upon examination of the data supplied by the company is in agreement that 50% and 75% ferrosilicon are competitive with each other for the bulk of their uses. Upon examination of industry trade statistics pertaining to ferrosilicon it is apparent that 50% and 75% ferrosilicon imports increased significantly, while U.S. production declined during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Keokuk Ferro-Sil, Inc., Keokuk, Iowa contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Keokuk Ferro-Sil, Inc., Keokuk, Iowa who became totally or partially separated from employment on or after August 23, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 18th day of January 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2691 Filed 1–31–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,100, TA–W–39,100A, and TA–W–38,833]

Paper Converting Machine Company, Green Bay, Wisconsin; Packaging Machine Division, a Paper Converting Machine Company, Green Bay, Wisconsin; O & E Machine Corp. a Paper Converting Machine Company, Green Bay, Wisconsin; Notice of Revised Determination on Reconsideration

By letter of August 23, 2001, the U.A.W., Local 1102 requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on July 16, 2001, based on the finding that imports of heavy duty paper converting machinery and parts for the packaging industry did not contribute importantly to worker separations at the subject plan. The denial notice was published in the **Federal Register** on August 6, 2001 (66 FR 41052).

The union supplied additional information concerning foreign competition impacting the plant workers.

Upon contact with the company it became evident that an affiliated foreign company producing like and directly competitive products as the subject plant increased their shipments of heavy duty paper converting machinery for the packaging industry into the United States.

The O & E Machine Company (a machine shop) and Packaging Machine Division (wrapping and packaging) functions are affiliated divisions of Paper Converting Machine Company, and integrated into the production operations of Paper Converting Machine Company's and therefore included in this decision.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Paper Converting Machine Company, Green Bay, Wisconsin (TA–W–39,100) contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Paper Converting Machine Company, Green Bay, Wisconsin (TA–W–39,100) and Packaging Machine Division, a Division of Paper Converting Machine Company, Green Bay, Wisconsin (TA–W–39,100A) who became totally or partially separated from employment on or after April 4, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

All workers of O & E Machine Corp., a Division of Paper Converting Machine Company, Green Bay, Wisconsin (TA–W–38,833) who became totally or partially separated from employment on or after February 17, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 18th day of January 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2692 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,551]

Rohm and Haas Specialty Chemical Division, Paterson, New Jersey; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Rohm and Haas, Specialty Chemical Division, Paterson, New Jersey. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–39,551; Rohm and Haas, Specialty Chemical Division, Paterson, New Jersey (January 24, 2002)

Signed at Washington, DC, this 24th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2684 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,512]

Royce Hosiery, Inc., High Point, North Carolina; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Royce Hosiery, Inc., High Point, North Carolina. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–39, 512; Royce Hosiery, Inc. High Point, North Carolina (January 24, 2002)

Signed at Washington, DC, this 24th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2681 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,524]

Tex Tech Industries, Tempe, Arizona; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Tex Tech Industries, Tempe, Arizona. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–39,524; Tex Tech Industries Tempe, Arizona (January 24, 2002)

Signed at Washington, DC, this 24th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2682 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,345]

Tri-State Plastics, Inc., Gastonia, North Carolina; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Tri-State Plastics, Inc., Gastonia, North Carolina. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–39,345; Tri-State Plastics, Inc., Gastonia, North Carolina (January 24, 2002)

Signed at Washington, DC this 24th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2685 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05193]

Micro Motion, Inc., Boulder, Colorado; Including Temporary Workers of Aorist Enterprises, Inc. and Staffing Solutions Employed at Micro Motion, Inc., Boulder, Colorado; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on October 2, 2001, applicable to workers of Micro Motion, Inc., Boulder, Colorado. The notice published in the **Federal Register** on October 19, 2001 (66 FR 53252).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State shows that some employees of the subject firm were temporary workers from Aorist Enterprises, Inc., Lakewood, Colorado and Staffing Solutions, Longmont, Colorado to produce mass flow meters and electronic transmitters at the Boulder, Colorado location of the subject firm.

Based on these findings, the Department is amending the certification to include temporary workers of Aorist Enterprises, Inc., Lakewood, Colorado and Staffing Solutions, Longmont, Colorado who were engaged in the production of mass flow meters and electronic transmitters at Micro Motion, Inc., Boulder, Colorado.

The intent of the Department's certification is to include all workers of Micro Motion, Inc., Boulder, Colorado adversely affected by a shift in production of mass flow meters and electronic transmitters to Mexico.

The amended notice applicable to NAFTA–05193 is hereby issued as follows:

All workers of Micro Motion, Inc., Boulder, Colorado, including temporary workers of Aorist Enterprises, Inc. and Staffing Solutions engaged in the production of mass flow meters and electronic transmitters at Micro Motion, Inc., Boulder, Colorado, who became totally or partially separated from employment on or after August 7, 2000, through October 2, 2003, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of, Trade Adjustment Assistance.

[FR Doc. 02–2695 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5041]

Seagate Technology, Inc., OKC 1020 Division, Oklahoma City, Oklahoma; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Seagate Technology, Inc., OKC 1020 Division, Oklahoma City, Oklahoma. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA–5041; Seagate Technology, Inc., OKC 1020 Division, Oklahoma City, Oklahoma (January 15, 2002)

Signed at Washington, DC, this 24th day of January, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2687 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05190 and NAFTA–05190A]

Sequa Corporation Men's Apparel Group Athens, Georgia; Sequa Corporation Men's Apparel Group Corporate Office Hackensack, New Jersey; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on September 25, 2001, applicable to workers of Sequa Corporation, Men's Apparel Group, Athens, Georgia. The notice published in the **Federal Register** on October 11, 2001 (66 FR 51974).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that worker separations have occurred at the Corporate Office, Hackensack, New Jersey location of the subject firm. The Corporate Office provides administrative support function services including sales and marketing for the Men's Apparel Group of the subject firm.

Based on these findings, the Department is amending the certification to include workers of the Corporate Office, Hackensack, New Jersey location of Sequa Corporation, Men's Apparel Group.

The intent of the Department's certification is to include all workers of Sequa Corporation, Men's Apparel Group adversely affected by an increase of imports from Mexico.

The amended notice applicable to NAFTA–05190 is hereby issued as follows:

All workers of Sequa Corporation, Men's Apparel Group, Athens, Georgia (NAFTA–5190) and Sequa Corporation, Men's Apparel Group, Corporate Office, Hackensack, New Jersey (NAFTA–5190A) who became totally or partially separated from employment on or after August 10, 2000, through September 25, 2003, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of January, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–2696 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05163]

Tyco Electronics Fiber Optics Division, Glen Rock, Pennsylvania; Notice of Negative Determination Regarding Application for Reconsideration

By application dated October 12, 2001, a former employee requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement—Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on September 28, 2001, and was published in the **Federal Register** on October 19, 2001 (66 FR 53252).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers engaged in activities related to the production of fiber optic connectors at Tyco Electronics, Fiber Optics Division, Glen Rock, Pennsylvania was based on the finding that criteria (3) and (4) of that group eligibility requirement of paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. There were no company imports of fiber-optic connectors from Mexico or Canada, nor did the company shift plant production from the Glen Rock, Pennsylvania plant to Mexico or Canada. The preponderance in the declines in employment at the subject firm was related to a shift in plant production to another affiliated domestic plant.

The petitioner alleges that plant production was shifted to an affiliated plant located in Mexico.

Information provided by the company shows that a negligible portion of the plant production was shifted to Mexico during the relevant period of the investigation. The overwhelming (over 98%) portion of subject plant production was transferred to Harrisburg, Pennsylvania. No plant machinery was transferred to Mexico during the relevant period.

The petitioners supplied a list of products that they indicated were transferred to Mexico. The overwhelming majority of these products were transferred prior to the relevant time frame of the investigation. Some of these products were produced at the subject firm only when orders required quick turn around time. The majority of these products were procured at a sister facility located in Harrisburg, Pennsylvania when quick turn around times were required. The quick turn around products equivalent to what the Mexican plant produced account for a relatively small portion of products that were produced at the subject plant.

The petitioner also claims that plant workers trained workers from an affiliated Mexican plant.

The workers did train workers from the Mexican plant during the relevant time frame. However, the training relates to only a negligible portion of production performed at the subject plant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error of misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of January 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–2694 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL95–F–1]

Nationally Recognized Testing Laboratories, Revised Fee Schedule

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

ACTION: Notice.

SUMMARY: This notice provides the revised schedule of fees to be charged by the Occupational Safety and Health Administration (OSHA) to Nationally Recognized Testing Laboratories (NRTLs). As provided under 29 CFR 1910.7, OSHA charges fees for specific types of services it provides to NRTLs. These services are: Processing applications for the initial recognition of an organization as an NRTL, or for expansion or renewal of an existing NRTL's recognition, and performing audits (post-recognition reviews) of NRTLs to determine whether they continue to meet the requirements for recognition. Annually, OSHA reviews the costs to the Government of providing the services to determine whether any changes to the fees are warranted. If change is warranted, we publish a notice to detail the projected costs of providing those services during the upcoming calendar year and solicit public comment on the revised fees.

The notice to propose the revised fees was published in the **Federal Register** on December 12, 2001 (66 FR 64274), and one comment was received. As stated in that notice, the revised fees would, and in fact did, go into effect on January 1, 2002. The revised fees will remain in effect until superseded by a later fee schedule.

DATES: The Fees Schedule shown in this notice went into effect on January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities at the above address, or phone (202) 693–2110. Our Web page includes information about the NRTL Program (see *http://www.osha-slc.gov/dts/otpca/nrtl/index.html* or see *http://www.osha.gov* and select ''Programs'').

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice that it has revised the fees that the Agency charges to Nationally Recognized Testing Laboratories (NRTLs). OSHA has taken this action as

a result of its annual review of the fees, as provided under 29 CFR 1910.7(f). This review showed that the costs of providing the services covered by the fees had changed sufficiently to warrant revisions to the Fee Schedule.

The notice to propose the revised fees was published in the **Federal Register** on December 12, 2001 (66 FR 64274). The notice requested submission of comments by December 27, 2001 (see correction of due date; 66 FR 65026, 12/17/01). One comment was received, which supported the rationale behind the changes to the fees. For those unfamiliar with OSHA's NRTL Program, we provide a brief overview below.

Many of OSHA's safety standards require equipment or products that are going to be used in the workplace be tested and certified to help ensure they can be used safely. Products or equipment that have been tested and certified must have a certification mark on them. An employer may rely on the certification mark, which shows the equipment or product has been tested and certified in accordance with OSHA requirements. In order to ensure that the testing and certification is done appropriately, OSHA implemented the NRTL Program. The NRTL Program establishes the criteria that an organization must meet in order to be and remain recognized as an NRTL.

The NRTL Program requirements are set forth under 29 CFR 1910.7, ''Definition and requirements for a nationally recognized testing laboratory.'' To be recognized by OSHA, an organization must: (1) Have the appropriate capability to test, evaluate, and approve products to assure their safe use in the workplace; (2) be completely independent of the manufacturers, vendors, and major users of the products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) have effective reporting and complaint handling procedures.

OSHA requires NRTL applicants (*i.e.*, organizations seeking initial recognition as an NRTL) to provide detailed information about their programs, processes, and procedures in writing when they apply for initial recognition. OSHA reviews the written information and conducts an on-site assessment to determine whether the organization meets the requirements of 29 CFR 1910.7. OSHA uses a similar process when an NRTL (*i.e.*, an organization already recognized) applies for expansion or renewal of its recognition. In addition, the Agency conducts annual audits to ensure that the recognized laboratories maintain their programs and continue to meet the recognition requirements.

OSHA promulgated the rule that established the fees on July 31, 2000 (65 FR 46797–46819). The first Fee Schedule, *i.e.*, the fees, went into effect on October 1, 2000. Currently, there are 18 NRTLs operating more than 45 recognized sites in the U.S., Canada, Europe, and the Far East.

Program Costs

In preparing the fee schedule presented in this notice, OSHA evaluated the total resources that it has committed to the NRTL Program overall and then estimated the costs that are involved solely with the application approval and the periodic review (*i.e.*, audit) functions. It is these costs alone that OSHA intends to recover through its fees. Personnel costs are the wages, salary, and fringe benefit costs of the staff positions involved and the number of full time equivalent (FTE) personnel devoted to the NRTL approval and review activities. These estimates also include travel and other costs of these activities. The Agency believes these estimates are fair and reasonable.

Based on the total estimated costs and the total estimated FTE, OSHA calculated an estimated equivalent cost per hour (excluding travel). This equivalent cost per hour includes both the direct and indirect costs per hour for ''direct staff'' members, who are the staff that perform the application, on-site, and legal reviews and the other activities involved in application processing and audits. In Figure 1, direct costs are expenses for direct staff members, and indirect costs are expenses for support and management staff, equipment, and other costs that are involved in the operation of the program. Support and management staff consists of program management and secretarial staff. Equipment and other costs are intended to cover items such as computers, telephones, building space, utilities, and supplies, that are necessary or used in performing the services covered by the proposed fees. Although essential to the services provided, these indirect costs are not readily linked to the specific activities involved in application processing and audits and, as explained later, are therefore allocated to the activities based on direct staff costs.

Figure 1 is an itemization of the estimated costs and the equivalent cost per hour calculated. OSHA believes that the costs shown fairly reflect the full cost of providing services to NRTLs and conducting other program activities. This figure shows how we calculated the estimated equivalent cost per hour (excluding travel).

FIGURE 1.—CURRENT ESTIMATED ANNUAL COSTS OF NRTL PROGRAM

Cost description	Est. FTE	Aver. cost per FTE (including fringe)	Total est. costs
Direct Staff Costs	4.7	$97,830	$459,800
Travel	Na	Na	50,000
Indirect Staff & Other Costs	Na	Na	*73,050
Total Est. Program Costs			582,850
Avg. direct staff cost/hr ($459,800 ÷ 4.7 FTE × 2,080 hours)			47
Equivalent avg. direct staff cost/hr ($532,850 ÷ 4.7 FTE × 2,080 hours) (includes direct & indirect costs)			54.50

*This amount consists of $34,800 of indirect staff costs and $38,250 for equipment and other costs.

The use of an ''equivalent average direct staff cost per hour'' measure is a convenient method of allocating indirect costs to each of the services for which OSHA will charge fees. The same result is obtained if direct staff costs are first calculated and then indirect costs are allocated based on the value, i.e., dollar amount, of the direct staff costs, which is an approach that is consistent with Federal accounting standards. To illustrate, assume a direct staff member spends 10 hours on an activity; the direct staff costs would then be calculated as follows:

Direct staff costs = 10 hours × $47/hour = $470

The $47/hour is the direct staff cost/hour amount shown in Figure 1. The

indirect costs would be allocated by first calculating the ratio of indirect costs to direct staff costs, again using the costs shown in Figure 1. This ratio would be as follows:

Indirect costs/direct staff costs = $73,050/$459,800 = 0.159

Next, the indirect costs would be calculated based on the $470 estimate of direct staff costs:

Indirect costs = $470 × 0.159 = $75

Finally, the total costs of the activity are calculated:

Total costs = direct staff costs + indirect costs = $470 + $75 = $545

Alternatively, the $545 can be derived by multiplying the $54.50 equivalent staff cost per hour rate by the 10 hours, i.e., $54.50 × 10 hours = $545.

After estimating program costs, the Agency estimated the time it spends on specific activities or functions. These estimates reflect the Agency's actual experience in performing the services covered by the fees. OSHA calculated time estimates for each major service category. These categories are: Initial applications, expansion and renewal applications, and audits. OSHA further divided some categories into the major activities performed and estimated the staff time and travel costs for each of these activities. The Agency then calculated the cost of each major activity using the time estimates, the equivalent cost per hour, and the estimate of travel costs. These costs serve as the basis for the fees later shown in the revised fee schedule. Examples of the calculations are shown in Figures 2, 3, 4, and 5.

FIGURE 2.—ESTIMATED COSTS FOR INITIAL APPLICATION

Major activity	Average hours	Average cost*
Initial Application Review		
Staff time: (includes review by office and field staff)	80	$4,360
On-Site Assessment—first day		
Staff time: (includes 16 hours preparation, 4 hours travel, 8 hours at site)	28	1,526
Travel:		670
Total (per site, per assessor)		2,196
On-Site Assessment—addnl. day		
Staff time	8	436
Travel amount: (to cover per diem)		70
Total (per site, per assessor)		506
Final Report & Federal Register notice		
Staff time: (includes work performed by field staff and office staff)	120	6,540

*Average cost for staff time equal average hours × equivalent average direct staff cost/hr ($54.50).

FIGURE 3.—ESTIMATED COSTS FOR EXPANSION APPLICATION (ADDITIONAL SITE)

Major activity	Average hours	Average cost*
Application Review (expansion for site)		
Staff time: (includes review by office and field staff)	16	$870
On-Site Assessment—first day		
Staff time: (includes 8 hours preparation, 4 hours travel, 8 hours at site)	20	1,090
Travel		670
Total (per site, per assessor)		1,760
On-Site Assessment—addnl. day		
Staff time	8	436
Travel amount: (to cover per diem)		70
Total (per site, per assessor)		506
Final Report & Federal Register notice		
Staff time: (includes work performed by field staff and office staff)	48	2,616

*Average cost for staff time equal average hours × equivalent average direct staff cost/hr ($54.50).

FIGURE 4.—ESTIMATED COSTS FOR RENEWAL OR EXPANSION (OTHER THAN ADDITIONAL SITE) APPLICATION

Major activity	Average hours	Average cost*
Application Review (renewal or expansion other than additional site)		
Staff time: (includes review by office and field staff)	2	$109
On-Site Assessment—first day		
Staff time: (includes 8 hours preparation, 4 hours travel, 8 hours at site)	20	1,090
Travel		670
Total (per site, per assessor)		1,760
On-Site Assessment—addnl. day		
Staff time	8	436
Travel amount: (to cover per diem)		70
Total (per site, per assessor)		506

FIGURE 4.—ESTIMATED COSTS FOR RENEWAL OR EXPANSION (OTHER THAN ADDITIONAL SITE) APPLICATION—Continued

Major activity	Average hours	Average cost*
Final Report & Federal Register notice		
Staff time: (includes work performed by field staff and office staff, if there is an on-site assessment)	48	2,616
Final Report & Federal Register notice		
Staff time: (includes work performed by field staff and office staff, if there is NO on-site assessment)	28	1,526

*Average cost for staff time equal average hours × equivalent average direct staff cost/hr ($54.50).

FIGURE 5.—ESTIMATED COSTS FOR ON-SITE AUDIT

Major activity	Average hours	Average cost*
Pre-site Review		
Staff time: (field staff only)	8	$436
On-Site Audit—first day		
Staff time: (includes 4 hours travel)	12	654
Travel		670
Total (per site, per assessor)		1,324
Final report		
Staff time: (includes work performed by field staff)	16	872
Total costs		**2,632

*Average cost for staff time equal average hours × equivalent average direct staff cost/hr ($54.50).
**Based on a one day audit. The costs for any additional days are the same as the per-day costs for an assessment.

In deriving the fee amounts shown in the fee schedule, OSHA has generally rounded the costs shown in Figures 2, 3, 4, and 5, up or down, to the nearest $50 or $100 amount.

OSHA believes that the amounts shown in the fee schedule reflect the Agency's current reasonable estimation of the costs involved for the services rendered to NRTLs. As previously mentioned, OSHA is not attempting to recover the entire cost of the NRTL Program through the fees but only the costs of providing these services.

What Has Changed

The following table shows the major changes that we have made to the fee schedule, comparing the fee amount in the previous fee schedule to the ''revised'' fee in the fee schedule shown later in this notice. Following the table, we explain the major changes.

TABLE OF MAJOR CHANGES TO FEES SCHEDULE

Description of fee	Previous fee amount	Revised fee amount	Change in fee amount (previous minus revised)
Initial Application Fee	$3,900	$4,400	$3,900 − $4,400 = $500 (increase).
Expansion Application Fee (additional site)	$1,550	$850	$1,550 − $850 = $700 (reduction).
Expansion Application Fee (additional test standards)	$1,550	$110	$1,550 − $110 = $1,440 (reduction).
Assessment—Initial Application (per site—SUBMIT WITH APPLICATION)	$5,900	$6,500	$5,900 − $6,500 = $600 (increase).
Review & Evaluation Fee (per 10 standards) (for standards already recognized for NRTLs or not requiring on-site review).	$50 per standard.	$10 per ten standards.	$500 − $10 = $490 per ten standards (reduction).
Final Report/Register Notice Fee—Renewal or Expansion Application (if OSHA performs on-site assessment).	$4,300	$2,600	$4,300 − $2,600 = $1,700 (reduction).
Final Report/Register Notice Fee—Renewal or Expansion Application (if OSHA performs NO on-site assessment).	$4,300	$1,500	$4,300 − $1,500 = $2,800 (reduction).

The previous Expansion Application Fee was based upon an NRTL submitting an application that included adding a site and a set of standards to its recognition. Many past expansion applications that we had received were so structured, and the fees were estimated on the basis of receiving similar such applications. However, more recently, NRTLs have submitted an expansion application covering a limited number of test standards and did not couple this request with an expansion for an additional site. In addition, the previous Expansion Application Fee was estimated on the basis of the NRTL submitting documentation to justify its capabilities for performing testing in an area outside its present scope of recognition. However, if the testing falls within its current capabilities, the application consists of a letter listing the test standards for which it is seeking recognition. The review of this letter is similar to the review we perform for a renewal request. If OSHA must review substantial documentation, e.g., if a standard falls outside the NRTL's current testing capabilities, or if OSHA

has not previously recognized a particular test standard for any NRTL, the previous standard fee of $50, which has now changed to $55, covered the necessary staff work to grant the expansion request for that test standard. If on the other hand OSHA must perform minimal review in determining whether to grant the expansion request for a standard, the rate is $10 for every ten or fewer standards. As a result, we have split the expansion application fee essentially into two fees and adjusted the review and evaluation fee to reflect the work involved for the scenarios just described.

As shown in Figure 1 and later in the proposed fee schedule, the hourly cost charged for staff time is now $54.50, or about 11% higher than the hourly rate of $49 in our previous fee schedule, which is available on our web site. The $49 was based upon staff salary and fringe and other program costs during 1999, whereas the $54.50 is based upon projected costs during 2002. Therefore, the 11% increase reflects changes that have accumulated over a three year period, or about 3.6% compounded annually, which is consistent with annual salary adjustments provided to Federal employees.

Fee Schedule and Description of Fees

OSHA establishes the following fee schedule, which will remain in effect until superseded by a later fee schedule:

TABLE A—FEE SCHEDULE

Nationally Recognized Testing Laboratory Program—(NRTL Program)—Fee Schedule (Effective January 1, 2002) [10]

Type of service	Activity or category (fee charged per application unless noted otherwise)	Fee amount
Application Processing	Initial Application Review [1]	$4,400
	Expansion Application Fee (per additional site) [1]	$850
	Renewal Application Fee or Expansion (other) Application Fee [1]	$110
	Assessment—Initial Application (per site—SUBMIT WITH APPLICATION) [2,4].	$6,500
	Assessment—Initial Application (per person, per site—first day—BILLED AFTER ASSESSMENT) [2,7,8].	$1,500 + travel expenses.
	Assessment—Expansion or Renewal Application (per person, per site—first day) [3,8].	$1,100 + expenses.
	Assessment—each addnl. day (per person, per site) [2,3,8]	$440 + travel expenses.
	Review & Evaluation Fee [5] ($10 per 10 standards if standards already recognized for NRTLs or require minimal review; else $55 per standard).	$10 per 10 standards or $55 per standard.
	Final Report/Register Notice—Initial Application [5]	$6,550
	Final Report/Register Notice Fee—Renewal or Expansion Application (if OSHA performs on-site assessment) [5].	$2,600
	Final Report/Register Notice Fee—Renewal or Expansion Application (if OSHA performs NO on-site assessment) [5].	$1,500
Audits	On-site Audit (per person, per site—first day) [6]	$1,950 + travel expenses.
	On-site Audit (per person, per site—each addnl. day) [6]	$440 + travel expenses.
	Office Audit (per site) [6]	$440
Miscellaneous	Supplemental Travel (per site—for sites located outside the 48 contiguous States, including the District of Columbia) [4].	$1,000
	Late Payment [9]	$55

Notes to OSHA Fee Schedule for NRTLs:

1. Who must pay the Application Review fees, and when must they be paid?

If you are applying for initial recognition as an NRTL, you must pay the Initial Application Review fee and include this fee with your initial application. If you are an NRTL and applying for an expansion or renewal of recognition, you must pay the Expansion Application Review fee or Renewal Application Review fee, as appropriate, and include the fee with your expansion or renewal application.

2. What assessment fees do you submit for an initial application, and when must they be paid?

If you are applying for initial recognition as an NRTL, you must pay $6,500 for each site for which you wish to obtain recognition, and you must include this amount with your initial application. We base this amount on two assessors performing a three day assessment at each site. After we have completed the assessment work, we will calculate our assessment fee based on the actual staff time and travel costs incurred in performing the assessment. We will calculate this fee at the rate of $1,500 for the first day and $440 for each additional day, plus actual travel expenses, for each assessor. Actual travel expenses are based on government per diem and travel fares. We will bill or refund the difference between the amount you pre-paid, $6,500/site, and this fee. We will reflect this difference in the final bill that we will send to you at the time we publish the preliminary **Federal Register** notice announcing the application.

3. What assessment fees do you submit for an expansion or renewal application, and when must they be paid?

If you are an NRTL and applying solely for an expansion or renewal of recognition, you do not submit any assessment fee with your application. If we need to perform an assessment for the expansion or renewal request, we will bill you for the fee after we perform the assessment for the actual staff time and travel costs we incurred in performing the assessment. We will assess this fee at the rate of $1,100 for the first day and $440 for each additional day, plus actual travel expenses, for each assessor. Actual travel expenses are based on government per diem and travel fares.

4. When do I pay the Supplemental Travel fee?

You must include this fee when you submit an initial application for recognition and the site you wish to recognized is located outside the 48 contiguous U.S. states (including the District of Columbia). The current supplemental travel fee is $1,000. We will factor in this prepayment when we bill for the actual costs of the assessment, as described in our note #2 above. See note 7 for possible refund of Assessment fees.

5. When do I pay the Review and Evaluation and the appropriate Final Report/Register Notice fees?

We will bill an applicant or an NRTL for the appropriate fees at the time we publish the preliminary **Federal Register** notice to announce the application. We will bill at the rate of $10 per 10 standards reviewed, or fraction thereof, for those standards that OSHA has previously recognized for any NRTLs and/or that require minimal review in determining whether to grant recognition for the additional test standards. Otherwise, we will bill at the rate of $55 per standard and provide appropriate explanation.

6. When do I pay the Audit fee?

We will bill the NRTL for this fee (on-site or office, as deemed necessary) after completion of the audit. We will calculate our fee based on actual staff time and travel costs incurred in performing the audit. We will calculate this fee at the rate of $1,950 for the first day and $440 for each additional day, plus actual travel expenses for each auditor. Actual travel expenses are based on government per diem and travel fares.

7. When and how can I obtain a refund for the fees that I paid?

If you are applying for initial recognition as an NRTL, we will refund the assessment fees that we have collected if you withdraw your application before we have traveled to your site to perform the on-site assessment. We will also credit your account for any amount we owe you if the assessment fees we have collected are greater than the actual costs of the assessment. Other than these two cases, we will not refund or grant credit for any other fees that are due or that we have collected.

8. What rate does OSHA use to charge for staff time?

OSHA has estimated an equivalent staff cost per hour that it uses for determining the fees that are shown in the Fee Schedule. This hourly rate takes into account the costs for salary, fringe benefits, equipment, supervision and support for each ''direct staff'' member, that is, the staff that perform the main activities identified in the Fee Schedule. The rate is an average of these amounts for each of these direct staff members. The current estimated equivalent staff costs per hour = $54.50.

9. What happens if I do not pay the fees that I am billed?

As explained above, if you are an applicant, we will send you a final bill for the fees at the time we publish the preliminary **Federal Register** notice. If you do not pay the bill by the due date, we will assess the Late Payment fee shown in the Fee Schedule. This late payment fee represents one hour of staff time at the equivalent staff cost per hour (see note 8). If we do not receive payment within 60 days of the bill date, we will cancel your application. As also explained above, if you are an NRTL, we will send you a bill for the audit fee after completion of the audit. If you do not pay the fee by the due date, we will assess the Late Payment Fee shown in the Fee Schedule. If we do not receive payment within 60 days of the bill date, we will publish a **Federal Register** notice stating our intent to revoke recognition.

10. How do I know whether this is the most Current Fee Schedule?

You should contact OSHA's NRTL Program (202–693–2110) or visit the program's web site to determine the effective date of the most current Fee Schedule. Access the site by selecting ''Subject Index'' or ''Programs'' at *www.osha.gov.* Any application processing fees are those in effect on the date you submit your application. Audit fees are those in effect on the date we begin our audit. Any pending application (i.e., an application that OSHA has not yet completed processing) will be subject only to the fees for the activities that OSHA begins on or after the effective date of the initial fee schedule.

The fee schedule shows the current activities for which OSHA charges fees. In evaluating the changes to the fee schedule, OSHA considered the following: (1) Actual expenditures of the 2001 fiscal year, and (2) estimated costs of the 2002 fiscal year.

The following is a description of the tasks and functions currently covered by each type of fee category, *e.g.,* application fees, and the basis used to charge each fee.

Application Fees

This fee reflects the technical work performed by office and field staff in reviewing application documents to determine whether an applicant submitted complete and adequate information. The application review does not include a review of the test standards requested, which is reflected in the review and evaluation fee. Application fees would be based on average costs per type of application. OSHA uses average costs since the amount of time spent on the application review does not vary greatly by type of application. This is based on the premise that the number and type of documents submitted will generally be the same for a given type of application. Experience has shown that most applicants follow the application guide that OSHA provides to them.

Assessment Fees

This fee is different for initial and for expansion or renewal applications. It is based on the number of days for staff preparatory and on-site work and related travel. Three types of fees are shown, and each one would be charged per site and per person. The two fees for the first day reflect time for office preparation, time at the applicant's facility, and an amount to cover travel in the 48 contiguous states. A supplemental travel amount is assessed for travel outside this area. These travel amounts are only estimates for purposes of submitting the initial fees. The applicant or NRTL is billed actual expenses, based on government per diem and travel fares. Any difference between actual travel expenses and the travel amounts in the fee schedule are reflected in the final bill or refund sent to the applicant or NRTL.

Similar to the application fee, the office preparation time generally involves the same types of activities. Actual time at the facility may vary, but the staff devote at least a full day for traveling and for performing the on-site work. The fee for the additional day reflects time spent at the facility and an amount for one day's room and board.

Review and Evaluation Fee: This fee is charged per test standard (which is part of an applicant's proposed scope of recognition). The fee reflects the fact that staff time spent in the office review of an application varies mainly in accordance with the number of test standards requested by the applicant. In general, the fee is based on the estimated time necessary to review test standards to determine whether each one is ''appropriate,'' as defined in 29 CFR 1910.7, and covers equipment for which OSHA mandates certification by an NRTL. The fee also covers time to determine the current designation and status (*i.e.,* active or withdrawn) of a test standard by reviewing current directories of the applicable test standard organization. Furthermore, it includes time spent discussing the results of the application review with the applicant. The actual time spent will vary depending on whether an applicant requests test standards that have previously been approved for other NRTLs. When the review is minimal, these activities take approximately 2 hours for every 10 or fewer standards. When the review is more substantial, the estimated average review time per standard is one hour for each standard, which translates to $55 per standard. Substantial review will occur when the standard has not been previously recognized for any NRTL or when the NRTL is proposing to do testing outside its current scope of recognition.

Final Report/Register Notice Fees

Each of these fees is charged per application. The fee reflects the staff time to prepare the report of the on-site review (i.e., assessment) of an applicant's or an NRTL's facility. The fee also reflects the time spent making the final evaluation of an application, preparing the required **Federal Register** notices, and responding to comments received due to the preliminary finding notice. These fees are based on average costs per type of application, since the type and content of documents prepared are generally the same for each type of applicant. There is a separate fee when OSHA performs no on-site assessment. In these cases, the NRTL Program staff perform an office assessment and prepare a memo to recommend the expansion or renewal.

Audit (Post-Recognition Review) Fees

These fees reflect the time for office preparation, time at the facility and travel, and time to prepare the audit report of the on-site audit. A separate fee is shown for an office audit conducted in lieu of an actual visit. Each fee is per site and does not generally vary for the same reasons

described for the assessment fee and because the audit is generally limited to one day. As previously described, the audit fee would include amounts for travel, and, similar to assessments, OSHA will bill the NRTL for actual travel expenses.

Miscellaneous Fees

The sample fee schedule only shows the average cost for one full day of staff time. OSHA would use this fee primarily in cases of refunding the assessment fee. OSHA will also charge a fee for late payment of the annual audit fee. The amount for the late fee is based on 1 hour of staff time.

Final Decision

OSHA performed its annual review of the fees it currently charges to Nationally Recognized Testing Laboratories, as provided under 29 CFR 1910.7(f). Based on this review, OSHA determined that certain fees warranted change, as detailed in this notice. As a result, OSHA now establishes the revised fees by adopting the Nationally Recognized Testing Laboratory Program Fees Schedule shown as Table A above, which was effective as of January 1, 2002, as provided in the preliminary notice published on December 12, 2001 (66 FR 64274). This fee schedule will remain in effect until superseded by a later fee schedule. OSHA will provide the public an opportunity to comment on any future changes to the fees.

Signed at Washington, DC, this 17 day of January, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 02–2643 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10891, et al.]

Proposed Exemptions; Connecticut Plumbers and Pipefitters Pension Fund (the Pension Fund), Connecticut Pipe Trades Local No. 777 Annuity Fund (the Annuity Fund); Connecticut Pipe Trades Health Fund (the Health Fund) (Collectively the Funds)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: ''*moffittb@pwba.dol.gov*'', or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Connecticut Plumbers and Pipefitters Pension Fund (the Pension Fund), Connecticut Pipe Trades Local No. 777 Annuity Fund (the Annuity Fund); Connecticut Pipe Trades Health Fund (the Health Fund) (Collectively the Funds), Located in Manchester, Massachusetts

[Exemption Application Nos. D–10891; D–10892 and L–10893]

Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the purchase on September 1, 1999 (the Purchase) by the Health Fund of the common stock of Employee Benefit Administrators, Inc. (EBPA Stock) from Michael W. Daly and Virginia S. Daly (the Dalys), parties in interest with respect to the Health Fund, and the subsequent reallocation of the purchase price (the Reallocation) among the Funds, including ''makewhole'' payments (Makewhole Payments) representing lost earnings in connection with the Purchase, provided that the following conditions are satisfied:

(a) The Purchase was a one-time transaction for a lump sum cash payment;

(b) The Purchase price was no more than the fair market value of EBPA Stock as of the date of the Purchase;

(c) The fair market value of the EBPA Stock was determined by an independent, qualified, appraiser;

(d) The Funds paid no commissions or other expenses relating to the Purchase;

(e) The proposed Reallocation will be made in connection with the original payment by the Pension Fund and the Annuity Fund for EBPA Stock resulting from the original allocation (the Original Allocation);

(f) The Makewhole Payments to be made by the Health Fund to the Pension Fund and the Annuity Fund represent an amount to provide the Pension Fund and the Annuity Fund with a rate of return equal to the total accrued but unpaid interest due as of the date of grant of this exemption as a result of the Original Allocation on September 1, 1999; and

(g) An independent fiduciary has negotiated, reviewed, and approved the terms of the Reallocation and will ensure the current and future payments by the Funds in connection with services provided by the administrative affiliate will reflect actual expenditures by the Funds.

Effective Date of Exemption: The effective date of this exemption is September 1, 1999.

Summary of Facts and Representations

1. The Annuity Fund is a defined contribution employee pension plan located in Manchester, Connecticut. It provides for contributions by employers, and permits the participants to invest the contributions in alternatives provided by Putnam Investments, the Annuity Fund's recordkeeper. At the time of the transaction, the Annuity Fund had 1,518 participants and assets as of January 31, 1999 of $21,540,687.33.

The Pension Fund is a non-contributory defined benefit plan located in Manchester, Connecticut. The Pension Fund employs 13 investment managers for the assets. At the time of the transaction, the Pension Fund had 1,587 plan participants and assets as of January 31, 1999 of $209,288,337.71.

The Health Fund is non-contributory and has 2,263 plan participants. The assets are maintained at Salomon Smith Barney, and Olson, Mobeck & Associates, Inc. acts as investment manager. At the time of the transaction, the fair market value of the Health Fund's assets was $20,651,136.78.

At the time of the Purchase, less than approximately 1% of the total assets of each respective plan were involved in the subject transaction. The Funds are multiemployer plans within the meaning of section 3(37)(A) of the Act, and were established and are maintained pursuant to section 302(c)(5) of the Labor Management Relations Act of 1947. The Funds are jointly managed by an equal number of Trustees appointed by management and the union.

2. Prior to September 1, 1999, the Funds employed two outside administrators. One administrator, Insurance Programmers, Inc. (IPI) provided services to the Annuity Fund and the Pension Fund. For the Pension Fund, IPI processed contributions and pension applications, issued monthly pension checks and quarterly statements and provided information for the annual actuarial valuation. Its charges totaled $105,600 in the last year of its retention. For the Annuity Fund, IPI processed contributions, posted receipts to Putnam Investments, performed recordkeeping duties, and processed withdrawal applications. IPI's charges for the Annuity Fund were $84,500. The second administrator, EBPA provided services to the Health Fund. It processed contributions, determined eligibility, paid both health and disability claims, maintained claims records, coordinated pre-admission certifications and utilization reviews and did COBRA administration. Its annual charges were $424,500.

In 1998, the Trustees of the Annuity and Pension Funds decided to explore alternatives for the Funds' administration. Since some of the Trustees of the Annuity and Pension Funds also served as Trustees of the Health Fund, and the Funds collectively served roughly the same group of participants and beneficiaries, the Trustees decided to consider unified administration for the Funds. Accordingly, the Trustees decided to bring the administration in-house. Due to concern about potential disruption to participants and beneficiaries, the Trustees further decided to explore the retention of existing administrative personnel through the purchase of EBPA, which had the most day-to-day contact with participants and beneficiaries.

The Trustees sought advice from the Segal Company (Segal), a nationally known actuarial and benefits consulting firm that represents mutliemployer trust funds. On April 29, 1998, Segal released a feasibility study to the Trustees, which concluded that, from a financial and operational perspective, the purchase of EBPA made good business sense.

3. The Trustees represent that the motivation for the Funds Purchase of EBPA was solely to benefit the Funds' interests. The Trustees further represent that (i) the annual operating expenses with in-house administration would be approximately $454,450 versus the $614,600 paid by the Funds for outside administration in 1998; (ii) in-house administration would give the Funds more direct control over the administrative process and better access to data so that the Trustees could more easily shift priorities or make changes in the administrative processes; and (iii) the in-house staff would be employees of the Funds, customer service should be more sensitive and responsive to the needs of the participants and beneficiaries, problems could be solved more quickly, and the Trustees would not have to coordinate between different vendors.

4. The Trustees obtained the services of Marenna, Pia and Associates, LLC (MPA), to perform an appraisal of the EBPA Stock. The valuation was performed by Kenneth Pia, a principal of MPA. Mr. Pia is the Director of Valuation and Litigation Services at MPA, a certified public accountant, an Accredited Senior Appraiser of the American Society of Appraisers, and a Certified Valuation Analyst of the National Association of Certified Valuation Analysts. Mr. Pia represents that he and his firm are independent of the parties involved the Purchase.

The appraisal sought the fair market value of EBPA, which it defined as the price at which the property would change hands between a willing buyer and willing seller, neither being under a compulsion to transact and both having reasonable knowledge of all relevant facts and circumstances. In arriving at the value, the appraisal considered all of the factors set forth in Revenue Ruling 59–60. As for the primary methodology, Mr. Pia chose the earnings-based approach, specifically the capitalization of forecasted next year earnings method. MPA concluded that the fair market value of 100 percent of the stock of EBPA was $277,000.

5. The Funds and the Dalys reached an agreement on the sale of the EBPA Stock and terms of the Dalys employment on September 1, 1999. The Funds purchased for cash, 100 percent of the EBPA Stock at a price of $250,000. Mr. Dalys annual salary was set at $105,000. The ownership of the EBPA stock also enabled the Funds to acquire the tangible assets, primarily office equipment and fixtures, used by EBPA in the administration of the Health Fund's business. The Funds and the Dalys also agreed upon an employment contract for a term of five years, which provides for termination upon just cause prior to that time.

6. The Trustees represent they were not aware that the Purchase would

constitute a violation of the prohibited transaction provisions of the Act, nor were they advised of the violation at the time of the transaction.[1] The Trustees relied upon the advice of Vincent F. OHara of Holm & O'Hara who was counsel to the Trustees regarding ERISA matters throughout the process of self-administration. Only after the Purchase did the Trustees legal counsel conclude that the trustees needed a prohibited transaction exemption. Subsequently, the Trustees retained outside counsel to file an application for a retroactive exemption with the Department.

7. The Funds allocated the purchase price pursuant to an allocation study based on the projected comparative administrative needs of each of each of the Funds (the Original Allocation) performed by Segal. Specifically, the Health Fund paid $110,000, the Pension Fund paid $97,500 and the Annuity Fund paid $42,500.[2] The Department reviewed the Original Allocation and discovered that Segal's analysis did not include the cost to the Funds of paying the claims.

8. As a result of the Original Allocation's deficiencies, the Trustees engaged Peter D. Graeb, CPA (Mr. Graeb) of Beers, Hamerman & Company, P.C. (BHC) to determine the Reallocation of the Purchase price. BHC determined that the Reallocation should yield the following allocation of the Purchase price: Health Fund 77%; Pension fund 18%; and the Annuity Fund 5%. Applying the Reallocation methodology, the allocation of the purchase price will be: Health Fund paying $192,500; the Pension Fund paying $45,000 and the Annuity Fund paying $12,500.

Furthermore, as a result of the Department's review and determination that the Original Acquisition was not allocated equitably among the Funds, it has been determined that the Makewhole Payment should be made by the Health Fund to the Pension Fund and the Annuity Fund representing lost earnings to the Funds as a result of the Original Allocation. The Makewhole Payment will consist of the Health Fund paying an additional $82,500 of the purchase price of EBPA, with the Pension Fund receiving $52,500 and the Annuity Fund receiving $30,000 of the additional $82,500 paid by the Health Fund. Mr. Graeb also calculated the lost earnings in connection with the Original Acquisition. Mr. Graeb's calculation of the lost earnings or Makewhole Payment concluded that the Health Fund earned a return for the 23-month period between August 1, 1999 through June 30, 2001 of 11.02%. This was based on the net investment return, per audited financial statement for the fiscal year August 1, 1999 through June 30, 2001 and the preliminary accounting for the fiscal year ending June 30, 2001. Applying that return yields the following numbers: the Health Fund earned $9,092 on the $85,000 it underpaid. Sharing that amount in the percentages derived from the Original Allocation study would yield $52,500 and interest of $5,786 to the Pension Fund and $30,000 and $3,306 to the Annuity Fund from the period August 1, 1999 through June 30, 2001. Therefore, the Makewhole Payments will represent an amount that provides the Pension Fund and the Annuity Fund with a rate of return equal to the total accrued but unpaid interest due at the time of grant of this exemption as a result of the Original Allocation.

9. An independent party, Robert Nagle (Mr. Nagle), will serve as the independent fiduciary for the Funds with respect to the purposed Reallocation between the Funds. Mr. Nagle has experience with employee benefit plans and has served as a court ordered fiduciary in several cases, including service at the behest of the Department. Mr. Nagle has no prior connection to the Trustees. Mr. Nagle will assure that the Reallocation accurately reflects the Funds' respective equity interest in the administrative subsidiary and that the Health Fund has reimbursed the Pension Fund and the Annuity Fund for the difference between their original investments and the reallocated amounts, plus the Makewhole Payments. In addition, Mr. Nagle will confirm on an annual basis that the expenses of the administrative subsidiary are being properly allocated to the Funds based on actual expenditures of each Fund.

10. In summary, the Trustees represent that the requested retroactive individual exemption will satisfy the criteria of section 408(a) of the Act for the following reasons:

(a) The Purchase was a one-time transaction for a lump sum cash payment;

(b) The Purchase price was no more than the fair market value of EBPA Stock as of the date of the Purchase;

(c) The fair market value of the EBPA Stock was determined by an independent, qualified, appraiser;

(d) The Funds paid no commissions or other expenses relating to the Purchase;

(e) The proposed Reallocation will be made in connection with the original payment by the Pension Fund and the Annuity Fund for EBPA Stock resulting from the Original Allocation;

(f) The Makewhole Payments to be made by the Health Fund to the Pension Fund and the Annuity Fund represent an amount to provide the Pension Fund and the Annuity Fund with a rate of return equal to the total accrued but unpaid interest due as of the date of grant of this exemption as a result of the Original Allocation on September 1, 1999; and

(g) An independent fiduciary has negotiated, reviewed, and approved the terms of the Reallocation and will ensure the current and future payments by the Funds in connection with services provided by the administrative affiliate will reflect actual expenditures by the Funds.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Trustees and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif Ilias Ford of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Pacific Investment Management Company, LLC (PIMCO), Located in Newport Beach, CA

[Application No. D–11005]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[3]

Section I. Proposed Exemption for the Purchase of Fund Shares With Assets Transferred in Kind From a Plan Account

If the exemption is granted, the restrictions of section 406(a) and section

[1] The Department wishes to note that ERISA's general standards of fiduciary conduct would apply to the Purchase by the Funds. In this regard, section 404(a) of the Act requires, among other things, that a plan fiduciary discharge his duties with respect to a plan solely in the interest of the plans's participants and beneficiaries in a prudent fashion.

[2] The Dalys made certain representations concerning the business and the Funds withheld $20,000 from the sale proceeds in order to assure that the representations were accurate. The escrow was released in four annual installments, which began May 1, 2000, and will end May 1, 2003.

[3] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

406(b) 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 (F) of the Code, shall not apply, effective February 5, 2002, to the purchase of shares of one or more open-end management investment companies (the PIMCO Mutual Funds) registered under the Investment Company Act of 1940 (the ICA), to which PIMCO or any affiliate of PIMCO (the PIMCO Affiliate) [4] serves as investment adviser and may provide other services, by an employee benefit plan (the Plan or Plans), whose assets are held by PIMCO, as trustee, investment manager or discretionary fiduciary, in exchange for securities held by the Plan in an account (the Account) or sub-Account with PIMCO (the Purchase Transaction), provided that the following conditions are met:

(a) A fiduciary who is acting on behalf of each affected Plan and who is independent of and unrelated to PIMCO, as defined in paragraph (g) of Section III below (the Second Fiduciary), provides, prior to the first Purchase Transaction, the written approval described in paragraph (b) or (c) of this Section I, as applicable, following the disclosure of written information concerning the PIMCO Mutual Funds, which includes the following:

(1) A current prospectus or offering memorandum for each PIMCO Mutual Fund which has been approved by the Second Fiduciary for that Plan's Account; [5]

(2) A statement describing the fees to be charged to, or paid by, the Plan and the PIMCO Mutual Funds to PIMCO, including the nature and extent of any differential between the rates of the fees paid by the PIMCO Mutual Fund and the rates of the fees otherwise payable by the Plan to PIMCO;

(3) A statement of the reasons why PIMCO considers Purchase Transactions to be appropriate for the Plan;

(4) A statement on whether there are any limitations on PIMCO with respect to which Plan assets may be invested in the PIMCO Funds, and if so, the nature of such limitations;

(5) In the case of a Plan having total assets that are less than $200 million, the identity of all securities that are deemed suitable by PIMCO for transfer to the PIMCO Mutual Funds; and

(6) Upon such Second Fiduciary's request, copies of the proposed and final exemptions pertaining to the exemptive relief provided herein for Purchase Transactions occurring after the date of the final exemption.

(b) On the basis of the foregoing information, in paragraph (a) of this Section I, the Second Fiduciary of a Plan having total assets that are at least $200 million, gives PIMCO a standing written approval (subject to unilateral revocation by the Second Fiduciary at any time) for—

(1) The Purchase Transactions, consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(2) The investment guidelines for the Account (the Strategy) and the management, by PIMCO, of client Plan assets in separate Accounts in the implementation of the Strategy;

(3) The investment of a certain portion (or portions) of the Accounts in specified PIMCO Mutual Funds, as part of PIMCO's ongoing implementation of the Strategy;

(4) The acquisition of shares of PIMCO Mutual Funds in cash or in kind, from time to time; and

(5) The receipt of confirmation statements with respect to the Purchase Transactions in the form of written reports to the Second Fiduciary.

(c) On the basis of the foregoing information in paragraph (a) of this Section I, the Second Fiduciary of a Plan having total assets that are less than $200 million, gives PIMCO—

(1) A standing written approval (subject to unilateral revocation by the Second Fiduciary at any time) for—

(i) The Strategy and the management, by PIMCO, of client Plan assets in separate Accounts in the implementation of the Strategy;

(ii) The investment of a certain portion (or portions) of the Accounts in specified PIMCO Mutual Funds, as part of PIMCO's ongoing implementation of the Strategy; and

(iii) The acquisition of shares of PIMCO Mutual Funds in cash or in kind, from time to time.

(2) Advance written approval for—

(i) Each Purchase Transaction, consistent with the responsibilities, obligations and duties imposed on fiduciaries by Part 4 of Title I of the Act; and

(ii) The receipt of confirmation statements with respect to Purchase Transactions in the form of written reports to the Second Fiduciary.

(d) No sales commissions or other fees are paid by a Plan in connection with a Purchase Transaction.

(e) All transferred assets are securities for which market quotations are readily available.

(f) The transferred assets consist of assets transferred to the Plan's Account at the direction of the Second Fiduciary.

(g) With respect to assets transferred in kind, each Plan receives shares of a PIMCO Mutual Fund which have a total net asset value that is equal to the value of the assets of the Plan exchanged for such shares, based on the current market value of such assets at the close of the business day on which such Purchase Transaction occurs, using independent sources in accordance with the procedures set forth in Rule 17a–7b under the ICA (Rule 17a–7), as amended from time to time or any successor rule, regulation or similar pronouncement, and the procedures established by the PIMCO Mutual Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the day of the Purchase Transaction determined on the basis of reasonable inquiry from at least two sources that are market makers or pricing services independent of PIMCO.

(h) PIMCO sends by regular mail, express mail or personal delivery or, if applicable, by facsimile or electronic mail to the Second Fiduciary of each Plan that engages in a Purchase Transaction, a report containing the following information about each Purchase Transaction:

(1) A list (or lists, if there are multiple Purchase Transactions) identifying each of the securities that has been valued for purposes of the Purchase Transaction in accordance with Rule 17a–7(b)(4) of the ICA;

(2) The current market price, as of the date of the Purchase Transaction, of each of the securities involved in the Purchase Transaction;

(3) The identity of each pricing service or market maker consulted in determining the value of such securities;

(4) The aggregate dollar value of the securities held in the Plan Account immediately before the Purchase Transaction; and

(5) The number of shares of the PIMCO Mutual Funds that are held by

[4] Unless otherwise noted, ''PIMCO'' refers to ''PIMCO'' and to any ''PIMCO Affiliates'' and the term ''PIMCO Mutual Funds'' refers to any registered investment funds that are managed or advised by PIMCO or a PIMCO Affiliate.

[5] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Exchange Act of 1933 (the 1933 Act). In the Department's view, the private placement memorandum must contain sufficient information to permit Second Fiduciaries to make informed investment decisions.

the Account following the Purchase Transaction (and the related per share net asset value and the aggregate dollar value of the shares received) immediately following the Purchase Transaction.

(Such report is disseminated by PIMCO to the Second Fiduciary by regular mail, express mail or personal delivery, or if applicable, by facsimile or electronic mail, no later than 30 business days after the Purchase Transaction.)

(i) With respect to each of the PIMCO Mutual Funds in which a Plan continues to hold shares acquired in connection with a Purchase Transaction, PIMCO provides the Second Fiduciary with—

(1) A copy of an updated prospectus or offering memorandum for such PIMCO Mutual Fund, at least annually; and

(2) Upon request of the Second Fiduciary, a report or statement (which may take the form of the most recent financial report, the current Statement of Additional Information, or some other statement) containing a description of all fees paid by the PIMCO Mutual Fund to PIMCO.

(j) As to each Plan, the combined total of all fees received by PIMCO for the provision of services to the Plan, and in connection with the provision of services to a PIMCO Mutual Fund in which the Plan holds shares acquired in connection with a Purchase Transaction, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(k) All dealings in connection with a Purchase Transaction between a Plan and a PIMCO Mutual Fund are on a basis no less favorable to the Plan than dealings between the PIMCO Mutual Fund and other shareholders.

(l) No Plan may enter into Purchase Transaction with the PIMCO Mutual Funds prior to the date the proposed exemption is published in the **Federal Register**.

(m) PIMCO maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons, as described in paragraph (n) of this Section I, to determine whether the conditions of this proposed 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 PIMCO, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than PIMCO, 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 (m) of this Section I.

(n)(1) Except as provided in paragraph (n)(2) of this Section I and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (m) of Section I above 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 (the Service), or the Securities and Exchange Commission (the SEC);

(B) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the PIMCO Mutual Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (n)(1)(B) or (C) of this Section I shall be authorized to examine the trade secrets of PIMCO or commercial or financial information which is privileged or confidential.

Section II. Availabilty of Prohibited Transaction Exemption (PTE) 77–4 [6]

Any purchase of PIMCO Mutual Fund shares by a Plan that complies with the conditions of Section I of this proposed exemption shall be treated as a ''purchase or sale'' of shares of an open-end investment company for purposes of PTE 77–4 and shall be deemed to have satisfied paragraphs (a), (d) and (e) of Section II of PTE 77–4.

Section III. Definitions

For purposes of this proposed exemption,

(a) The term ''PIMCO'' means Pacific Investment Management Company LLC, any successors thereto, and affiliates of PIMCO (as defined in paragraph (b) of this Section III), including Nicholas-Applegate Capital Management, PIMCO Equity Advisers, Cadence Capital Management, NFJ Investment Group, Value Advisors LLC, Allianz of America, Inc., Pacific Specialty Markets LLC, PIMCO/Allianz International Advisors LLC, OpCap Advisors and Oppenheimer Capital, and their existing and future affiliates.

(b) An ''affiliate'' of a person 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, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person 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 ''PIMCO Mutual Fund'' or ''PIMCO Mutual Funds'' means any open-end investment company or companies registered under the ICA for which PIMCO serves as investment adviser, administrator, or investment manager. The term is also meant to include a PIMCO Affiliate Mutual Fund in which a PIMCO Affiliate serves as an investment adviser or investment manager.

(e) The term ''net asset value'' means the amount for purposes of pricing all purchases and redemptions calculated by dividing the value of all securities, determined by a method as set forth in a PIMCO Mutual Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such PIMCO Mutual Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term ''relative'' means a relative as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term ''Second Fiduciary'' means a fiduciary of a plan who is independent of and unrelated to PIMCO. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to PIMCO if —

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with PIMCO;

[6] In relevant part, PTE 77–4 (42 FR 18732 (April 8, 1977) permits the purchase and sale by an employee benefit plan of shares of a registered open-end investment company when a fiduciary with respect to such plan is also the investment adviser for the mutual fund. Section II(a) of PTE 77–4 requires that a plan does not pay a sales commission in connection with such purchase or sale. Section II(d) describes the disclosures that are to be received by an independent plan fiduciary. For example, the plan fiduciary must receive a current prospectus for the mutual fund as well as full and detailed written disclosure of the investment advisory and other fees that are charged to or paid by the plan and the investment company. Section II(e) requires that the independent plan fiduciary approve purchases and sales of mutual fund shares on the basis of the disclosures given.

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of PIMCO (or is a relative of such persons); or

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration from PIMCO for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of PIMCO (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser; (B) the written authorization provided to PIMCO for the Purchase Transactions; (C) the Plan's decision to continue to hold or to redeem shares of the PIMCO Mutual Funds held by such Plan; and (D) the approval of any change of fees charged to or paid by the Plan, in connection with the transactions described above in Section I, then paragraph (g)(2) of this Section III, shall not apply.

(h) The term ''Strategy'' refers to the set of investment guidelines that have been established in advance to govern the Account. The Strategy is created by PIMCO in collaboration with the Second Fiduciary of a client Plan and may be mutually amended, from time to time.

Summary of Facts and Representations

Description of the Parties

1. *PIMCO (i.e., Pacific Investment Management Company, LLC),* an investment counseling firm located in Newport Beach, California, is a subsidiary of PIMCO Advisors, L.P. (PALP). A controlling interest in PALP is indirectly held by Allianz A.G., a European-based multinational insurance and financial services holding company. An indirect, minority equity interest in PALP is held by Pacific Life Insurance Company, a California-based insurance company.

PIMCO provides investment management and advisory services to the private accounts of institutional clients and to mutual funds, including the separate portfolios of the PIMCO Mutual Funds. PIMCO and its affiliates[7] currently provide the PIMCO Mutual Funds described below with overall investment management services, including, but not limited to, the selection and supervision of investment advisers and regulatory reporting. PIMCO also acts as the dividend disbursing agent with respect to certain classes of shares and as the investment adviser to certain PIMCO Mutual Fund portfolios. PIMCO currently serves as administrator to the PIMCO Mutual Funds and provides the PIMCO Mutual Funds with certain administrative and shareholder services necessary for PIMCO Mutual Fund operations. Additionally, PIMCO is responsible for the supervision of other PIMCO Mutual Fund service providers.

PIMCO also provides investment management and asset allocation services to a variety of clients, including the Plans described below. In the course of implementing each Plan's investment strategy (i.e., the Strategy) and to the extent authorized in the investment management agreement (the Investment Management Agreement) or separate investment guidelines for each Plan, PIMCO may utilize the separate investment portfolios of the PIMCO Mutual Funds as the Plans' investment vehicles.

2. *The Plans* will consist of retirement plans qualified under section 401(a) of the Code which constitute ''pension plans'' as defined in section 3(2) of the Act, certain welfare plans as defined under section 3(1) of the Act [e.g., voluntary employees' beneficiary association trusts exempt from tax under Code section 501(c)(9)]; and/or ''plans'' as defined in section 4975(e)(1) of the Code, and with respect to which PIMCO serves or will serve as an investment manager. The Plans will not include employee benefit plans that are sponsored by PIMCO or its affiliates. As a precondition to participating in the Purchase Transactions that are described herein, each Plan will have total assets of at least $100 million.

3. *The PIMCO Mutual Funds* to which the requested exemption will cover consist of investment companies registered under the ICA. A representative group of PIMCO Mutual Funds which have been currently authorized by the Plans adopting one or more Strategies is the Private Account Portfolio Series (the Private Account Portfolios), which is a subset of the Pacific Investment Management Series (otherwise referred to as ''the PIMS Trust''). The Private Account Portfolios are being offered to institutional investors. Any Plan investments in the Private Account Portfolios (or any other PIMCO Mutual Fund offered for the purpose of Purchase Transactions described herein) will be subject to the terms and conditions of this exemption.

The Private Account Portfolios invest at least 65 percent of their assets in bonds or debt securities, including, but not limited to, securities issued or guaranteed by the U.S. Government; corporate debt of U.S. and non-U.S. issuers; asset-backed securities; and notes, repurchase agreements and other obligations of governmental issuers. The Private Account Portfolios currently consist of the following 16 separate mutual funds:

- Short-Term Portfolio
- Short-Term Portfolio II
- U.S. Government Sector Portfolio
- U.S. Government Sector Portfolio II
- Mortgage Portfolio
- Mortgage Portfolio II
- Investment Grade Corporate Portfolio
- Real Return Bond Portfolio
- Asset-Backed Securities Portfolio
- Asset-Backed Securities Portfolio II
- High Yield Portfolio
- Municipal Sector Portfolio
- International Portfolio
- Short-Term Emerging Markets Portfolio
- Emerging Markets Portfolio
- Select Investment Portfolio

These PIMCO Mutual Funds pay PIMCO an annualized advisory fee of 0.02 percent in return for providing investment advisory services. Aside from the Private Account Portfolios, PIMCO also proposes that the Purchase Transactions contemplated herein will also apply to PIMCO Mutual Funds that are equity mutual funds.

5. PIMCO also serves as the administrator of all of the PIMCO Mutual Funds and it receives an annualized administrative fee from the PIMCO Mutual Funds under a fixed fee structure. For example, in the case of the Private Account Portfolios, PIMCO receives an annualized administrative fee ranging from 0.028 percent for the Real Return Bond Portfolio to 0.04 percent for the International Portfolio. In return for these fixed fees, PIMCO provides administrative services for shareholders of the Private Account Portfolios and it also bears certain costs of various third party services such as audits, custodial services, portfolio accounting, as well as legal, transfer agency and printing costs.[8]

[7] Another wholly owned subsidiary of PIMCO, PIMCO Funds Distributors LLC, serves as the principal underwriter and distributor of the PIMCO Mutual Funds.

[8] At the present time, PIMCO represents that it does not know how many PIMCO Mutual Funds it will offer to client Plans. PIMCO notes that its fee structure for the Private Account Portfolios is not unusual given the fact that the client Plans pay a Plan-level investment advisory fee based on the amount of assets managed for them by PIMCO. Because PIMCO manages many large client Plans, which place a minimum of $600 million with PIMCO, the size of the Plan-level investment advisory fees will vary in inverse proportion to the size of the client Plan's Account with PIMCO. As noted in Representation 12 of the proposed exemption, PIMCO will utilize the fee crediting mechanism described in PTE 77–4 to offset its Fund-level investment advisory fees from its Plan-level investment advisory and/or management fees.

As both administrator and investment adviser of the PIMCO Mutual Funds, PIMCO makes overall investment decisions with respect to the assets of each PIMCO Mutual Fund's investment program.

6. The PIMCO Mutual Funds are offered and sold in full compliance with regulations promulgated by the SEC. As mandated by the SEC, shareholders of the PIMCO Mutual Funds receive the following disclosures concerning the PIMCO Mutual Funds:

(a) A copy of the prospectus or offering memorandum, which is updated at least annually; (b) an annual report containing audited financial statements of the PIMCO Mutual Funds and information regarding the PIMCO Mutual Funds' performance (unless such performance is included in the prospectus for the PIMCO Mutual Funds); and (c) a semi-annual report containing unaudited financial statements. With respect to the Plans, PIMCO or National Financial Data Services, Inc., the transfer agent for the PIMCO Mutual Funds, reports all transactions involving shares of the PIMCO Mutual Funds in periodic account statements provided to each Plan's trustee or custodian bank.

As indicated above in the operative language, PIMCO requests that the exemption cover Purchase Transactions involving the Private Account Portfolios as well as other ICA–registered mutual funds that are advised by PIMCO, in which Plans invests. (As noted above, these PIMCO Mutual Funds may also include equity mutual funds.) Similarly, PIMCO requests that the exemption cover Purchase Transactions involving PIMCO Affiliate Mutual Fund shares by client Plans whose assets are managed by investment managers which are PIMCO Affiliates, such as Applegate Capital Management, PIMCO Equity Advisors, Cadence Capital Management, NFJ Investment Group, Value Advisors LLC, Allianz of America, Inc., Pacific Specialty Markets LLC, PIMCO/Allianz International Advisors LLC, OpCap Advisors or Oppenheimer Capital.[9]

If granted, the proposed exemption will be effective as of the date the notice of proposed exemption is published in the **Federal Register** such that no Plan may enter into Purchase Transaction with the PIMCO Mutual Funds prior to this time.

[9] As noted in the operative language of this proposed exemption, unless otherwise stated, references to ''PIMCO'' or to a ''PIMCO Mutual Fund'' refer also to a ''PIMCO Affiliate'' or to a ''PIMCO Affiliate Mutual Fund.

PIMCO's Investment Strategy

7. As noted above, PIMCO serves as investment manager to certain Plans. PIMCO will consult with a Second Fiduciary of the Plan to develop an investment strategy, which is then approved and adopted by the Second Fiduciary to serve as the investment guidelines for the investment of a Plan Account.

According to PIMCO, the term ''Strategy'' refers to the set of investment guidelines that have been established in advance to govern an Account. The Strategy is created by PIMCO, in collaboration with the Second Fiduciary of a client Plan and may be unilaterally amended, from time to time.

The development of the Strategy will include the selection of broad asset classes and the designation of a percentage of Plan assets to be allocated among such broad asset classes by use of separate Plan Accounts. For example, a Plan may desire to allocate 10 percent of its total assets for investment in global funds under PIMCO's management. Therefore, the Plan will transfer 10 percent of its assets to a Global Bond Account with PIMCO that is designed only to invest in such assets, and at the same time indicate how much of that Account may be invested in PIMCO Mutual Funds with the same investment focus. Later or at the same time, the Plan may establish other Accounts with PIMCO with a different investment focus, i.e., Stable Value, High Yield, Total Return, etc. Thus, any Plan may have more than one Account governed by the Strategy. Such investments will be carried out in accordance with PTE 77–4.

The Strategy can only be modified with the approval of the Second Fiduciary. While a Plan may retain PIMCO to manage various Accounts separately (even though they all may be governed by the Strategy), the fee for all such management services is included within PIMCO's Plan-level investment management fee.

Implementation of the Strategy

8. The Strategy will be implemented by PIMCO in various situations. In the case of a new client Plan, PIMCO may be asked to take over an existing portfolio of securities, and that portfolio will have already been created by some other investment manager fiduciary using an asset allocation strategy developed by the Plan's in house fiduciaries or outside consultants. Another situation will occur when an existing client Plan allocates additional assets to PIMCO as investment manager for an Account. Further, a Second Fiduciary of an existing client Plan may transfer additional assets to a new sub-Account established specifically for the purpose of investing in a particular Strategy (i.e., adding new asset classes). If a Plan retains PIMCO to manage only its International Account, the Strategy will provide for allocation solely among international mutual funds.

The Second Fiduciary may decide later to expand the scope of PIMCO's management authority to include total return fixed income mutual funds, in which case, PIMCO will establish a sub-Account for the purpose of investing in the total return fixed income Strategy. At a later date, the Second Fiduciary may decide to retain PIMCO to manage mortgage-backed securities.

In each of the foregoing situations, PIMCO will not become a fiduciary until after the Second Fiduciary has specified which portion of the Plan's assets (including which specific assets and which specific PIMCO Mutual Funds may be authorized for investment) will be allocated to a sub-Account under PIMCO's management. Having obtained the initial authorization of the Second Fiduciary, however, PIMCO will invest the assets of the client Plan, from time to time, among the PIMCO Mutual Funds which the Second Fiduciary has authorized.

Also, in each of the above situations, the client Plan's existing portfolio of securities frequently may include securities that are suitable for investment by the PIMCO Mutual Funds. PIMCO believes that it may be appropriate, in such cases, to transfer these securities in kind, directly to the relevant PIMCO Mutual Funds in order to avoid transaction costs and potential market disruption that may occur from a sale of those securities by the Plan and the subsequent repurchase of those securities by the PIMCO Mutual Funds. Plan securities which are compatible with the investment guidelines for the PIMCO Mutual Funds, and which can be transferred in compliance with procedures adopted by such Funds, will be transferred in kind to the PIMCO Mutual Funds in exchange for Fund shares, pursuant to prior client authorization of the Plans investment in such Funds. Any securities which are not transferred in kind will continue to be held and actively-managed by PIMCO, as directed by the client Plan's Second Fiduciary, outside of the PIMCO Mutual Funds in a separate account maintained such Plan.

9. PIMCO maintains that the in kind transfers of Account assets in exchange for shares of the PIMCO Mutual Funds will be ministerial transactions performed in accordance with pre-

established objective procedures which are approved by the Board of Trustees of the PIMS Trust. Such procedures require that assets transferred to a PIMCO Mutual Fund (a) be consistent with the investment objectives, policies and restrictions of the corresponding portfolios of the PIMCO Mutual Fund, as determined by PIMCO; (b) satisfy the applicable requirements of the ICA and the Code; and (c) have a readily ascertainable market value, as determined pursuant to SEC Rule 17a–7. Further, a Second Fiduciary for each Plan will be required to give PIMCO prior written authorization and approve the transfer of the Plan's assets to the PIMCO Mutual Funds (which Funds have been approved for investment by the Plan's Account), and the transfer of such assets on an in kind basis.

Although PIMCO intends that multiple Purchase Transactions will occur per Plan, after each transaction is completed, PIMCO will continue to manage the Account in accordance with the exemptive relief provided under PTE 77–4. In order to implement the Strategy for each Account (and various sub-Accounts), PIMCO will be guided by its investment process in its management of the Accounts.

Advance Disclosure/Approval

10. Under the Investment Management Agreement, a Second Fiduciary will receive all of the disclosures required by PTE 77–4. In this regard, such information includes, but is not limited to, (a) a current prospectus or offering memorandum for each PIMCO Mutual Fund which has been approved by the Second Fiduciary for that Plan's Account; (b) a statement describing the fees to be charged to, or paid by, the Plan and the PIMCO Mutual Fund to PIMCO, including the nature and extent of any differential between the rates of the fees paid by the such Fund and the rates of the fees otherwise payable by the Plan to PIMCO; (c) a statement of the reasons why PIMCO considers Purchase Transactions to be appropriate for the Plan; (d) a statement on whether there are any limitations on PIMCO with respect to which Plan assets may be invested in the PIMCO Mutual Funds; and (e) in the case of a Plan having total assets that are less than $200 million, the identity of all securities that are deemed suitable by PIMCO for transfer to the PIMCO Mutual Funds. In addition, PIMCO will provide copies of the proposed and final exemptions to the Second Fiduciary, upon such fiduciary's request.

Based on these disclosures, the Second Fiduciary of a Plan having total assets that are at least $200 million, by executing the Investment Management Agreement, will give PIMCO a standing written approval, which will be unilaterally revocable by such Second Fiduciary at any time. Such standing written approval will apply to all future Purchase Transactions that involve the transfer of a Plan's assets to the corresponding PIMCO Mutual Funds in exchange for shares, as appropriate, and PIMCO's receipt of fees for providing services to the PIMCO Mutual Funds. Further, the Second Fiduciary will approve (a) the Strategy for the Account and the management of client Plan assets in separate Accounts in the implementation of such Strategy; (b) the investment of a certain portion or portions of the Accounts in specified PIMCO Mutual funds, as part of the ongoing implementation of the Strategy;[10] (c) the acquisition of shares of PIMCO Mutual Funds in cash or in kind, from time to time; and (d) the receipt of confirmation statements with respect to the Purchase Transactions in the form of written reports to the Second Fiduciary.

In the case of a Plan having total assets that are less than $200 million, the Second Fiduciary will also give PIMCO standing written approval, which will be unilaterally revocable by the Second Fiduciary at any time, and will similarly apply to all future Purchase Transactions. However, such standing approval will cover (a) the Strategy and the management, by PIMCO, of client Plan assets in separate Accounts in the implementation of such Strategy; (b) the investment of a certain portion (or portions) of the Accounts in specified PIMCO Mutual Funds, as part of PIMCO's ongoing implementation of such Strategy; and (c) the acquisition of shares of PIMCO Mutual Funds in cash or in kind, from time to time. In addition, the Second Fiduciary will be required to provide PIMCO with written approval, prior to each Purchase Transaction, with respect to such transaction, consistent with the responsibilities, obligations and duties imposed on fiduciaries by part 4 of Title I of the Act.

Moreover, the Second Fiduciary will be required to authorize the receipt of confirmation statements from PIMCO, with respect to Purchase Transactions, in the form of written reports to such Second Fiduciary.

Under either Plan size scenario, if the Second Fiduciary does not approve the use of the PIMCO Mutual Funds as Plan investments, it will not allow PIMCO the investment discretion to invest in the PIMCO Mutual Funds.

Valuation Procedures

11. The assets transferred by an Account to the Funds in connection with a Purchase Transaction will consist of securities for which there is a recognized market. The value of the securities to be transferred in kind from an Account in such Purchase Transactions will be determined based on market value as of the close of business on the day of the Purchase (the Account Valuation Date). The current market price for specific types of Account securities transferred to the PIMCO Mutual Funds in exchange for shares in a Purchase Transaction on the Account Valuation Date will be determined in a single valuation using the valuation procedures described in Rule 17a–7 under the ICA as follows:

(a) If the security is a ''reported security,'' as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (1934 Act), the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System) for the Account Valuation Date; or if there are no reported transactions in the Consolidated System that day, the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1–1 under the 1934 Act), as of the close of business on the Account Valuation Date; or

(b) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange on the Account Valuation Date; or if there is no reported transaction on such exchange that day, the average of the highest current independent bid and lowest current independent offer on such exchange as of the close of business on the Account Valuation Date; or

(c) If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ as of the close of business on the Account Valuation Date; or

(d) For all other securities, the average of the highest current independent bid and lowest current independent offer as of the close of business on the Account Valuation Date, determined on the basis of reasonable inquiry. For securities in this category, PIMCO intends to obtain quotations from at least two sources that are broker-dealers or pricing services independent of and unrelated to PIMCO, using the average of the quotations to value the securities, in conformance with interpretations by the SEC and practice under Rule 17a–7.[11]

[10] It is represented that the parameters of such blanket approval will be documented by letter agreement between PIMCO and the Plan.

[11] Securities of non-U.S. issuers may be traded on U.S. exchanges or the NASDAQ, directly or in the form of ADRs, or may be acquired on foreign

In addition, if the asset is a short-term investment having a maturity of 60 days or less, the asset will be valued at its amortized cost.[12] If the asset is an exchange traded option or an option on a future, the asset will be valued at the settlement price determined by the exchange.[13] Securities and assets originally valued in currencies other than the U.S. dollar will be converted to U.S. dollars using exchange rates obtained from independent pricing services.

The Account securities received by a transferee PIMCO Mutual Fund in a Purchase Transaction will be valued by such portfolio for purposes of the transfer in the same manner and as of the same day as such securities will be valued by the corresponding transferor Account. The value per share of the PIMCO Mutual Funds issued to the Accounts will be based on the net asset value per share of such PIMCO Mutual Fund.[14]

Rule 17a–7 (or the Rule) of the ICA requires a mutual fund registered under the ICA to adopt procedures reasonably designed to ensure that all transaction with such mutual fund have satisfied the conditions of the Rule. The board of directors of such registered mutual fund must, on a quarterly basis, review all transactions conducted under the Rule and make a determination that all such purchases or sales made during the quarter have complied with the procedures adopted by such fund.

As required by the Rule, reports will be prepared and presented to the board of directors of any PIMCO Mutual Fund that has engaged in transactions covered by such Rule. In addition, PIMCO will provide the reports (with respect to Purchase Transactions affecting the client Plan's Account) to any Second Fiduciary of a client Plan which has engaged in a Purchase Transaction with a PIMCO Mutual Fund during the period in question. Such reports will be disseminated by PIMCO to Second Fiduciaries of client Plans by regular mail, express mail or personal delivery, or if applicable, by facsimile or electronic mail, no later than 30 business days after the Purchase Transaction.

The reports will serve both a confirmation and reporting function. Such reports will contain the following information: (a) A list (or lists, if there are multiple Purchase Transactions) identifying each of the securities that was valued for purposes of the Purchase Transaction in accordance with Rule 17a–7(b)(4) of the ICA; (b) the current market price, as of the date of the Purchase Transaction, of each of the securities involved in the Purchase Transaction; (c) the identity of each pricing service or market maker consulted in determining the value of such securities; (d) the aggregate dollar value of the securities held in the Plan Account immediately before the Purchase Transaction; and (e) the number of shares of the PIMCO Mutual Funds that are held by the Account following the Purchase Transaction (and the related per share net asset value and the aggregate dollar value of the shares received) immediately following the Purchase Transaction.

PIMCO's General Compliance with PTE 77–4

12. As noted above, it is anticipated that the Purchase Transactions will occur not only when a new client Plan retains PIMCO as a discretionary fiduciary under the Investment Management Agreement in connection with an existing portfolio of assets, but where PIMCO, while implementing a Strategy for an ongoing client Plan, determines that it is appropriate to invest Plan assets in the PIMCO Mutual Funds under the terms of PTE 77–4. Any individual Plan (or Plan sponsor) that retains PIMCO as an investment manager will pay directly to PIMCO a Plan-level investment management fee in exchange for all investment management services provided to it by PIMCO. PIMCO's fee is usually based on a percentage of the market value of assets under management. For example, if a Plan Account has less than $600 million in aggregate assets, PIMCO's investment management fee will be computed as follows: 0.50 percent on the first $25 million, 0.375 percent on the next $25 million and 0.25 percent thereafter. If the Account has total assets that are in excess of $600 million, PIMCO's investment management fees will reflect 0.25 percent on the first $600 million, 0.20 percent on the next $700 million and 0.15 percent thereafter.

In addition, certain of PIMCO's fee schedules may include incentive-based fee structures, if agreed to by the client Plan's Second Fiduciary.[15] Under a typical incentive fee arrangement, PIMCO will earn its annual base fee of 20 basis points. Thereafter, PIMCO will earn an additional 20 percent of the excess of an Account's performance over a designated independent index, such as the Lehman Aggregate Bond Index.

Further, client Plans may request customized products and services, and fees for such services may be separately negotiated. As mentioned above, the size of the fee will vary in inverse proportion to the size of the Plan's Account with PIMCO. Fees are normally paid on a quarterly basis, with some accounts being billed during the quarter for services which are provided, using the asset value at the beginning of the quarter. However, the periods over which fees are calculated and their method of payment will be negotiated in advance and will depend upon the requirements of the individual client.

With respect to any Plan with assets invested in the PIMCO Mutual Funds, PIMCO follows PTE 77–4, under which all investment advisory fees payable to PIMCO by the PIMCO Mutual Funds (currently, 0.02 percent for the Private Account Portfolios) that are attributable to that Plan's investment in the PIMCO Mutual Funds are credited against such Plan's Plan-level investment management fees. The net result of the

exchanges or foreign over-the-counter markets. In the latter case, valuation will be in accordance with Representation 11 above.

[12] In PTE 96–54 (61 FR 37933, July 22, 1996), involving the Wells Fargo Bank, N.A. (Wells Fargo), the ''amortized cost'' method referred to an approach to valuing debt securities that were recognized in different contexts by various regulatory agencies and accounting standard boards. Wells Fargo noted that the amortized cost method is a permitted, rather than required, valuation approach and that the term also refers to the value of a security derived from the methodology. For example, Wells Fargo explained that the SEC's ''Codification of Financial Policies,'' describes in detail the use of the amortized cost methodology and recognizes that a mutual fund's board of directors may determine in good faith that, except in unusual circumstances, amortized cost approximates the fair market value of debt securities with remaining maturities of 60 days or less (based on the cost for securities acquired within 60 days of maturity or fair market value on the 61st day prior to maturity for securities already owned). PIMCO represents that it concurs with Wells Fargo's understanding of the amortized cost method.

[13] PIMCO represents that trading in options and futures on options are among the strategies typically employed by managers of fixed income mutual funds, such as the Private Account Portfolios. Any options not traded on an exchange will be valued in the same manner as other securities which are not traded on an exchange. In addition, PIMCO notes that settlement prices for the options are continuously available during the trading day for exchange-traded options.

[14] For purposes of pricing purchases, net asset value is determined by dividing the value of all securities and assets of each portfolio, less the liabilities charged to each portfolio, by the number of each portfolio's outstanding shares.

[15] PIMCO represents that if the Plan-level investment management fees includes an incentive fee which is calculated and payable to it or to the PIMCO Affiliates, such fee will be in accordance with advisory opinions issued by the Department to Batterymarch Financial Management (see ERISA Advisory Opinion 86–20A, August 29, 1986); BDN Advisers, Inc. (see ERISA Advisory Opinion 86–21A, August 29, 1986); and Alliance Capital Management Corporation (see ERISA Advisory Opinion 89–28A, September 25, 1989). However, in this proposed exemption, the Department expresses on opinion on whether the PIMCO's contemplated fee arrangements are in compliance with the aforementioned advisory opinions.

credit to the Plan is that, with respect to any Plan investments, PIMCO receives only a Plan-level investment management fee. Therefore, the investment of Plan assets in the PIMCO Mutual Funds will not result in additional investment management fees to PIMCO or to the PIMCO Affiliates.[16]

PIMCO may also receive other Fund-level fees for administrative, transfer, accounting, and other secondary services (the Secondary Services)[17] provided to a PIMCO Mutual Fund or to the distributor of shares of the PIMCO Mutual Funds and its affiliates. However, no such fees will be paid to PIMCO pursuant to a 12b-1 Plan. PIMCO represents that the trustees of the PIMCO Mutual Funds and the shareholders of such Funds approve the compensation that PIMCO receives from the PIMCO Mutual Funds. In addition, the trustees of the PIMCO Mutual Funds approve any changes in the compensation paid to PIMCO for services rendered to the PIMCO Mutual Funds.

Currently, PIMCO credits all or a portion of the Fund-level fees it receives from the Private Account Portfolios for Secondary Services that are administrative in nature to the participating Plans in the same manner as PIMCO credits back its Fund-level advisory fees. For certain of these PIMCO Mutual Funds, PIMCO is retaining a portion of such administrative fees in accordance with the Department's advisory opinions involving PNC Financial Corp. (ERISA Advisory Opinion 93–12A, April 27, 1993) and the Frank Russell Company (ERISA Advisory Opinion 93–13A, April 27, 1993).[18]

Finally, PIMCO represents that the combined total of all Plan-level and Fund-level fees received by PIMCO for the provision of services to such Plans and to the PIMCO Mutual Funds, respectively, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

Conditions for Exemption

13. If granted, this proposed exemption will be subject to the satisfaction of certain conditions that will further protect the interests of the Plans. For example, the proposed Purchase Transactions are subject to the prior written authorization of an independent Second Fiduciary, acting on behalf of each of the Plans, who has been provided with full and written disclosure by PIMCO. The Second Fiduciary will generally be the administrator, sponsor, or a committee appointed by the sponsor to act as a named fiduciary for a Plan.

With respect to disclosure, the Second Fiduciary of such Plan will receive full and written disclosure of information concerning the PIMCO Mutual Funds as set forth in the Investment Management Agreement, including (a) a current prospectus or offering memorandum (containing the same information as the prospectus for securities registered under the 1933 Act) for each PIMCO Fund to which the Plan's assets may be transferred; (b) a statement describing the fees to be charged to, or paid by, the Plan and the PIMCO Mutual Funds to PIMCO, including the nature and extent of any differential between the rates of the fees paid by the Fund and the rates of the fees otherwise payable by the Plan to PIMCO; (c) a statement of the reasons why PIMCO considers Purchase Transactions to be appropriate for the Plan; (d) a statement on whether there are any limitations on PIMCO with respect to which Plan assets may be invested in the Funds, and if so, the nature of such limitations; and (e) in the case of a Plan having total assets that are less than $200 million, the identity of all securities that are deemed suitable by PIMCO for transfer to the PIMCO Mutual Funds.

On the basis of the information disclosed, the Second Fiduciary, in the Investment Management Agreement for a client Plan, or in separate Investment Guidelines provided to PIMCO, will authorize in writing the investment of assets of the Plans in shares of the PIMCO Mutual Funds in connection with the Purchase Transactions set forth herein and the compensation received by PIMCO in connection with its services to the PIMCO Mutual Funds. The Second Fiduciary's written authorization will extend to those portfolios of the PIMCO Mutual Funds that are specifically referenced in the Plan's Investment Management Agreement with PIMCO or in separate Investment Guidelines given to PIMCO by the client Plan. (As noted above in Representation 10, such authorization by the Second Fiduciary may include either blanket approval or transactional approval, depending upon the size of the Plan.) Having obtained the authorization of the Second Fiduciary, PIMCO will invest the assets of a Plan, from time to time, among such portfolios of the PIMCO Mutual Funds and in the manner provided in the Investment Management Agreement and the Strategy, subject to satisfaction of the other terms and conditions of this proposed exemption.

In addition to the disclosures provided to the Plan prior to investment in any of the PIMCO Mutual Funds, PIMCO will routinely provide at least annually to the Second Fiduciary of the Plan, updated prospectuses of the PIMCO Mutual Funds or offering memoranda in accordance with the requirements of the ICA and the SEC rules promulgated thereunder. Further, the Second Fiduciary of a Plan will be supplied, upon request, with a report or statement (which may take the form of the most recent financial report of the PIMCO Mutual Funds, the current statement of additional information (or offering memoranda supplement), or some other written statement) which contains a description of all fees paid by the PIMCO Mutual Fund to PIMCO.

In addition to the disclosures provided to the Plan prior to investment in any of the PIMCO Mutual Funds, it is represented that (a) Plans and other investors will purchase or redeem shares in the Funds in accordance with standard procedures adopted by each Fund's board of directors; (b) Plans will pay no sales commissions, redemption fees, or Rule 12b–1 Fees in connection with purchase or redemption of shares in the Funds by the Plans; (c) PIMCO will not purchase from or sell to any of the Plans shares of any of the Funds; (d) PIMCO will maintain for a period of six years, in a manner that is capable for audit and examination, records necessary to enable certain designated persons, such as Plan fiduciaries, Plan participants, or duly authorized employees or representatives of the Department, the Service or the SEC, to determine whether the conditions of the exemption have been met; (e) all dealings in connection with a Purchase Transaction will be on a basis that is no less favorable to a Plan than dealings between the PIMCO Mutual Fund and other shareholders; and (f) the price paid or received by the Plans for shares of the Funds will be the net asset value per share at the time of such purchase or redemption and will be the same

[16] The total annual operating expenses of the portfolios for the PIMCO Mutual Funds are set forth in the offering materials and disclosures given to Plan clients in connection with an investment in such Funds. As noted above, the Private Account Portfolios of the PIMCO Mutual Funds impose an annualized administrative fee, which currently ranges (after appropriate credits) from 0.028 percent for the Real Return Bond Portfolio to 0.04 percent for the International Portfolio.

[17] The term ''Secondary Service'' means a service, other than an investment management, investment advisory or similar service which is provided by PIMCO to the Funds, including, but not limited to, custodial, accounting, administrative, or legal services.

[18] PIMCO represents that the PIMCO Mutual Fund portfolios for which it presently credits back fees for Secondary Services are the Short-Term Fund, the Short-Term II Fund, the U.S. Government Sector II Fund, the Mortgage Fund, the Mortgage II Fund, and the Investment Grade Corporate Fund.

price as any other investor would have paid or received at that time.

The value of the Funds' shares and the value of each Funds' portfolios are determined on a daily basis. Assets are valued at fair market value, as required by Rule 17a–7.[19] Net asset value per share, for purposes of pricing purchases and redemptions, is determined by dividing the value of all securities and other assets of each portfolio, less the liabilities charged to each portfolio, by the number of each portfolio's outstanding shares.

It is represented that the receipt of fees, as described above, is generated by a Plan's investment in the PIMCO Mutual Funds. These investments are the result of purchases of shares with cash and the exchanges of assets of the Plans, including those in Accounts, for shares of the PIMCO Mutual Funds. With respect to such Purchase Transactions, it is represented that Plans and other investors will purchase or redeem shares of the PIMCO Mutual Funds in accordance with standard procedures described in the prospectus (or offering memorandum) for each portfolio of the PIMCO Mutual Funds.

14. In summary, it is represented that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Depending upon the size of an investing Plan, a Second Fiduciary has authorized or will authorize, in writing, a Purchase Transaction prior to its consummation either by blanket approval or by transactional approval after such Second Fiduciary has received full written disclosure of information concerning the Plan's investment in a PIMCO Mutual Fund.

(b) Each Plan has received or will receive shares of a PIMCO Mutual Fund, in connection with a Purchase Transaction, that are equal in value to the assets of the Plan exchanged for such shares, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures set forth in Rule 17a–7 under the ICA, as amended from time to time or any successor rule, regulation or similar pronouncement.

(c) Not later than 30 business days after a Purchase Transaction, a Second Fiduciary of a Plan that has engaged in a Purchase Transaction has received or will receive a report containing the following information: (1) The identity of each of the securities that was valued for purposes of a Purchase Transaction in accordance with Rule 17a–7(b)(4) of the ICA; (2) the current market price, as of the date of the Purchase Transaction, of each of the securities involved in the Purchase Transaction; (3) the identity of each pricing service or market maker consulted in determining the value of such securities; (4) the aggregate dollar value of the securities held in the Plan Account immediately before the Purchase Transaction; and (5) the number of shares of the PIMCO Mutual Funds that are held by the Account following the Purchase Transaction (and the related per share net asset value and the aggregate dollar value of the shares received) immediately following the Purchase Transaction.

(d) The price that has been paid or received or will be paid or received by the Plans for shares in the PIMCO Mutual Funds is the net asset value per share at the time of the transaction and will be the same price for the shares which will be paid or received by any other investor for shares of the same class at that time.

(e) As to each individual Plan, the combined total of all fees received by PIMCO for the provision of services to a Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, has not been in excess, nor will be in excess of ''reasonable compensation,'' within the meaning of section 408(b)(2) of the Act.

(f) No sales commissions, redemption fees, or Rule 12b–1 Fees have been paid or will be paid by a Plan in connection with a Purchase Transaction.

(g) With respect to each Purchase Transaction, the Second Fiduciary has received or will receive a full and detailed written disclosure of information concerning a PIMCO Mutual Fund, including a current prospectus and a statement describing the fee structure, and such Second Fiduciary has authorized or will authorize, in writing, the investment of the Plan's assets in the Fund and the fees paid by the Fund to PIMCO.

(h) In accordance with the requirements of PTE 77–4 and advisory opinions issued by the Department thereunder, (1) the Plans have received or will receive a full credit against Plan-level fees of any investment management, investment advisory or similar fees paid to PIMCO with respect to any of the assets of such Plans that are or will be invested in shares of any of the Funds; and (2) PIMCO may retain fees for certain Secondary Services it performs on behalf of the Funds.

(i) PIMCO will provide ongoing disclosures (e.g., updated prospectuses or offering memoranda) to Second Fiduciaries of Plans so that such fiduciaries may, among other things, verify the fees charged by PIMCO to the PIMCO Mutual Funds.

(j) All dealings between the Plans and any of the PIMCO Mutual Funds have been or will be on a basis that is no less favorable to such Plans than dealings between the PIMCO Mutual Funds and other shareholders holding shares of the same class as the Plans.

Notice to Interested Persons

PIMCO represents that because client Plans that may be potentially interested in engaging in the aforementioned Purchase Transactions cannot be identified at this time, the only practical means of notifying the Second Fiduciaries of such Plans is by the publication of this notice of proposed exemption in the **Federal Register**. Therefore, comments and requests for a hearing must be received by the Department no later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

[19] However, if the use of a money market fund is authorized by a client Plan, the assets would instead be valued based on the amortized cost method authorized by SEC Rule 2a–7 in order to maintain the net asset value at $1.00 per share.

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of January, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.

[FR Doc. 02–2640 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–09; Exemption Application No. D–10984]

Grant of Individual Exemptions; Prudential Insurance Company of America (Prudential Insurance)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption 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).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is 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 exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

The Prudential Insurance Company of America (Prudential Insurance), Located in Newark, NJ

[Prohibited Transaction Exemption 2002–09; Exemption Application No. D–10984]

Exemption

Section I. Covered Transactions

The restrictions of section 406(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 (D) of the Code,[1] shall not apply, effective September 27, 2001, to (1) the receipt of shares of common stock (Common Stock) issued by Prudential Financial, Inc. (Prudential Financial or the Holding Company) or (2) the receipt of cash (Cash) or policy credits (Policy Credits) by any eligible policyholder (the Eligible Policyholder) of Prudential Insurance, which is an employee benefit plan (the Plan), including Plans sponsored by Prudential Insurance and/or its affiliates for the benefit of their own employees (collectively, the Prudential Insurance Plans),[2] in exchange for such Eligible Policyholder's mutual membership interest in Prudential Insurance, pursuant to a plan of conversion (the Plan of Reorganization) adopted by Prudential Insurance and implemented in accordance with section 17:17C–2 of the New Jersey Insurance Law.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply, effective September 27, 2001, to the receipt and holding, by the Prudential Welfare Plan, of Common Stock, whose fair market value exceeds 10 percent of the value of the total assets held by such Plan.

This exemption is subject to the general conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Reorganization is implemented in accordance with procedural and substantive safeguards that are imposed under New Jersey Insurance Law and is subject to review and supervision by the New Jersey Commissioner of Banking and Insurance (the Commissioner).

(b) The Commissioner reviews the terms of any options that are provided to Eligible Policyholders of Prudential Insurance as part of such Commissioner's review of the Plan of Reorganization, and the Commissioner only approves the Plan of Reorganization following a determination that the Plan of Reorganization is fair and equitable to all Eligible Policyholders.

(c) Except as provided below, each Eligible Policyholder has an opportunity to comment on and vote to approve the Plan of Reorganization after full written disclosure of the terms of the Plan of Reorganization is given to such policyholder by Prudential Insurance. As provided under the Plan of Reorganization and approved by the Commissioner,

(1) Eligible Policyholders of policies issued by designated subsidiaries (the Designated Subsidiaries) of Prudential Insurance will not have the opportunity to comment and vote on the Plan of Reorganization, and

(2) Prudential Insurance will be precluded from voting on the Plan of Reorganization where a group policy is issued to Prudential Insurance as trustee for a multiple employer, or similar, trust (the MET).

[1] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[2] Unless otherwise noted, references to the term ''Plan'' are meant to include ''outside'' Plan policyholders of Prudential Insurance as well as the Prudential Welfare Benefits Plan (the Prudential Welfare Plan).

(d) Any election by an Eligible Policyholder which is a Plan to receive Common Stock pursuant to the terms of the Plan of Reorganization, or any decision by such Eligible Policyholder to participate in the commission-free purchase and sale program (the Program), is made by one or more fiduciaries of such Plan that are independent of Prudential Insurance and neither Prudential Insurance nor any of its affiliates exercises any discretion or provides ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c) with respect to such election or decision-making.

(e) In the case of the Prudential Insurance Plans, the independent fiduciary—

(1) Conducts a due diligence review of the subject transactions; and

(2) Votes whether to approve or disapprove the Plan of Reorganization, on behalf of such Plan.

(f) In the case of the Prudential Welfare Plan, the independent fiduciary—

(1) Votes shares of Common Stock that are held by such Plan, which exceed the limitation of section 407(a) of the Act;

(2) Disposes of Common Stock in excess of the limitation set forth under section 407(a)(2) of the Act as soon as reasonably practicable, but in no event later than six months after the effective date of the Plan of Reorganization;

(3) Provides the Department with a complete and detailed final report as it relates to such Plan prior to the effective date of the Plan of Reorganization; and

(4) Takes all actions that are necessary and appropriate to safeguard the interests of such Plan.

(g) After each Eligible Policyholder entitled to receive Common Stock is allocated at least 8 shares (or the equivalent value of 10 shares of Common Stock for Eligible Policyholders receiving Cash or Policy Credits), additional consideration is allocated to Eligible Policyholders who own eligible policies based on a methodology that takes into account each eligible policy's contribution to Prudential Insurance's surplus, which methodology has been reviewed by the Commissioner.

(h) All Eligible Policyholders that are Plans participate in the transactions on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(i) No Eligible Policyholder pays any brokerage commissions or fees in connection with the receipt of Common Stock or in connection with the implementation of the Program.

(j) All of Prudential Insurance's policyholder obligations remain in force and are not affected by the Plan of Reorganization.

(k) The terms of the transactions are at least as favorable to the Plans as an arm's length transaction with an unrelated party.

Section III. Definitions

For purposes of this exemption:

(a) The term ''Prudential Insurance'' means The Prudential Insurance Company of America and any affiliate of Prudential Insurance as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Prudential Insurance includes —

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Prudential Insurance. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.); and

(2) Any officer, director or partner in such person.

(c) The term ''Eligible Policyholder'' means a policyholder who is eligible to receive compensation under Prudential Insurance's Plan of Reorganization. Eligible Policyholders are policyholders of Prudential Insurance on the day the Plan of Reorganization is adopted by the Board of Directors of Prudential Insurance.

(d) The term ''Designated Subsidiary'' means stock life insurance company subsidiaries of Prudential Insurance whose policyholders, pursuant to section 17:17C–1 of New Jersey Insurance Law, have been deemed eligible under the Plan of Reorganization to receive compensation, but which are not qualified to vote on the Plan of Reorganization.

(e) The term ''Holding Company'' refers to a New Jersey stock business corporation which will be named ''Prudential Financial, Inc.'' Under the Plan of Reorganization, Prudential Insurance will become an indirect, wholly owned stock life insurance company subsidiary of the Holding Company.

(f) The term ''Policy Credit'' means a dividend accumulation, an additional dividend, an increase in the policy's account value, an extension of the policy's expiration date, or an additional payment under an annuity contract.

(g) The term ''Plan'' refers to employee benefit plans covered by ERISA or section 4975(e) of the Code.

(h) The term ''demutualization'' refers to the process of an insurance company's reorganizing or converting from a mutual life insurance company to a stock life insurance company. As used herein, ''reorganization'' and ''conversion'' also refer to a demutualization.

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 49408.

Effective Date: This exemption is effective as of September 27, 2001.

Written Comments

The Department received two written comments with respect to the proposed exemption. One comment was submitted by a Plan policyholder of Prudential Insurance who expressed concerns about the demutualization. The other comment was submitted by Prudential Insurance and requested minor clarifications and updates to the proposed exemption.

Discussed below are the comments submitted by the policyholder and Prudential Insurance, as well as responses to such comments made by either Prudential Insurance or the Department.

Plan Policyholder's Comment

Although characterized as a comment, the Plan policyholder objects to the proposed exemption but offers no comments on the covered transactions, their terms, or the conditions of the proposal. Instead, the policyholder expresses general opposition to Prudential Insurance's Plan of Reorganization. In this regard, the Plan policyholder believes that Prudential Insurance's demutualization will impair the security of his insurance policy and is of the view that the Policyholder Information Booklet (the PIB), describing such Plan of Reorganization, is ''biased and inadequate.''

In response, Prudential Insurance indicates that the Plan policyholder's comment is unfounded and notes that the concerns expressed therein have been considered by the Commissioner and independent experts as part of their review of the PIB and the Plan of Reorganization. In addition, Prudential Insurance states that a very small number of policyholders, who submitted objections to the Commissioner, expressed concerns similar to those articulated by the Plan policyholder. Prudential Insurance notes further that the Commissioner, in determining that the Plan of Reorganization is fair and equitable to

Prudential Insurance policyholders and consistent with New Jersey Insurance Law, rejected such comments. Accordingly, Prudential Insurance finds nothing in the Plan policyholder's comment letter to prevent the Department from granting the requested exemption.

Prudential Insurance's Comment

1. *Voting by Prudential Insurance.* Section II(c)(2) of the proposal provides that ''Prudential Insurance will be precluded from voting on the Plan of Reorganization where a group policy is issued to Prudential as trustee for a multiple employer, or similar, trust (the MET) which is not a plan described in section 3(3) of the Act or section 4975(e)(1) of the Code.'' (Emphasis added.) Prudential Insurance states that it did not include the italicized language in the exemption application or in the draft operative language it provided because it could not know whether any particular MET or similar arrangement would qualify as a plan for ERISA purposes, or whether the employers participating in such arrangement would be deemed to have established their own ERISA-covered plans in connection with the arrangement. Therefore, Prudential Insurance recommends deleting the italicized language from Section II(c)(2) of the final exemption.

The Department concurs with this comment and has made the requested deletion in the operative language of the final exemption.

2. *Source of Prudential Insurance's Voting Authority.* In Representation 10 of the proposed exemption, Footnote 23 states that New Jersey Insurance Law precludes Prudential Insurance as a trustee of a MET from voting on the Plan of Reorganization. Prudential Insurance states that the terms of the Plan of Reorganization actually preclude Prudential Insurance from voting in this situation rather than New Jersey Insurance Law. Accordingly, the Department notes this change to Footnote 23 of the proposed exemption.

3. *Status of the Demutualization.* Prudential Insurance explains that its Plan of Reorganization was given final approval by the Commissioner on October 15, 2001. In addition, Prudential Insurance states that on December 13, 2001, it completed its initial public offering and that the stock of Prudential Financial is currently being traded on the New York Stock Exchange.

In response to this comment, the Department has noted these recent developments in Prudential Insurance's demutualization.

Accordingly, after giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption subject to the modifications and clarifications described above. For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10984) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

The Rollover Individual Retirement Account for Brenda A. Moran (the IRA), Located in Hobbs, New Mexico

[Prohibited Transaction Exemption No. 2002–10; Application No. D–11015]

Exemption

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 cash sale (the Sale) of common stock (the Stock) of Bravo Energy Inc. (Bravo) by the IRA [3] to Bravo, a disqualified person with respect to the IRA, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party;

(c) The IRA receives the greater of $14.24 per share of Stock or the fair market value of the Stock at the time of the Sale; and

(d) The IRA is not required to pay any commissions, costs or other expenses in connection with the Sale.

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 December 13, 2001 at 66 FR 64478.

[3] Because Brenda A. Moran (the Applicant) is the only participant in the IRA, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

FOR FURTHER INFORMATION CONTACT: Mr. Khalif Ford of the Department, telephone (202) 693–8560. (This is not a toll-free number.)

Individual Retirement Account of Howard E. Adkins (the IRA), Located in Boise, Idaho

[Prohibited Transaction Exemption 2002–11; Exemption Application No. D–11025]

Exemption

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 by the IRA of an interest (the Interest) in certain real property (the Property) to Moccasin, LLC, a disqualified person with respect to the IRA, [4] provided that the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the IRA pays no commissions nor other expenses relating to the sale; and (3) the sales price received by the IRA equals the Interest's fair market value, as of the date of the sale, as established by a qualified, independent appraiser.

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 December 13, 2001 at 66 FR 64478.

Written Comments

The applicant, Howard E. Adkins, M.D., has provided the Department with the following updated information regarding a change in the value of the IRA's Interest. On November 26, 2001, Dr. Adkins received from the IRA an additional two percent undivided interest in the West Tract of the Property as the minimum required distribution (MRD) for the year 2001. Dr. Adkins had previously received a nine percent undivided interest in the West Tract as the MRD for the year 2000, as described in Item 3 of the Summary of Facts and Representations (the Summary) contained in the Notice. An independent appraisal valued the Property as a whole at $685,700, and the West Tract at $385,320, as of September 18, 2001 (see Item 4 of the Summary). Subtracting the 11 percent minority interest in the West Tract ($385,320 × .11 = $42,385), which is owned individually by Dr. Adkins, the value of the IRA's Interest is thus reduced to

[4] Pursuant to 29 CFR 2510.3–2(d), the IRA is not an employee benefit plan within the jurisdiction of title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

$643,315. The appraisal will be updated at the time of the sale transaction.

Based upon the information contained in the entire record, the Department has determined to grant the proposed exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng 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 exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is 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 this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of January, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–2639 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for the Management and Administration of the Coming Up Taller Awards.

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to one (1) award of a Cooperative Agreement for the management and administration of the Coming Up Taller Awards. The Coming Up Taller Awards annually honor and bring public attention to approximately ten excellent programs that provide education and practical experience in the arts and humanities for at-risk children and youth. The organizations that receive Coming Up Taller Awards receive a grant award from the National Endowment for the Arts. The responsibilities of the successful recipient of the Cooperative Agreement will include assisting in various aspects of the award selection process, design and production of an award ceremony and related events, development and implementation of a media and public information strategy, and maintenance of a web site. Those interested in receiving the Solicitation package should reference Program Solicitation PS 02–01 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored. The Program Solicitation will also be posted on the Endowment's Web site at *http://www.arts.gov.*

DATES: Program Solicitation PS 02–01 is scheduled for release approximately February 19, 2002 with proposals due on March 21, 2002.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements.

[FR Doc. 02–2651 Filed 2–4–02; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board

Nominations for Membership

The National Science Board (NSB) is the policymaking body of the National Science Foundation (NSF). The Board consists of 24 members appointed by the President, with the advice and consent of the Senate, for six-year terms, in addition to the NSF Director *ex officio.* Section 4(c) of the National Science Foundation Act of 1950, as amended, states that: ''The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific and engineering leaders in all areas of the Nation.''

The Board and the NSF Director solicit and evaluate nominations for submission to the President. Nominations accompanied by biological information may be forwarded to the Chairman, National Science Board, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, no later than March 29, 2002. Any questions should be directed to Mrs. Susan E. Fannoney, Staff Assistant, National Science Board Office (703/292–8096).

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–2645 Filed 2–4–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it

displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension: Revision.*

2. *The title of the information collection:* Part 61—Licensing Requirements for Land Disposal of Radioactive Waste (3150–0135).

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Applications for licenses are submitted as needed. Other reports are submitted annually and as other events require.

5. *Who is required or asked to report:* Applicants for and holders of an NRC license for land disposal of low-level radioactive waste, and all generators, collectors, and processors of low-level waste intended for disposal at a low-level waste facility.

6. *The number of annual responses:* 12 (9 reports and 3 recordkeepers).

7. *The estimated number of annual respondents:* 3.

8. *The number of hours needed annually to complete the requirement or request:* 4,059 hours (42 hours for reporting plus 4,017 hours for recordkeeping) or approximately 1,353 hours per respondent.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* Part 61 establishes the procedures, criteria, and license terms and conditions for the land disposal of low-level radioactive waste. Reporting and recordkeeping requirements are mandatory or, in the case of application submittals, are required to obtain a benefit. The information collected in the applications, reports, and records is evaluated by the NRC to ensure that the licensee's or applicant's physical plant, equipment, organization, training, experience, procedures, and plans provide an adequate level of protection of public health and safety, common defense and security, and the environment.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by March 7, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0135), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 30th day of January 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–2733 Filed 2–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 73—Physical Protection of Plants and Materials.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion. Required reports are submitted and evaluated as events occur.

5. *Who will be required or asked to report:* Persons who possess, use, import, export, transport, or deliver to a carrier for transport, special nuclear material.

6. *An estimate of the number of responses:* 77,734.

7. *The estimated number of annual respondents:* 103.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* The industry total burden is 364,805 hours annually (45,835 hours for reporting and 318,970 hours for recordkeeping).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* NRC regulations in 10 CFR part 73 prescribe requirements for establishment and maintenance of a physical protection system with capabilities for protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used. The information in the reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of special nuclear material is in compliance with license and regulatory requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by March 7, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0002), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 30th day of January 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–2737 Filed 2–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[License Number 42–26928–01]

Environmental Assessment, Finding of No Significant Impact, and Notice of Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission is considering authorizing

Core Laboratories, Inc., an exemption to use radioactive markers containing quantities exceeding the limits listed in 10 CFR 30.71 as pipe collar markers in oil and gas wells.

Environmental Assessment

Identification of the Proposed Action

Core Laboratories, Inc. is licensed by the NRC to conduct well logging operations. They have requested, in letters dated July 14, 1997 and February 4, 1998, that the United States Nuclear Regulatory Commission (NRC) grant them an exemption from 10 CFR 39.47 to use radioactive markers containing quantities exceeding the limits listed in 10 CFR 30.71 as pipe collar markers in oil and gas wells. 10 CFR 39.47 specifies that licensees may only use radioactive markers if the individual markers contain quantities not exceeding the quantities listed in 10 CFR 30.71. Core Laboratories requested authorization to use iridium-192, scandium-46, antimony-124, cesium-137, and cobalt-60 markers with activities up to 50 microcuries, as pipe collar markers. 10 CFR 30.71 limits iridium-192, scandium-46, antimony-124, and cesium-137 to 10 microcuries and cobalt-60 to 1 microcurie.

The markers Core Laboratories requested authorization to use are either installed directly into the collars or are placed onto the collar threads and secured between the pipe casing joints and, therefore, are not easily removable. Once installed in a well, the casing and collars are cemented into place. The Supplementary Information section of the proposed rulemaking concerning radioactive markers notes that the reason limiting the activity to those specified in 10 CFR 30.71 was necessary, is ''because it is impracticable for the licensee that installs the radioactive marker to recover the marker when the well owner or operator removes the casings from the well at a later date.'' In its correspondence to NRC, Core Laboratories describes agreements it will have with the well owner/operator, and procedures it will follow to ensure the markers are recovered should the casing and collars be removed prior to a specified date.

Need for the Proposed Action

The exemption is needed so that Core Laboratories, Inc. can carry out its business of logging wells in the oil and gas industry. The higher activity markers allow for more accurate pipe collar location measurements when logging certain oil and gas wells.

Environmental Impacts of the Proposed Action

There will be no significant environmental impact from the proposed action due to the fact that no material is being released into the environment and all of the material is wholly contained within the pipe collars and will be recovered should the casing and collars be removed from the wells.

During operations, the radiation dose will not be significantly greater than occurs normally because of the low activities involved. Compensatory safety measures will be in place at all times when placing or removing the markers into the pipe casing collars and will ensure the markers will be recovered should the casing and collars be removed from the wells.

Alternatives to the Proposed Action

As required by section 102(2)(E) of NEPA (42 USC 4322(2)(E)), possible alternatives to the final action have been considered. The only alternative is to deny the exemption. This option would not produce a gain in protecting the human environment, and would force Core Laboratories, Inc. to only use the lower activity markers specified in the regulation. This may result in Core Laboratories, Inc. having to depend on less accurate pipe collar location measurements when logging oil and gas wells.

Alternative Use of Resources

No alternative use of resources was considered due to the reasons stated above.

Agencies and Persons Consulted

No other agencies or persons were contacted regarding this proposed action.

Identification of Sources Used

Letters from Core Laboratories, Inc. to U.S. Nuclear Regulatory Commission, Region IV, dated July 14, 1997 and February 4, 1998.

Finding of No Significant Impact

Based on the above environmental assessment, the Commission has concluded that environmental impacts that would be created by the proposed action would not have a significant effect on the quality of the human environment and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The licensee's letters dated July 14, 1997 and February 4, 1998, are available for inspection and copying for a fee in the Region IV Public Document Room, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011–8064. The documents may also be viewed in the Agency-wide Documents Access and Management System (ADAMS) located on the NRC web site at *www.nrc.gov.*

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this action may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852), and on the licensee (Core Laboratories, Inc., 9830 Rosprim, Houston, TX 77040); and must comply with the requirements for requesting a hearing set forth in the Commission's regulations, 10 CFR part 2, subpart L, ''Information Hearing Procedures for Adjudications in Materials Licensing Proceedings.''

These requirements, which the request must address in detail, are:

1. The interest of the requestor in the proceeding;
2. How that interest may be affected by the results of the proceeding (including the reasons why the requestor should be permitted a hearing);
3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for hearing is timely—that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (*i.e.*, health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 29th day of January, 2002.

For the Nuclear Regulatory Commission.

John W. N. Hickey,

Chief, Material Safety and Inspection Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–2734 Filed 2–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 50–388]

PPL Susquehanna, LLC, Allegheny Electric Cooperative, Inc., Susquehanna Steam Electric Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR), part 50, section 50.60(a), and Appendix G, for Facility Operating License Nos. NPF–14 and NPF–22 issued to PPL Susquehanna, LLC (PPL, the licensee), for operation of the Susquehanna Steam Electric Station (SSES), Units 1 and 2 (SSES–1 and 2), located in Luzerne County, Pennsylvania. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow PPL to use American Society of Mechanical Engineers (ASME) Code Case N–640 as the basis for establishing the fracture toughness values used in pressure-temperature (P–T) limit calculations. Section 50.60(a) of 10 CFR part 50 requires nuclear power reactors to meet the fracture toughness requirements set forth in 10 CFR part 50, Appendix G. Appendix G of 10 CFR part 50 requires that P–T limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR part 50, Appendix G, states, ''The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' Appendix G of 10 CFR part 50 specifies that the requirements for these limits are the ASME Boiler and Pressure Vessel Code (ASME Code), Section XI, Appendix G, limits. Code Case N–640 permits application of the lower bound static initiation fracture toughness value equation (KI_c equation) as the basis for establishing the P–T curves in lieu of using the lower bound crack arrest fracture toughness value equation (i.e., the KI_a equation, the method invoked by Appendix G to Section XI of the ASME Code) as the basis for the curves.

The proposed action is in accordance with the licensee's application for exemption dated July 17, 2001, as supplemented by letters dated July 26, and October 15, 2001.

The Need for the Proposed Action

ASME Code Case N–640 is needed to revise the method used to determine the P–T limits, since continued use of the present curves unnecessarily restricts the reactor coolant system (RCS) P–T operating window. The RCS P–T operating window is defined by the RPV P–T operating and test limit curves developed in accordance with the ASME Code, Section XI, Appendix G. Continued operation of SSES–1 and 2, with these P–T curves without the relief provided by ASME Code Case N–640 would unnecessarily require the licensee to maintain the RCS temperature in a limited, high-temperature (over 200 °F) operating band during the pressure test. This results in challenges to plant operators in maintaining the RCS within the narrow allowable temperature band and challenges to personnel safety due to the high ambient drywell temperatures. Implementation of the proposed P–T curves, as allowed by ASME Code Case N–640, does not significantly reduce the margin of safety and would eliminate the challenges to plant operators and personnel safety by allowing the pressure test to be conducted at a lower coolant temperature.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the exemption described above would provide an adequate margin of safety against brittle failure of the SSES–1 and 2 RPVs.

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 nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in 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 Susquehanna Steam Electric Station, dated June 1981.

Agencies and Persons Consulted

On December 17, 2001, the staff consulted with the Pennsylvania State official, Mr. Michael Murphy of the Pennsylvania Department of Environmental Protection, 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 July 17, 2001, as supplemented by letters dated July 26, and October 15, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems Public Library (ADAMS) 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 30th day of January 2002.

For the Nuclear Regulatory Commission.

Joel T. Munday,

Acting Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–2738 Filed 2–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of February 4, 11, 18, 25, March 4, 11, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 4, 2002

Wednesday, February 6, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)

9:30 a.m.
Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

Week of February 11, 2002—Tentative

There are no meetings scheduled for the Week of February 11, 2002.

Week of February 18, 2002—Tentative

Tuesday, February 19, 2002

1:55 p.m.
Affirmation Session (Public Meeting) (If needed)

2 p.m.
Meeting with the Advisory Committee on the Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Angela Williamson, 301–415–5030)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of February 25, 2002—Tentative

Friday, March 1, 2002

9:30 a.m.
Briefing on Status of Office of the Chief Financial Officer (OCFO) Programs, Performance, and Plans (Public Meeting) (Contact: Lars Solander, 301–415–6080)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of March 4, 2002—Tentative

Monday, March 4, 2002

2 p.m.
Briefing on Status of Nuclear Waste Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of March 11, 2002—Tentative

There are no meetings scheduled for the Week of March 11, 2002.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information

By a vote of 5–0 on January 29 and 30, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of 1) Dominion Nuclear Connecticut Inc. (Millstone Nuclear Power Station, Units 2 and 3) Petition for Reconsideration of CLI–01–24 and 2) Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility); Georginas Against Nuclear Energy's Motion for Reconsideration of CLI–01–28'' be held on January 30, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, D.C. 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: January 31, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–2801 Filed 2–1–02; 10:23 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 11, 2002 through January 24, 2002. The last biweekly notice was published on January 22, 2002 (67 FR 2917).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the

Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 7, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: December 13, 2001.

Description of amendments request: The amendments would lower the maximum allowable differential pressure across the Engineered Safety Features (ESF) ventilation system units when tested at specified system flowrates.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification (TS) 5.5.11, Ventilation Filter Testing Program (VFTP) establishes a program for requiring testing of Engineered Safety Feature (ESF) filter ventilation systems in accordance with appropriate regulatory guidance.

PVNGS [Palo Verde Nuclear Generating Station] calculations 13–MC–HJ–0804 and 13–MC–HF–0902 were developed to document the design basis and testing standard positions that PVNGS has taken concerning the Control Room Essential Filtration System (CREFS) air filtration units (AFUs) and the ESF Pump Room Exhaust Air Cleanup System (PREACS) AFUs. These calculations established a lower design dirty filter differential pressure (D/P) to ensure that the AFUs are capable of delivering the design flows at 100% maximum dirty filter condition and also able to meet the adsorber residence time when the filters are clean. Design margin of the AFUs is validated via analyses performed in the referenced calculations and confirmed by the various startup and surveillance tests.

The analyses established a more restrictive design criteria than that which is currently listed in TS 5.5.11.d. The new D/P limit for the CREFS AFUs is less than or equal to 4.8 inches water gauge (iwg). The new D/P limit for the PREACS AFUs is less than or equal to 5.2 iwg. This applies to all three of the PVNGS units. Each PVNGS unit is equipped with two CREFS and two PREACS AFUs.

These essential AFUs are not event initiators. The essential CREFS and PREACS AFUs are used to mitigate the consequences of a postulated accident as discussed in Updated Final Safety Analysis Report (UFSAR) Sections 15.6 and 15.7. The proposed change in filter D/P for dirty filter conditions does not increase the probability of an accident previously evaluated.

The accident analyses that could be affected by the proposed changes to the CREFS and PREACS AFUs are addressed in the calculations which determine the expected radiological doses in the control room, at the Exclusion Area Boundary (EAB), and in the Low Population Zone (LPZ) resulting from postulated accidents. The efficiency of the essential AFU filter and charcoal adsorber as well as adsorber residence time and airflow rate are required parameters to evaluate the removal of radioactive gases and particulates from the postulated accidents evaluated in UFSAR Chapter 15. However, the proposed changes to the essential AFUs D/P limits ensure that PVNGS remains within existing licensing bases for radiological consequences of fuel handling accidents and LOCA events.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The purpose of the essential AFUs (CREFS and PREACS) is to mitigate the consequences of an accident and as such, they are not plant accident initiators.

The proposed changes in filter D/P limits for these essential AFUs do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operations. The proposed changes in the filter D/P limit for dirty filter conditions ensure that PVNGS remains within existing licensing bases for radiological consequences of fuel handling accidents and LOCA [loss-of-coolant accident] events and are not initiators of any new or different kinds of accidents.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change in the allowed maximum D/P across the filter in a dirty condition is a more conservative and restrictive change (less than or equal to 4.8 inches of water (iwg) for the CREFS units and 5.2 iwg for the PREACS units) than the current value of ''less than 8.4 iwg'' in Technical Specification 5.5.11.d. Under these conditions, the AFUs are required to deliver the design flows at a lower maximum D/P, which increases the structural safety margin of the filters. At the same time, the charcoal adsorber residence time requirements are met for the higher fan flowrate achieved with clean filters. The variations in diesel generator output voltage and frequency and its effects on the airflows and adsorber residence time are bounded by the design value parameters as demonstrated in calculations 13–MC–HJ–0804 and 13–MC–HF–0902. As such, the proposed changes ensure that PVNGS remains within existing licensing bases.

Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Carolina Power & Light Company (CP&L), Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The amendment would revise Technical Specifications Section 5.6.5, ''Core Operating Limits Report (COLR)'' to add a report to the list of documents describing the approved methodologies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

* * * [The report proposed to be added to the COLR references is under generic review by NRC and, if approved, will be adopted for use.] Analyzed events are assumed to be initiated by the failure of plant structures, systems, or components. The core operating limits developed in accordance with the new methodology will be bounded by any limitations in the NRC acceptance in its safety evaluations of the new methodologies. The topical report associated with the new methodology demonstrates that the integrity of the fuel will be maintained during normal operations and that design requirements will continue to be met. The proposed change does not involve physical changes to any plant structure, system, or component. Therefore, the probability of occurrence for a previously analyzed accident is not significantly increased.

The consequences of a previously analyzed accident are dependent on the initial conditions assumed for the analysis, the behavior of the fuel during the analyzed accident, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. The proposed methodology continues to meet applicable design and safety analyses acceptance criteria. The proposed change does not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. As a result, no analysis assumptions are violated and there are no adverse effects on the factors that contribute to offsite or onsite dose as the result of an accident. The proposed change does not affect setpoints that initiate protective or

mitigative actions. The proposed change ensures that plant structures, systems, or components are maintained consistent with the safety analysis and licensing bases. Based on this evaluation, there is no significant increase in the consequences of a previously analyzed event.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve any physical alteration of plant systems, structures, or components, other than allowing for fuel design in accordance with NRC approved methodologies. The proposed methodology continues to meet applicable criteria for LBLOCA [large-break loss-of-coolant accident] analysis. No new or different equipment is being installed. No installed equipment is being operated in a different manner. There is no alteration to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. As a result no new failure modes are being introduced. There are no changes in the methods governing normal plant operation, nor are the methods utilized to respond to plant transients altered. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The margin of safety is established through the design of the plant structures, systems, and components, through the parameters within which the plant is operated, through the establishment of the setpoints for the actuation of equipment relied upon to respond to an event, and through margins contained within the safety analyses. The proposed change in the methodology used for LBLOCA analyses does not impact the condition or performance of structures, systems, setpoints, and components relied upon for accident mitigation. The proposed change does not significantly impact any safety analysis assumptions or results. Therefore, the proposed change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Richard P. Correia.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: December 6, 2001.

Description of amendment request: The proposed amendments would revise the Technical Specification (TS) 3.7.16, ''Control Room Area Cooling System (CRACS),'' which currently requires entry into TS 3.0.3 when two trains of CRACS are inoperable. The proposed amendments would allow 6 hours to restore the operability of one train.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Loss of CRACS for the duration of the Completion Time is not a safety concern because equipment in the control area is suitable for considerably higher temperatures than will be experienced within the Completion Time.

The accidents evaluated in the UFSAR [Updated Final Safety Analysis Report] are not initiated by the CRACS or loss of the CRACS. Furthermore, the CRACS is not directly credited for mitigation of the accidents evaluated in the UFSAR. The CRACS does perform a support function to maintain environmental conditions for equipment that does help mitigate accidents. The proposed change does extend the total time from loss of a second required train until entry into the required MODEs. However, analysis confirms that the CRACS function is not required for a number of hours (i.e. 18 or more), which is substantially greater than the proposed Completion Time of 6 hours. The proposed Completion Time of 6 hours allows reasonable time for restoration prior to initiation of shutdown while leaving sufficient time to reach hot shutdown. The probability of an accident or event occurring during this Completion Time is acceptably low.

The current TS may require simultaneous reduction in power and shutdown of all three Units. Such action is not without some risk. Allowing the requested limited additional time to restore control area cooling reduces some risk factors by not changing plant power level in response to a minor problem that does not constitute a safety concern. If the initiation of shutdown of the affected units does become necessary, this change would allow operators more flexibility to sequence the shutdowns to minimize overall operator burden and the impact of simultaneous shutdowns.

In summary, this change will not involve a significant increase in the probability or consequences of any previously evaluated accident.

2. Do the proposed changes create the possibility of new or different kind of accident from any previously evaluated?

Response: No.

No new or different kind of accident has been identified as a result of this Technical Specification change.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The accidents evaluated in the UFSAR are not initiated by the CRACS or loss of the CRACS. The loss of the CRACS was screened out of the Oconee PRA and is not modeled in the present Oconee PRA as either an initiating event or as a support system failure. Temperature transient analyses calculate the time to reach the limiting design temperature of required systems, structures, or components supported by CRACS. Current analyses show CRACS is not required to perform a support function for at least 18 hours.

This 18 hour time is not used to calculate the consequences or impact on fission product barriers if CRACS is not restored. Instead this time is used to prioritize activities to restore CRACS and is substantially greater than the proposed 6 hour Completion Time. As discussed above, this allows reasonable time for restoration prior to initiation of shutdown, while leaving sufficient time to reach hot shutdown. Since either the CRACS function will be restored or the affected unit(s) will be shutdown, this change would not result in a change of, or challenge to, the design basis limit for a fission product barrier.

This change does not involve a departure from a method of evaluation used for evaluating behavior or response of the facility or supported components.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The proposed amendments would revise the Technical Specification 5.6.5.b to eliminate the revision number and dates of the topical reports that contain the analytical methods used to determine the core operating limits. This proposed change is consistent with

TSTF (Technical Specification Task Force)–363.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would implementation of the changes proposed in this LAR [license amendment request] involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR makes an administrative change to the Technical Specifications made necessary as part of Duke's implementation of revised NRC regulations. The changes proposed to these TS have no substantive impact on the Oconee licensing bases, nor Duke's ability to conservatively evaluate changes to these licensing bases. Therefore, the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR makes administrative changes that have no impact on any accident analyses.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The proposed changes are administrative, an implementation of the revised 10CFR50.59 regulation. Implementation of the revised 10CFR50.59 regulation provides the necessary regulatory requirements to ensure that nuclear plants' margin of safety is preserved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard J. Laufer, Acting.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: December 3, 2001.

Description of amendment request: Energy Northwest is requesting a revision to the technical specifications (TSs) and licensing and design bases to reflect the application of alternative source term methodology. The alternative source term analyses have been performed without crediting secondary containment during fuel handling accidents. As such, the proposed license amendment relaxes operability requirements during fuel handling and core alterations for: (1) secondary containment; (2) secondary containment isolation instrumentation; and (3) the standby gas treatment system. The alternative source term analyses have also been performed without crediting the main steam leakage control system; therefore, the licensing basis and the TS are being revised to reflect the proposed deactivation of the system. The license amendment request also addresses the establishment of secondary containment vacuum under adverse environmental conditions. In addition, the amendment request increases the allowed amount of unfiltered control room leakage into the control room.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The alternative source term does not affect the design or operation of the facility; rather, once the occurrence of an accident has been postulated, the new source term is an input to evaluate the consequence. The implementation of the alternative source term methodology has been evaluated in revisions to the analyses of the following limiting design basis accidents at Columbia Generating Station:

- Control Rod Drop Accident
- Fuel Handling Accident
- Main Steam Line Break Accident
- Loss of Coolant Accident

Based upon the results of these analyses, it has been demonstrated that, with the requested changes, the dose consequences of these limiting events are within the regulatory guidance provided by the NRC for use with the alternative source term. This guidance is presented in 10 CFR 50.67 and associated Regulatory Guide 1.183, and Standard Review Plan Section 15.0.1.

Requirements for secondary containment operability, secondary containment isolation valves, and the standby gas treatment system during fuel movement or core alterations are being eliminated. This is acceptable because, with the application of alternative source term methodology, secondary containment is not credited for the fuel handling accident. The licensing basis is being revised to reflect the proposed deactivation of the main steam leakage control system. This is acceptable because, with the application of alternative source term methodology, no credit is assumed for the system in the accident analyses.

With regard to the Justification for Continued Operation regarding the establishment of secondary containment vacuum under adverse environmental conditions, the proposed changes to the secondary containment and standby gas treatment system Technical Specifications and application of alternative source term methodology ensures that secondary containment draw-down and bypass leakage are within the assumptions of the applicable safety analysis.

With regard to the previously-identified Unreviewed Safety Question pertaining to increased unfiltered control room in-leakage into the control room envelope, application of alternative source term methodology has shown that in-leakage rates in excess of tested values would result in control room doses below the regulatory limit.

Therefore, operation of Columbia Generating Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The alternative source term does not affect the design, functional performance or operation of the facility. Similarly, it does not affect the design or operation of any structures, systems or components equipment or systems involved in the mitigation of any accidents, nor does it affect the design or operation of any component in the facility such that new equipment failure modes are created.

Requirements for the main steam leakage control system are being deleted by this proposed amendment request. This is acceptable because the system no longer meets the criteria of 10 CFR 50.36. With the application of alternative source term methodology, no credit is assumed for the system in the accident analyses. Furthermore, since the main steam leakage control system is a mitigating system, it cannot create the possibility of an accident.

Requirements for secondary containment operability, secondary containment isolation valves, and the standby gas treatment system during fuel movement or core alterations are being eliminated. This is also acceptable because, with the application of alternative source term methodology, secondary containment is not credited for the fuel handling accident.

Therefore, the operation of Columbia Generating Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The changes proposed are associated with the implementation of a new licensing basis for Columbia Generating Station. Approval of the basis change from the original source term developed in accordance with TID–14844 to a new alternative source term as described in Regulatory Guide 1.183 is requested by this submittal. The results of the accident analyses revised in support of this submittal, and the requested Technical Specification changes, are subject to revised acceptance criteria. These analyses have been performed using conservative methodologies.

Safety margins and analytical conservatisms have been evaluated and are satisfied. The analyzed events have been carefully selected and margin has been retained to ensure that the analyses adequately bound postulated event scenarios. The dose consequences of these limiting events are within the acceptance criteria also found in the latest regulatory guidance. This guidance is presented in 10 CFR 50.67 and associated Regulatory Guide 1.183.

The proposed changes can be made while still satisfying regulatory requirements and review criteria, with significant margin. The changes continue to ensure that the doses at the exclusion area and low population zone boundaries, as well as the control room, are within the corresponding regulatory limits.

Therefore, operation of Columbia Generating Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: September 7, 2001 as revised December 17, 2001. This notice supersedes (66 FR 52799) published on October 17, 2001, which was based upon the licensee's application dated September 7, 2001.

Description of amendment request: The amendment would revise the Post Accident Monitoring Instrumentation Technical Specifications to ensure that licensee commitments to Regulatory Guide 1.97 are properly reflected.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

The proposed amendment involves rewording or reformatting of technical specification requirements regarding certain post accident monitoring instrumentation at Indian Point 3, to improve the usability of the specification. The proposed rewording of the required channels for core exit temperature adopts the wording from the Standard Technical Specifications, which is applicable to the Indian Point 3 design. New condition entry statements are added in Condition C as an alternate formatting method which replaces the existing approach of using notes in the instrumentation list in Table 3.3.3–1, for certain instrument channels. Similarly, combining two existing functions into one new function is an improved formatting method that eliminates the need for a note in the Table. None of these proposed changes affect the requirements established in the existing specification.

Post accident monitoring instrumentation is a tool used by plant operators to conduct diagnostic activities outlined in plant emergency operating procedures. The presence or absence of this instrumentation does not influence accident initiators for accidents previously analyzed. Also, this instrumentation is not credited to support automatic responses for accident mitigating systems or equipment. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed amendment involves rewording or reformatting of technical specification requirements to improve the usability of the specification for certain post accident monitoring instrumentation at Indian Point 3. The proposed amendment does not involve any changes to plant equipment, setpoints, or the way in which the plant is operated. The proposed amendment maintains the existing requirements for post accident monitoring instrumentation using an improved presentation format. Therefore the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed license amendment involve a significant reduction in a margin of safety?

Response:

The proposed amendment involves rewording or reformatting of technical specification requirements to improve the usability of the specification for certain post accident monitoring instrumentation at Indian Point 3. The proposed rewording of the required channels for core exit temperature adopts the wording from the Standard Technical Specifications, which is applicable to Indian Point 3. Use of the standard wording ensures consistent application of the requirements for this post accident monitoring function. Similarly, reformatting the specification to use new condition entry statements, rather than the existing notations in the Table will improve the usability of the specification and ensure that the intended requirements will be consistently applied.

The proposed changes do not delete or modify existing requirements or add new requirements. The changes involve rewording or reformatting of existing requirements and provide an improved method of stating the requirements intended in the existing specification. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Joel T. Munday, Acting.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: January 16, 2002.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to permit functional testing of the emergency diesel generators (EDGs) to be performed during power operation. The proposed changes will add a footnote to Surveillance Requirement 4.8.1.1.2.g.7 regarding the 24-hour functional test of the EDGs. The changes are based on an integrated review of deterministic design basis factors, and an evaluation of plant risk using probabilistic safety assessment (PSA) techniques.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The function of the emergency diesel generators is to supply emergency power in the event of a LOOP. Operation of the EDGs is not a precursor to any accident. The EDGs provide assistance in accident mitigation. There are no technical changes related to the acceptance criteria of the surveillance requirement. The proposed change requesting that the scheduling aspects of the surveillance requirements be changed to accommodate improved planning capability for testing does not affect the accident analyses. The EDG that is being tested will be considered inoperable however, the remaining required EDGs would be operable during the test and they are capable of supporting the safe shutdown of the plant. The Probabilistic Safety Assessment (PSA)

results fall below the Acceptance Guidelines for TS changes contained in Regulatory Guides 1.174 and 1.177; therefore, the risk of performing the EDG 24-hour run during POWER OPERATION has only a small quantitative impact on plant risk. Therefore, the proposed change to permit the 24-hour functional test of the EDGs to be performed during POWER OPERATION does not significantly increase the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not include any physical changes to plant design or a change to current Surveillance Requirement acceptance criteria. Performance of the Surveillance Requirement during POWER OPERATION results in equipment out of service, inoperable EDG, which is addressed by current Technical Specification limiting condition for operation. Therefore, performance of the EDG 24-hour functional testing during POWER OPERATION does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed changes are associated with surveillance requirements for the EDGs. The proposed changes allow the EDG 24-hour functional testing to be performed during POWER OPERATION. Performing the functional test during POWER OPERATION will not impact the plant design bases or safety analyses because the affected EDG will be declared inoperable during the test. During the time that the EDG in test is declared inoperable, the system is considered to be exempt from the single failure criterion such that adequate emergency power will remain available to support the system design bases.

From a design basis perspective, the inoperable EDG effectively represents a single failure for the system. Since the emergency power system is designed to accomplish its system safety functions with only two of the three EDGs in service, and recovery of a failed component is not credited in the plant safety analysis (i.e., the single failure remains in effect for the entire accident sequence), removing an EDG from service to perform a 24-hour functional test during POWER OPERATION will not reduce the margin of safety assumed in the plant safety analyses.

The Probabilistic Safety Assessment (PSA) results fall below the Acceptance Guidelines for TS changes contained in Regulatory Guides 1.174 and 1.177. Therefore, the risk of performing the EDG 24-hour run during POWER OPERATION has only a small quantitative impact on plant risk.

An integrated assessment of the risk impact of performing the 24-hour functional test during POWER OPERATION for a single inoperable EDG has determined that the risk contribution is small and is within regulatory guidelines. Therefore, facility operation in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit No. 2, Oswego County, New York

Date of application for amendment: December 26, 2001.

Brief description of amendment: The licensee proposed to revise Table 3.6.1.3–1, ''Secondary Containment Bypass Leakage Paths Leakage Rate Limits,'' of the Technical Specifications to re-designate two feedwater system air-operated primary containment isolation valves (PCIVs) as simple check valves. Upon approval by the NRC staff, the licensee would modify the air-operated PCIVs to become simple check valves. The simple check valves will perform the same function as the air-operated valves during normal and accident conditions. This design change only affects the nonsafety-related remote testing and position indication design features of the feedwater check valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided its analysis of the issue of no significant hazards consideration. The NRC staff reviewed the licensee's analysis and has performed its own, which is presented below:

1. Does the amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment does not affect the probability of previously evaluated accidents because the affected PCIVs were not presumed to be initiators or precursors of any accident. The modified valves will continue to perform the same function as before. The modified valves will not alter or prevent the ability of existing structures, systems, or components to perform their intended safety or accident-mitigating functions depicted in the Updated Final Safety Analysis Report. The proposed amendment and the underlying design change will not prevent the unit to continue to comply with applicable regulatory requirements. As a result, the proposed amendment will not alter the conditions or assumptions used in previously evaluated accidents, specifically, the feedwater line break accident outside containment, and the loss-of-coolant accident.

Therefore, operation in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment would lead to modification of air-operated PCIVs to become simple check valves. The modified valves will continue to perform the same function (i.e., prevent back flow in the feedwater line). Furthermore, the modified valves would not alter or prevent the ability of structures, systems, or components to perform their intended safety or accident mitigating functions. Thus, previously evaluated accident scenarios would not be altered by the proposed amendment.

Accordingly, the proposed amendment and the resulting design modification do not create any new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

No. The proposed amendment does not change any analysis methodology, safety limits or acceptance criteria. The modified valves will have the same level of performance as before.

Therefore, operation in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: L. Raghavan (Acting).

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 19, 2001.

Description of amendment request: The proposed amendment would extend the completion time under Technical Specification (TS) Section 3.8.4.A to allow replacement of 125 VDC Batteries 1D1 and 1D2 while at power (Mode 1). The proposed amendment would add required actions 3.8.4.A.2.1 and 3.8.4.A.2.2 as one-time-only alternates and a conditional note following 3.8.4.A.1 to allow replacement of the 125 VDC batteries during a 10-day period for each battery. This TS change would be applicable one-time only, for each battery.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

During the replacement of the existing station batteries, a temporary battery will provide the same function as the battery being removed. Even though this temporary battery will not meet seismic requirements, it will be assembled from safety-related Class 1E cells. The temporary battery will be subjected to surveillance testing prior to being utilized to confirm serviceability. The respective DC bus will be continuously energized by the existing battery charger. A backup swing charger will also be available which is a normal part of system configuration.

This one-time change also requires that required features be declared inoperable when the associated 125 VDC source is inoperable and the redundant required feature(s) are also inoperable for at least four hours. This action is intended to provide assurance that a loss of onsite power, during the period that a 125 VDC source is inoperable, does not result in a complete loss of safety function of critical systems. The completion time is intended to allow the operator time to evaluate and repair any discovered inoperabilities.

Due to the limited duration of the activity, the very low probability of a seismic event over this limited extended completion time, and the planned implementing contingency actions, a significant increase in the probability of an accident previously evaluated does not occur. The proposed change does not affect accident initiators or precursors, or design assumptions for the systems or components used to mitigate the consequences of an accident as analyzed in Chapter 15 of the DAEC UFSAR. The other division of DC power will remain operable to support design mitigation capability. Therefore, the proposed one-time completion time TS amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

During the replacement of the existing station batteries, a temporary battery will provide the same function as the batteries being removed. Even though this temporary battery does not meet the seismic requirements, it possesses adequate capacity to fulfill the safety-related requirements of supplying necessary power to the associated 125VDC bus. Because the temporary battery will perform like the station battery that is currently installed, no new electrical or functional failure modes are created. The temporary battery will be located in the turbine building which is non-seismic. The temporary battery will not be placed into seismically mounted racks. Thus, a seismic failure of this temporary battery is possible. The failure, if it does occur, would not create a new or different kind of accident from accidents previously evaluated.

This one-time change also requires that required features be declared inoperable when the associated 125 VDC source is inoperable and the redundant required feature(s) are also inoperable for at least four hours. This action is intended to provide assurance that a loss of onsite power, during the period that a 125 VDC source is inoperable, does not result in a complete loss of safety function of critical systems. The completion time is intended to allow the operator time to evaluate and repair any discovered inoperabilities.

The proposed one-time change does not introduce any new accident initiators or precursors or any new design assumptions for those systems or components used to mitigate the consequences of an accident. Therefore, the possibility of a new or different kind of accident from any previously evaluated has not been created. Thus, the proposed one-time completion time extension TS amendment does not create the possibility of a new of different kind of accident from any previously evaluated.

(3) The proposed amendment will not involve a significant reduction in a margin of safety.

During the replacement of the existing station batteries, a temporary safety-related battery will perform the same function as the battery being removed. Even though this battery will not be seismically mounted, it will be assembled from safety-related Class 1E cells. The battery is functionally similar to the safety-related battery that is already installed. It will possess adequate capacity to fulfill the requirements of the associated 125VDC bus. The proposed replacement activity will not prevent the plant from mitigating a Design Basis Accident (DBA) during events that result in the loss of power from the temporary battery. In these cases, the remaining DC power supporting the design mitigation capability will be maintained. Due to the limited duration of the activity, the very low probability of a seismic event over this limited extended completion time, and the planned implementing contingency actions, a significant reduction in the margin of safety will not result. The associated DC bus will always be supplied by either the temporary battery and/or the battery charger at all times. In addition a spare swing battery charger is available. As a result, there is no significant reduction in the margin of safety.

This one-time change also requires that required features be declared inoperable when the associated 125 VDC source is inoperable and the redundant required feature(s) are inoperable for at least four hours. This action is intended to provide assurance that a loss of onsite power, during the period that a 125 VDC source is inoperable, does not result in a complete loss of safety function of critical systems. The completion time is intended to allow the operator time to evaluate and repair any discovered inoperabilities.

Therefore, this proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Al Gutterman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: William D. Reckley, Acting Section Chief.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: July 30, 2001, as supplemented September 7, October 16, and December 5, 2001, and January 18, 2002.

Description of amendment request: This notice supercedes a notice published on November 14, 2001 (66 FR 57123).

The proposed amendments would revise Technical Specification 5.5.12, ''Primary Containment Leakage Rate Testing Program,'' to allow a one-time deferral of the Type A containment integrated leakage rate test (ILRT) at the Susquehanna Steam Electric Station (SSES), Units 1 and 2. The Unit 1 test would be deferred to no later than May 3, 2007, and the Unit 2 test would be deferred to no later than October 30, 2007, resulting in an extended interval of 15 years for performance of the next ILRT at each unit. Additionally the proposed amendments would allow a one-time deferral of the drywell-to-suppression chamber bypass leakage test, Surveillance Requirement (SR) 3.6.1.1.2, so that it would continue to be conducted along with the ILRT, consistent with current practice.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The frequency of Type A testing does not change the probability of an event that results in core damage or vessel failure. Primary containment is the engineered feature that contains the energy and fission products from evaluated events. The SSES IPE [Individual Plant Examination] documents events that lead to containment failure. The frequency of events that lead to containment failure does not change because it is not a function of the Type A test interval. Containment failure is a function of loss of safety systems that shutdown the reactor, provide adequate core cooling, provide decay heat removal, and loss of drywell sprays.

Similarly, the frequency of the SR 3.6.1.1.2 bypass test does not change the probability of an event that results in core damage or vessel failure since they are not a function of the bypass test.

The consequences of the evaluated accidents are the amount of radioactivity that is released to secondary containment and subsequently to the public. Normally, extending a test interval increases the probability that a Structure, System, or Component will fail. However, NUREG–1493, Performance-Based Containment Leak-Test Program, states that calculated risks in BWR's is very insensitive to the assumed leakage rates. The remaining testing and inspection programs provide the same coverage as these tests, and will maintain containment leakage at appropriately low levels. Any leakage problems will be identified and repairs will be made. Additionally, the containment is continuously monitored during power operation. Anomalies are investigated and resolved. Thus there is a high confidence that [containment] integrity will be maintained independent of the Type A test and SR 3.6.1.1.2 bypass test frequency.

Therefore, this proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously analyzed?

Primary containment is designed to contain energy and fission products during and after an event. The SSES IPE identifies events that lead to containment failure. The proposed revision to the Type A and SR 3.6.1.1.2 test interval does not change this list of events. There are no physical changes being made to the plant and there are no changes to the operation of the plant that could introduce a new failure mode creating an accident or affecting mitigation of an accident.

Therefore, this proposed amendment does not involve a possibility of a new or different kind of accident from any previously analyzed.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed one time extension to the Type A test frequency and the frequency of SR 3.6.1.1.2 from 10 to 15 years does not involve a significant reduction in margin of safety.

The tests are performed to ensure the degree of reactor containment structural integrity and leak-tightness considered in the plant safety analysis is maintained. These proposed changes do not affect the degree of leak-tightness nor structural integrity of the containment. These proposed changes only affect the frequency by which the tests are performed. The test acceptance criteria are not affected.

The proposed TS changes do not involve a change in the manner in which any plant system is operated or controlled.

The proposed TS changes do not affect the availability of equipment associated with containment integrity that is assumed to operate in the plant safety analysis.

The NUREG–1493 generic study of the effects of extending containment leakage testing found that a 20-year interval in Type A leakage testing resulted in an imperceptible increase in risk to the public. PPL analyses determined the total integrated risk and [Large Early Release Frequency] LERF increase is not significant. NUREG–1493 found that, generically, the design containment leakage rate contributes a very small amount of individual risk and would have minimal affect since most potential leakage paths are detected by Type B and Type C testing. Type B and Type C testing combined with visual inspection programs will maintain containment leakage at appropriately low levels.

The vacuum breaker leakage test (SR 3.6.1.1.3) and stringent acceptance criteria, combined with the negligible non-vacuum breaker leakage area and thorough periodic visual inspection, provide an equivalent level of assurance as the SR 3.6.1.1.2 bypass test. PPL analyses determined the total integrated risk and LERF increase is not significant.

The combination of the factors described above ensures that the proposed changes do not represent a significant reduction on margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: J. Munday, Acting.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: November 1, 2001.

Description of amendment request: The proposed changes would modify the provisions under which equipment may be considered operable when either its normal or emergency power source is inoperable. Technical Specifications (TSs) Section 3.0.5 will be deleted under this proposal, and additional limiting conditions for operation (LCO) will be incorporated into electrical power systems TS 3.8.1.1, A.C. Sources—Operating. The corresponding TS Bases will be modified accordingly. The proposed changes are consistent with the recommendations contained in NUREG–1431, Rev. 2, ''Standard Technical Specifications for Westinghouse Plants.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The design of the AC electrical power system ensures that sufficient power will be available for engineered safeguards equipment required for safe shutdown of the facility and mitigation of accident conditions. Initial conditions of design basis accidents and transients in the Accident Analysis assume required engineered safeguards systems are operable and will function in order to maintain plant response within design limits. The proposed changes to action times do not affect the probability that any accident will occur. Since the minimum configuration of equipment assumed in the Accident Analysis will remain available, there will similarly be no increase in consequences of any accident.

The proposed changes to action times are consistent with the Westinghouse Standard Technical Specification (STS) requirements. This specification is intended to provide assurance that an event coincident with a failure of the associated normal or emergency power supply will not result in complete loss of safety function of critical required systems. The completion time allows the operator time to evaluate and repair any discovered inoperability. The given time periods are considered acceptable because they minimize risk while allowing time for restoration before subjecting the unit to transients associated with shutdown. These completion times take into account the capacity and capability of the remaining AC sources, a reasonable time for repairs and the low probability of a design basis accident occurring during this period.

With failure of one offsite power source, the remaining operable offsite circuit and diesel generators (DG) are adequate to supply electrical power to the onsite Class 1E electrical distribution system. At least one complete train of equipment will continue to operate in the same manner as assumed in the analyses to mitigate a design basis

accident, given a failure of one component in a redundant train.

With both required offsite circuits inoperable, onsite emergency AC sources remain available to maintain the unit in a safe shutdown condition in the event of a design basis accident (DBA) or transient. The action completion time is reduced to 12 hours in this case. At least one complete train of equipment will operate as assumed in the analyses to mitigate a design basis accident, given a failure of one component in a redundant train.

With a single emergency diesel generator inoperable, the remaining operable DG and offsite power circuits are adequate to supply power to the onsite Class 1E electrical distribution system. Required actions ensure that a loss of offsite power during this period does not result in a complete loss of safety functions. Four hours is considered an acceptable time period to minimize risk during this condition, while allowing reasonable time for repair.

In any of these scenarios at least one train of equipment will be available to mitigate an accident and bring the plant to a safe shutdown condition, as assumed in the Accident Analysis. There will be no impact to radiological dose consequences.

Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously analyzed.

Expanding the allowable out of service time consistent with requirements of Standard Technical Specifications does not introduce any new or different failure from any previously evaluated or change the manner in which safety systems are operated. The associated system and equipment configurations are no different from those previously evaluated. The change in allowable action times have been considered and determined to be acceptable, without causing additional risk. The conditions of TS 3.8.1 continue to ensure that an event coincident with a failure of the associated normal or emergency power supply will not result in complete loss of safety function of critical required systems.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Involve a significant reduction in a margin of safety.

The power sources and distribution systems are designed to ensure sufficient power is available to supply safety related equipment required for safe shutdown of the facility and mitigation and control of accident conditions. Operability requirements are consistent with initial conditions assumed in the accident analysis. The proposed changes continue to provide assurance that an event coincident with failure of an associated diesel generator or offsite power circuit will not result in complete loss of safety function of critical required redundant systems or equipment.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395 Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: August 7, 2001.

Description of amendment request: SCE&G proposes a change to Table 3.3–2 of the Virgil C. Summer Nuclear Station Technical Specifications Surveillance Requirements to include a response time requirement of 0.5 seconds for the Source Range (SR) Neutron Flux Reactor Trip. The proposed change results from SCE&G's review of Westinghouse Nuclear Safety Advisory Letter NSAL–00–016. This NSAL notified SCE&G that the SR Neutron Flux Reactor Trip is implicitly credited within the accident analyses for the Uncontrolled Rod Cluster Control Assembly Bank Withdrawal from Subcritical event during Modes 3, 4, and 5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change enhances the operability requirements of the SR Neutron Flux Instrumentation (NI) system by requiring response time testing. The performance of the required response time testing for the SR Neutron Flux Channels does not contribute to the initiation of any accident previously evaluated. Testing will be done during normal channel calibration when the SR Reactor Trip function is not required to be operable. During and following the required response time testing, there will be no adverse affect on the design and operation of the NSSS, BOP, and fluid and auxiliary system which are important to safety. Since the reactor coolant pressure boundary integrity and normally operating systems are not adversely impacted, the probability of occurrence of an accident evaluated in the VCSNS FSAR is no greater than the original design basis of the plant.

The availability of a reactor trip on the SR trip function with a defined response time of 0.5 seconds ensures that the event consequences of a RWFS event in Modes 3, 4, or 5 remain bounded by the current FSAR analysis. This is accomplished by ensuring that the reactor is shutdown before any significant power is generated.

With this change, periodic time response testing of the SR reactor trip function will be required to demonstrate that SR reactor trip function can be completed within the time limit assumed in the accident analyses. This enhanced operability requirement of the SR NI system provides additional assurance that the plant will be operated within its design and licensing basis. Any event that requires the mitigative function of this system will remain bounded by the analysis documented in Chapter 15 of the FSAR. No adverse hardware, software, setpoint or procedure changes are associated with this change. Furthermore, during and following the required response time testing, there will be no adverse affect on the design and operation of the NSSS, BOP, and fluid and auxiliary systems which are important to safety. Given the above, there is no potential for additional releases as a result of this activity. Therefore, no increase in any previously evaluated accident consequences will occur.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Enhancing the operability requirement for a Reactor Protection System input can not be considered an accident precursor. This change adds response time testing to the SR NI system which assures that the accident analysis, including assumptions, is maintained. No hardware, software, operational practices or instrumentation setpoints are being revised. No change to plant operating characteristics or philosophy result from this change. Therefore, the possibility of an accident of a different type is not being created.

3. Does this change involve a significant reduction in margin of safety?

TS Table 3.3–2 currently states that the response time for the SR NI is not applicable. However, the inherent assumption that this system will be the principal system to mitigate the rod withdrawal from subcritical accident is described in FSAR 15.2.1. The margin of safety is enhanced by the addition of an administrative requirement, to assure the safety analysis assumptions are satisfied. The maximum response time of 0.5 seconds is consistent with the maximum for Power Range and is conservative enough to limit the potential excursion to a safe value prior to tripping the plant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas

Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: Richard Laufer, Acting.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: January 9, 2002.

Description of amendment requests: The proposed amendments would revise Technical Specification 5.4, Technical Specifications (TS) Bases control. Specifically, TS 5.4.2 and TS 5.4.2.b would be revised to replace the word ''involve'' with ''require'' and delete the term ''unreviewed safety question,'' respectively. The proposed changes are pursuant to the revised regulations in Title 10, Code of Federal Regulations (10 CFR) Section 50.59 which eliminated the term ''unreviewed safety question.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change replaces the word ''involve'' with ''require'' and deletes reference to the term ''unreviewed safety question'' consistent with 10 CFR 50.59. Deletion of the term ''unreviewed safety question'' was approved by the Nuclear Regulatory Commission (NRC) with the revision to 10 CFR 50.59. Consequently, the probability of an accident previously evaluated is not significantly increased. Changes to the Technical Specification (TS) Bases are still evaluated in accordance with 10 CFR 50.59. As a result, the consequences of any accident previously evaluated are not significantly affected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing plant operation. These changes are considered administrative changes and do not modify, add, delete, or relocate any technical requirements in the TS.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes will not reduce a margin of safety because they have no effect on any safety analyses assumptions. Changes to the TS Bases that result in meeting the criteria in paragraph (c)(2) of 10 CFR 50.59 will still require NRC approval. The proposed changes to TS 5.4.2 are considered administrative in nature based on the revision to 10 CFR 50.59.

Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of amendment request: January 4, 2002.

Description of amendment request: The proposed amendment would change the Safety Limit Minimum Critical Power Ratio (SLMCPR) for single loop operation (SLO) in Technical Specification (TS) 2.1.1.2 to reflect the results of a cycle-specific calculation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specification [TS] change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the revised SLO [single loop operation] SLPCPR for [safety limit critical power ratio] Plant Hatch Unit 1 Cycle 21 for incorporation into the TS, and its use to determine cycle-specific thermal limits, has been performed using NRC-approved methods and procedures. The procedures incorporate cycle-specific parameters and reduced power distribution uncertainties in the determination of the value for the SLMCPR. These calculations do not change the method of operating the plant and have no effect on the probability of an accident initiating event or transient.

The basis of the MCPR Safety Limit is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. The new SLO SLMCPR preserves the existing margin to transition boiling and the probability of fuel damage is not increased. Therefore, the proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is the result of a cycle-specific application of NRC-approved methods to the Unit 1 Cycle 21 core reload. This change does not involve any new method for operating the facility and does not involve any facility modifications. No new initiating events or transients result from this change. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS bases will remain the same. Cycle-specific SLMCPRs are calculated using NRC-approved methods and procedures, and meet the current fuel design and licensing criteria. The SLO SLMCPR will be high enough to ensure that greater than 99.9% of all fuel rods in the core are expected to avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer, Acting.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: December 14, 2001.

Description of amendment request: A change is proposed to Surveillance Requirement (SR) 3.0.3 to allow a longer period of time to perform a missed surveillance. The time is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified

Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated December 14, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer, Acting.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: October 24, 2001.

Description of amendment request: The proposed amendment would relocate various Technical Specifications (TSs) to the Technical Requirements Manual (TRM). Their associated Bases will also be relocated to the TRM to be consistent with relocation of the various TSs. In addition, the proposed amendment corrects various typographical and page numbering errors, deletes an outdated one-time exception, and makes minor formal changes to improve consistency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This request involves relocation of information to the Technical Requirements Manual and administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed changes. Therefore, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated.

2. Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This request involves relocation of information to the Technical Requirements Manual and administrative changes only. The proposed change does not alter the performance of the equipment or the manner in which the equipment will be operated. The equipment will still be verified by test, if applicable, in accordance with applicable surveillance requirements. Changing the location of these requirements and surveillances from Technical Specifications to the Technical Requirements Manual will not create any new accident initiators or scenarios. Since the proposed changes only allow activities that are presently approved and conducted, no possibility exists for a new or different kind of accident from those previously evaluated.

3. Will the change involve a significant reduction in a margin of safety?

Response: No.

This request involves relocation of information to the Technical Requirements Manual and administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety systems settings, or will not relax the bases for any limiting conditions of operation. Therefore, the proposed changes will not impact the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis &

Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 5, 2001.

Description of amendment request: The proposed amendments would revise specific requirements of Technical Specification (TS) Section 6.0, ''Administrative Controls.'' The proposed amendments include relocating specific TS administrative control requirements to licensee-controlled documents; updating specific management titles to more generic title positions; updating requirements to be consistent with current industry standards; and reformatting, renumbering, and rewording existing requirements for better readability. The proposed changes include Items 1 thru 125, and 127 in Table 1 of Attachment 1 of the licensee's submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes involve reformatting, renumbering, and rewording of the existing TS. These modifications involve no technical changes to the existing TS. As such, these changes are administrative in nature and do not effect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes involve reformatting, renumbering, and rewording of the existing TS. The changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The changes will not impose any new or different requirements or eliminate any existing requirements. Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in margin of safety?

The proposed changes involve reformatting, renumbering, and rewording of the existing TS. The changes are administrative in nature and will not involve any technical changes. The changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Also, since these changes are administrative in nature, no question of safety is involved. Therefore, the changes do not involve a significant reduction in a margin of safety.

More Restrictive Changes

The proposed changes designated as ''More Restrictive'' (M) technical changes involve adding more restrictive requirements to the existing TS by either making current requirements more stringent or by adding new requirements that currently do not exist. These changes have been evaluated to not be detrimental to plant safety. These changes are modifications of requirements to provide consistency with the Improved Standard Technical Specifications recommended in NUREG–1431. The proposed changes include Items 39, 51, 129 and 130 in Table 1.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes provide more stringent requirements for operation of the facility. The more stringent requirements do not result in operation that will increase the probability of initiating an analyzed event and do not alter assumptions relative to mitigation of an accident or transient event. The more stringent requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The changes will not impose any new or different requirements or eliminate any existing requirements. Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in margin of safety?

The imposition of more stringent requirements either has no impact on or increases the margin of plant safety. As noted in the discussion of the changes, each change in this category, by definition, provides additional restrictions to enhance plant safety. The changes maintain requirements within the safety analyses and licensing basis. Therefore, these changes do not involve a significant reduction in a margin of safety.

Less Restrictive Changes L.1

Current TS 6.8.3.i, ''Diesel Fuel Oil Testing Program,'' requires properties for ASTM 2D fuel oil to be within limits within 30 days following sampling. The proposed change will increase the time in which compliance must be verified following sampling from 30 days to 31 days. This change is reasonable based on the relatively small increase in time and the probability of a major problem being found that would prevent the diesel generator from starting and operating. The proposed change, Item 70 in Table 1, is consistent with NUREG–1431.

In accordance with the criteria set forth in 10 CFR 50.92, the South Texas Project has evaluated this proposed TS change and determined that it involves no significant hazards consideration. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change extends the allowed completion time from 30 days to 31 days to verify that diesel fuel sample properties comply with ASTM 2D. This change does not affect the probability of an accident. Diesel fuel oil is not an initiator of any analyzed event. The consequences of an accident are not increased significantly because of the remote probability of an event occurring during the 24-hour period. Also, the probability of a major problem being found which would prevent the diesel generator from starting and operating is remote. The change will not alter the ability to mitigate an accident or transient event. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The change will not impose any new or different requirements or eliminate any existing requirements. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change extends the allowed completion time from 30 days to 31 days to verify that diesel fuel sample properties comply with ASTM 2D. The change does not significantly decrease the margin of safety because of the remote probability of an event occurring during the 24-hour period. Also, the probability of a major problem being found which would prevent the diesel generator from starting and operating is remote. The safety analysis assumptions will still be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Change L.2

Current TS 6.9.1.2 and 6.9.1.2.a require annual submittal of an Occupational Radiation Exposure Report by March 1 of the calendar year following the exposures. The submittal date is revised to April 30. This change is consistent with previous comprehensive revisions to 10 CFR Part 20. The report is provided to supplement the information required by 10 CFR 20.2206(b), which is filed on or before April 30 in accordance with 10 CFR 20.2206(c). The proposed change, Item 76 in Table 1, is consistent with NUREG–1431.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not result in any changes in hardware or methods of operation. The change in date for submittal of ''after the fact'' information is not considered in the safety analysis and cannot initiate or affect the mitigation of an accident in any way. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The change will impact only the administrative requirements for submittal of information and does not directly impact the operation of the plant. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not impact the margin of safety since the margin of safety is not dependent on the submittal of information. The safety analysis assumptions will still be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Change L.3

Current TS 6.9.1.3 requires annual submittal of a Radiological Environmental Operating Report by May 1 of each year. The submittal date is revised to May 15. This is an interval increase of 15 days. There is no requirement for the NRC to approve this report and 10 CFR [Part] 50 does not specify a specific reporting date. The proposed change, Item 82 in Table 1, is consistent with NUREG–1431.

In accordance with the criteria set forth in 10 CFR 50.92, the South Texas Project has evaluated this proposed TS change and determined that it involves no significant hazards consideration. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not result in any changes in hardware or methods of operation. The change in date for submittal of ''after the fact'' information is not considered in the safety analysis and cannot initiate or affect the mitigation of an accident in any way. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The change will impact only the administrative requirements for submittal of information and does not directly impact the operation of the plant. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not impact the margin of safety since the margin of safety is not dependent on the submittal of information. The safety analysis assumptions will still be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Change L.4

Current TS 6.9.1.4 requires annual submittal of a Radioactive Effluent Release Report within 60 days after January 1 of each year. The submittal date is revised to May 1. This is an interval increase of approximately 60 days. The proposed change, Item 85 in Table 1, is consistent with NUREG–1431.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not result in any changes in hardware or methods of operation. The change in date for submittal of ''after the fact'' information is not considered in the safety analysis and cannot initiate or affect the mitigation of an accident in any way. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The change will impact only the administrative requirements for submittal of information and does not directly impact the operation of the plant. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not impact the margin of safety since the margin of safety is not dependent on the submittal of information. The safety analysis assumptions will still be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Change L.5

The details specifying responsibility for initiating the Radiation Work Permit (RWP) surveillance frequency are being deleted. The requirement of current TS 6.12.1.c pertains to the individual qualified in radiation protection responsible for providing control over the activities in a high radiation area, including the performance of periodic radiation surveillances. The details specifying responsibility for the surveillance frequency in the RWP have no bearing on the requirements for entering a high radiation area. RWP details are controlled by plant procedures. Deleting these details eliminates ambiguity in the TS and the possibility for a misinterpretation of the TS requirements. The proposed change is provided in Table 1 as Item 103.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change eliminates ambiguity in the TS details specifying responsibility for the surveillance frequency in the Radiation Work Permit. The proposed change does not result in any changes in hardware or methods of operation. The details pertaining to the surveillance frequency in the Radiation Work Permit are not considered in the safety analysis and cannot initiate or affect the mitigation of an accident in any way. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed [change] does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The change will not impose any new or different requirements or eliminate any existing requirements. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not impact the margin of safety since the margin of safety is not dependent on who initiates the surveillance frequency of the Radiation Work Permit. The safety analysis assumptions will still be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Change L.6

The details specifying the individuals responsible for performance of the review of the use of overtime are being deleted, and the frequency at which the overtime review is performed is being changed from monthly to periodic. The details specifying responsibility for performance of the overtime review and the frequency of review are controlled by plant procedures. The proposed changes are consistent with the programmatic controls required by NUREG–1431. The proposed changes are provided in Table 1 as Item 30a.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes delete the details specifying the individuals responsible for performance of the overtime use review, and changes the frequency at which the overtime review is performed from monthly to periodic. The proposed change does not result in any changes in hardware or methods of operation. The details pertaining to the review of overtime are not considered in the safety analysis and cannot initiate or affect the mitigation of an accident in any way. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The change will not impose any new or different requirements or eliminate any existing requirements. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not impact the margin of safety since the margin of safety is not dependent on who performs the overtime review, nor on the frequency at which the review is performed. The safety analysis assumptions will still be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Less Restrictive Change L.7

The details specifying the actions to be taken in the event a Safety Limit is violated are deleted from the Specifications. The details regarding notification and reporting to the Commission are unnecessary, since reporting requirements are delineated in 10 CFR 50.72 and 50.73. The details regarding onsite notification requirements and review of the report by PORC [Plant Operations Review Committee] and NSRB [Nuclear Safety Review Board] are unnecessary, since plant policies and procedures already provide guidance on onsite notification and review of reports by these committees. Furthermore, these notification and reporting requirements are beyond the criteria of 10 CFR 50.36(c)(5) for inclusion in the Administrative Controls Section of the TS, and programmatic controls regarding actions to be taken for Safety Limit violations are not included in NUREG–1431. The proposed changes are provided in Table 1 as Item 30a.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes delete the details regarding actions to be taken in the event of a Safety Limit violation. The proposed change does not result in any changes in hardware or methods of operation. The details pertaining to notification and reporting of Safety Limit violations are not considered in the safety analysis and cannot initiate or affect the mitigation of an accident in any way. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The change will not impose any new or different requirements or eliminate any existing requirements. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not impact the margin of safety since the margin of safety is not dependent on notification and reporting of Safety Limit violations. The safety analysis assumptions will still be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Relocation of Requirements

The proposed changes designated as ''Relocated'' (R) technical changes involve the relocation of existing TS requirements or details to other licensee-controlled documents such as the UFSAR [Updated Final Safety Analysis Report], TRM [Technical Requirements Manual], ODCM [Offsite Dose Calculation Manual], or OQAP [Operational Quality Assurance Plan]. Future modification of relocated Administrative Controls requirements is adequately controlled by regulatory requirements such as 10 CFR 50.59 and 10 CFR 50.54. The proposed changes include Items 4, 12, 13, 15, 22, 25, 29, 31, 32, 40, 41, 42, 44, 46, 49, 52, 55, 58, 59, 68, 75, 96, 112, 117, 118, and 126 in Table 1.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes relocate certain details from the TS to the UFSAR, TRM, OQAP, or other licensee-controlled documents. These licensee-controlled documents containing the relocated information will be maintained in accordance with 10 CFR 50.59 or 10 CFR 50.54, as appropriate. The UFSAR is subject to the change control provisions of 10 CFR 50.71(e) and the plant procedures and other licensee-controlled documents are subject to controls imposed by plant administrative procedures, which endorse applicable regulations and standards. Since any changes to the UFSAR, TRM, OQAP, or other licensee-controlled documents will be evaluated per 10 CFR 50.59 or 10 CFR 50.54, such changes will not involve a significant increase in the probability or consequences of an accident previously evaluated. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve physical alteration of the plant (no new or different type of equipment will be installed) or change in the methods governing normal plant operation. The proposed changes will not impose or eliminate any requirements and adequate control of the information will be maintained. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. In addition, the details to be relocated from the TS to the UFSAR, TRM, OQAP, or other licensee-controlled documents are the same as in the existing TS. Since any future change to these details in the UFSAR, TRM, OQAP, or other licensee-controlled documents will be evaluated per the requirements of 10 CFR 50.59 or 10 CFR 50.54, as appropriate, such changes would not involve a significant reduction in a margin of safety. Based on 10 CFR 50.92, the existing requirement for NRC review and approval of revisions to these details proposed for relocation does not have a specific margin of safety upon which to evaluate. However, since the proposed changes are consistent with NUREG–1431, which was approved by the NRC Staff, revising the TS to reflect the approved level of detail ensures no significant reduction in the margin of safety.

The NRC staff has reviewed the licenses's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 10, 2001.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) 4.0.1 and 4.0.3 from the current South Texas Project (STP) TS format to the Improved TS format. In addition, the licensee has proposed that a Bases Control Program be incorporated into Section 6.0 of the TSs in order to (1) specify an administrative process for making changes to the TS bases, (2) delineate what kinds of changes can be made to the TS Bases without prior NRC approval, and (3) to provide for consistency between the TS Bases and the STP Final Safety Analysis Report. TS 4.0.3 would also be changed to reflect Technical Specification Task Force (TSTF) 358, Revision 6, changes to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified surveillance interval, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified surveillance interval, whichever is greater.'' The following requirement would be added to TS 4.0.3: ''A risk

evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves rewording of the existing Technical Specifications [4.0.1 and 4.0.3] to be consistent with NUREG–1431, Revision 2. These modifications involve no technical changes to the existing Technical Specifications. As such, these changes are administrative in nature and do not affect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves incorporation of the NUREG–1431, Revision 2, Bases Control Program requirements into the STP Technical Specifications. These modifications involve no technical changes to the existing Technical Specifications. As such, these changes are administrative in nature and do not affect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change involves rewording of the existing Technical Specifications [4.0.1 and 4.0.3] to be consistent with NUREG–1431, Revision 2. The change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The changes will not impose any new or different requirements or eliminate any existing requirements. Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change involves incorporation of the NUREG–1431, Revision 2, Bases Control Program requirements into the STP Technical Specifications. The changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The changes will not impose any new or different requirements or eliminate any existing requirements. Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in [a] margin of safety?

The proposed change involves rewording of the existing Technical Specifications [4.0.1 and 4.0.3] to be consistent with NUREG–1431, Revision 2. The changes are administrative in nature and will not involve any technical changes. The changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Also, since these changes are administrative in nature, no question of safety is involved. Therefore, the changes do not involve a significant reduction in a margin of safety.

The proposed change involves incorporation of the NUREG–1431, Revision 2, Bases Control Program requirements into the STP Technical Specifications. The changes are administrative in nature and will not involve any technical changes. The changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Also, since these changes are administrative in nature, no question of safety is involved. Therefore, the changes do not involve a significant reduction in a margin of safety.

With regard to the changes associated with TSTF–358, Revision 6, the NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated December 10, 2001.

As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in margin of safety.

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: November 8, 2001 (TS 01–06).

Brief description of amendments: The proposed amendment would revise a License Condition and the Technical Specifications (TS) for Sequoyah Units 1 and 2. The proposed change would delete License Condition 2.H, ''Reporting to the Commission,'' Administrative Control Section 6.6, ''Reportable Event Action,'' and Administrative Control Section 6.7, ''Safety Limit Violation.'' Because Administrative Control Section 6.6 is referenced in several Limiting Conditions for Operation (LCOs) and associated TS Bases, these LCOs and TS Bases would also be modified to remove those references.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

These revisions govern the reporting of either site characteristics and past events or of events covered under current NRC regulations and the proposed amendment is administrative in nature. Therefore, it does not increase the probability or consequences of any accident previously evaluated because it does not affect the state of the plant in any physical manner.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment is strictly administrative and does not affect plant equipment or operational procedures. Therefore, it will not create any new or different accidents.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed amendment affects the reporting to the Commission. As such, it does not affect personnel, public, or plant safety. Since the amendment will not affect the plant in a physical manner nor will it affect personnel, public, or plant safety, it will therefore not reduce the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant (SQN), Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: January 15, 2002 (TS 01–13).

Brief description of amendments: The proposed amendment would revise Technical Specification (TS) Section 4.0.5.c to provide an exception to the recommendations of Regulatory Position c.4.b of NRC Regulatory Guide 1.14, Revision 1, ''Reactor Coolant Pump Flywheel Integrity,'' dated August 1975. This change is in accordance with Improved Standard TS Generic Change Traveler TSTF–237, Revision 1, Westinghouse Electrical Corporation Topical Report WCAP–14535A, ''Topical Report on Reactor Coolant Pump Flywheel Inspection Elimination.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

An integral part of the Reactor Coolant System (RCS) in a pressurized water reactor is the RCP [reactor coolant pump]. The RCP ensures an adequate cooling flow rate by circulating large volumes of the primary coolant water at high temperature and pressure through the RCS. Following an assumed loss of power to the RCP motor, the flywheel, in conjunction with the impeller and motor assembly, provides sufficient rotational inertia to assure adequate core cooling flow during RCP coastdown.

Westinghouse Electric Corporation Topical Report WCAP–14535A, ''Topical Report on Reactor Coolant Pump Flywheel Inspection Elimination,'' dated November 1996, provides the technical basis for the elimination of inspection requirements for RCP flywheels for all domestic Westinghouse plants. In the Safety Evaluation for WCAP–14535, dated September 1996, the NRC stated that the evaluation methodology described in WCAP–14535 is appropriate and the criteria are in accordance with the design criteria of RG 1.14.

RCP flywheel inspections have been performed for 20 years with no indications of service induced flaws. Flywheel integrity evaluations show a very high flaw tolerance for the RCP flywheels. Crack extension over a 60-year service life is negligible. Structural reliability studies have shown that eliminating inspections after 10 years of plant life will not significantly change the probability of failure.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed change does not alter or prevent the ability of structures, systems, and components (SSC) from performing their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the SQN Updated Final Safety Analysis Report (UFSAR). The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the SQN UFSAR.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not modify the design or function of the RCP flywheels. Based upon the results of WCAP–14535A, no new failure mechanisms will be introduced by the revised RCP Flywheel Inservice Inspection Program. As presented in WCAP–14535A, detailed stress analysis and risk assessments have been performed that indicate that there would be no change in the probability of failure for RCP flywheels if all inspections were eliminated. In addition, the flywheel integrity evaluations show that RCP flywheels exhibit a very high tolerance for the presence of flaws.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

There is no significant mechanism for in-service degradation of the flywheels since they are isolated from the primary coolant environment. Additionally, WCAP–14535A analyses have shown there is no significant deformation of the flywheels even at maximum overspeed conditions. Likewise, the results of RCP flywheel inspections performed throughout the industry and at SQN identified no indications that would affect flywheel integrity.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority,

400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: December 26, 2001.

Brief description of amendments: The proposed amendments would revise Technical Specifications (TS) 5.5.16, ''Containment Leakage Rate Testing Program'' to allow for a one-time extension of the current interval between the Type A tests from 10 to 15 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed revision to Technical Specifications adds a one time extension to the current interval for Type A testing (10CFR50, Appendix J, Option B, Integrated Leak Rate Testing). The current test interval of 10 years, based on past performance, would be extended on a one time basis to 15 years from the last Type A test. The proposed extension to Type A testing does not involve a significant increase in the consequences of an accident since research documented in NUREG–1493, ''Performance-Based Containment System Leakage Testing Requirements,'' September 1995, has found that, generically, very few potential containment leakage paths are not identified by Type B and C tests. The NUREG concluded that reducing the Type A testing frequency to one per twenty years was found to lead to an imperceptible increase in risk. A high degree of assurance is provided through testing and inspection that the containment will not degrade in a manner detectable only by Type A testing. The last Type A test show[s] leakage to be below acceptance criteria, indicating a very leak tight containment. Inspections required by the American Society of Mechanical Engineers (ASME) Code [Boiler and Pressure Vessel Code] Section XI (Subsections IWE and IWL) and maintenance rule monitoring (10CFR50.65, ''Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants'') are performed in order to identify indications of containment degradation that could affect that leak tightness. Type B and C testing required by Technical Specifications will identify any containment opening such as valves that would otherwise be detected by the Type A tests. These factors show that a Type A test extension will not represent a significant increase in the consequences of an accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed revision to Technical Specifications adds a one time extension to the current interval for Type A testing (10CFR50, Appendix J, Option B, Integrated Leak Rate Testing). The current test interval of 10 years, based on past performance, would be extended on a one time basis to 15 years from the last Type A test. The proposed extension to Type A testing cannot create the possibility of a new or different type of accident since there are no physical changes being made to the plant and there are no changes to the operation of the plant that could introduce a new failure mode creating an accident or affecting the mitigation of an accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed revision to Technical Specifications adds a one time extension to the current interval for Type A testing (10CFR50, Appendix J, Option B, Integrated Leak Rate Testing). The current test interval of 10 years, based on past performance, would be extended on a one time basis to 15 years from the last Type A test. The proposed extension to Type A testing will not significantly reduce the margin of safety. The NUREG–1493, ''Performance-Based Containment System Leakage Testing Requirements,'' September 1995, generic study of the effects of extending containment leakage testing found that a 20 year extension in Type A leakage testing resulted in an imperceptible increase in risk to the public. NUREG–1493 found that, generically, the design containment leakage rate contributes about 0.1 percent to the individual risk and that the decrease in Type A testing frequency would have a minimal affect on this risk since 95% of the potential leakage paths are detected by Type C testing. Regular inspections required by the American Society of Mechanical Engineers (ASME) Code Section XI (Subsections IWE and IWL) and maintenance rule monitoring (10CFR50.65, ''Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants'') will further reduce the risk of a containment leakage path going undetected.

Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: December 6, 2001.

Description of amendment request: The proposed amendment would revise Required Actions for Limiting Conditions for Operation (LCOs) 3.3.1, ''Reactor Trip (RTS) Instrumentation;'' 3.3.9, ''Boron Dilution Mitigation System (BDMS);'' 3.4.5, ''RCS Loops—MODE 3;'' 3.4.6, ''RCS Loops—MODE 4;'' 3.4.7, ''RCS Loops—MODE 5, Loops Filled;'' 3.4.8, ''RCS Loops—MODE 5, Loops Not Filled;'' 3.8.2, ''AC Sources—Shutdown;'' 3.8.5, ''DC Sources—Shutdown;'' 3.8.8, ''Inverters—Shutdown;'' 3.8.10, ''Distribution Systems—Shutdown;'' 3.9.3, ''Nuclear Instrumentation;'' 3.9.5, ''Residual Heat Removal (RHR) and Coolant Circulation—High Water Level;'' and 3.9.6, ''Residual Heat Removal (RHR) and Coolant Circulation—Low Water Level'' in the Callaway Plant Technical Specifications (TSs). The Required Actions proposed to be revised require suspension of operations involving positive reactivity additions or reactor coolant system (RCS) boron concentration reductions. In addition, the proposed amendment would revise Notes, for several of the LCOs, that preclude reductions in RCS boron concentration. This amendment would revise these Required Actions and LCO Notes to allow small, controlled, safe insertions of positive reactivity, but limits the introduction of positive reactivity such that compliance with the required shutdown margin or refueling boron concentration limits will still be satisfied.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes. The RTS instrumentation and reactivity control systems will be unaffected. Protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction

standards that were applicable prior to the request are maintained.

The probability and consequences of accidents previously evaluated in the FSAR [Final Safety Analysis Report] are not adversely affected because the changes to the Required Actions and LCO Notes assure the limits on SDM [shutdown margin] and refueling boron concentration continue to be met, consistent with the analysis assumptions and initial conditions included within the safety analysis and licensing basis. The activities covered by this amendment application are routine operating evolutions. The proposed changes do not reduce the capability of reborating the RCS.

The proposed changes will not involve a significant increase in the probability of any event initiators. The initiating event for an inadvertent boron dilution event, as discussed in FSAR Section 15.4.6, is a failure in the reactor makeup control system (RMCS) or operator error such that inventory makeup with the incorrect boron concentration enters the RCS by way of the CVCS [chemical volume and control system] mixing tee. Since the RMCS design is unchanged, there will be no initiating event frequency increase associated with equipment failures. However, there could be an increased exposure time per operating cycle to potential operator errors during TS Conditions that, heretofore, prohibited positive reactivity additions. As such, the RTS Instrumentation, BDMS, and RCS Loops TS Bases changes from TSTF–286, Revision 2, have been augmented to preclude the introduction of reactor makeup water into the RCS via the CVCS mixing tee when one source range neutron flux channel (and, thus, the associated BDMS train) is inoperable or when no RCS loop is in operation. The equipment and processes used to implement RCS boration or dilution evolutions are unchanged and the equipment and processes are commonly used throughout the applicable MODES under consideration. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance. Required Action A.1 of LCO 3.3.9 limits the exposure to one inoperable BDMS train, which may be caused by an inoperable source range neutron flux channel. During the time the plant is in a TS Condition with a finite equipment restoration time, a single failure of the opposite train is not postulated. However, administrative controls have been added to this Action's Bases to highlight the need for operator awareness during all reactivity manipulations and to preclude introduction of reactor makeup water into the RCS.

The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of plant operation or change any operating limits. The proposed changes merely permit the conduct of normal operating evolutions when additional controls over core reactivity are imposed by the Technical Specifications. The proposed changes do not introduce any new equipment into the plant or alter the manner in which existing equipment will be operated. The changes to operating procedures are minor, with clarifications provided that required limits must continue to be met. No performance requirements or response time limits will be affected. These changes are consistent with assumptions made in the safety analysis and licensing basis regarding limits on SDM and refueling boron concentration.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

This amendment does not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not alter the limits on SDM or refueling boron concentration. The nominal trip setpoints specified in the Technical Specifications Bases and the safety analysis limits assumed in the transient and accident analyses are unchanged. None of the acceptance criteria for any accident analysis is changed.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F\Delta H$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: December 13, 2001.

Description of amendment request: The amendment would revise the Limiting Condition for Operation (LCO) 3.5.5, Required Action A.1 for the LCO, and Surveillance Requirement 3.5.5.1 in Technical Specification (TS) 3.5.5, ''Seal Injection Flow.'' The revision would replace the flow and differential pressure limits for the reactor coolant pump (RCP) seal injection flow stated in TS 3.5.5 by limits in Figure 3.5.5–1 that would be added to TS 3.5.5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes. The RTS [reactor trip system] instrumentation and reactivity control systems will be unaffected. Protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The probability and consequences of accidents previously evaluated in the FSAR [Final Safety Analysis Report] are not adversely affected because the changes continue to assure the analysis assumptions and initial conditions included within the safety analysis and licensing basis are satisfied.

The proposed changes will not involve a significant increase in the probability of any event initiators. The initiating event for a loss of coolant accident, as discussed in FSAR Section 15.6.5, is a break in the RCS [reactor coolant system] piping. Since the RCS piping design is unchanged, there will be no initiating event frequency increase associated with pipe breaks. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of plant operation. The proposed changes do not introduce any new equipment into the plant or alter the manner in which existing equipment will be operated. The changes to operating procedures are minor, with clarifications provided that required limits must continue to be met. No performance requirements or response time limits will be affected. These changes are consistent with assumptions made in the safety analysis and licensing basis regarding limits on RCP seal injection flow.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

This amendment does not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not alter the input parameters listed in FSAR Table 15.6–9 and used in large break and small break LOCA [loss-of-coolant accident] peak cladding temperature analyses. The containment pressure and temperature analyses are not adversely impacted. The nominal reactor and ESFAS [engineered safety feature actuation system] trip setpoints (Technical Specification Bases Tables B 3.3.1–1 and B 3.3.2–1), reactor and ESFAS allowable values (Technical Specification Tables 3.3.1–1 and 3.3.2–1), and the safety analysis limits assumed in the transient and accident analyses (FSAR Table 15.0–4) are unchanged. None of the acceptance criteria for any accident analysis is changed.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protective functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F\Delta H$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: April 3, 2001 as supplemented by letters dated October 22 and December 18, 2001. The April 3, 2001, amendment application was previously noticed in the **Federal Register** on May 2, 2001 (66 FR 22036).

Description of amendment request: The supplemental letter of October 22, 2001, added the following change to the technical specifications (TSs): revise TS Section 5.6.5 by adding TS 2.1.1 on reactor core safety limits on the existing list of core operating limits for each reload cycle that are documented in the Core Operating Limits Report (COLR). This proposed change is being added to the previous changes requested by the licensee's letter of April 3, 2001. The amendment would make the following changes to the TSs:

(1) Revise Safety Limit 2.1.1 by replacing Figure 2.1.1–1, ''Reactor Core Safety Limits,'' with a reference to limits being specified in the Core Operating Limits Report (COLR) and by adding two reactor core safety limits on departure from nucleate boiling ratio (DNBR) and peak fuel centerline temperature.

(2) Revise Note 1 on the over temperature ΔT in Table 3.3.1–1 of TS 3.3.1, ''Reactor Trip System Instrumentation,'' by replacing values of parameters with a reference to the values being specified in the COLR and correcting the expression for one term in the inequality for over temperature ΔT.

(3) Revise Note 2 on the overpower ΔT in Table 3.3.1–1 by replacing values of parameters with a reference to the values being specified in the COLR.

(4) Replace the limits for the reactor coolant system (RCS) pressure and average temperature with a reference to the limits being specified in the COLR for Limiting Condition for Operation (LCO) 3.4.1 and Surveillance Requirements (SRs) 3.4.1.1 and 3.4.1.2.

(5) Add the phrase ''and greater than or equal to the limit specified in the COLR'' to the RCS total flow rate in LCO 3.4.1 and SRs 3.4.1.3 and 3.4.1.4.

(6) Move items a. and b. to the left in the Note to the applicability in LCO 3.4.1.

(7) Revise TS Section 5.6.5 by adding TS 2.1.1 on reactor core safety limits, TS 3.3.1 on over temperature and overpower ΔT trip setpoints, and TS 3.4.1 on RCS pressure, temperature, and flow limits to the existing list of core operating limits for each reload cycle that are documented in the COLR and revising the list of topical reports in the COLR that represent the analytical methods approved by the Commission to determine core operating limits.

The proposed changes remove cycle-specific parameter limits and relocate them to the COLR, but they do not change any of the limits. The changes add more specific requirements regarding DNBR limit and peak fuel centerline temperature limit to the TSs, revise the list of topical reports in the list of NRC-approved analytical methods, correct one term of an expression, and move terms in a Note to the mode applicability for an LCO.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are programmatic and administrative in nature which do not physically alter safety related systems, nor affect the way in which safety related systems perform their functions. More specific requirements regarding the safety limits (i.e., DNBR limit and peak fuel centerline temperature limit) are being imposed in TS 2.1.1, ''Reactor Core Safety Limits,'' which replace the Reactor Core Safety Limits figure and are consistent with the values stated in the USAR [Updated Safety Analysis Report]. The proposed changes remove the cycle-specific parameter limits from TS 3.4.1 and relocate them to the COLR which do not change plant design or affect system operating parameters. In addition, the minimum limit for RCS total flow rate is being retained in TS 3.4.1 to assure that a lower flow rate than reviewed by the NRC will not be used. The proposed changes do not, by themselves, alter any of the parameter limits. The removal of the cycle-specific parameter limits from the TS does not eliminate existing requirements to comply with the parameter limits. The existing TS Section 5.6.5b, COLR Reporting Requirements, continues to ensure that the analytical methods used to determine the core operating limits meet NRC reviewed and approved methodologies. The existing TS Section 5.6.5c, COLR Reporting

Requirements, continues to ensure that applicable limits of the safety analyses are met.

The proposed changes to reference only the Topical Report number and title do not alter the use of the analytical methods used to determine core operating limits that have been reviewed and approved by the NRC. This method of referencing Topical Reports would allow the use of current Topical Reports to support limits in the COLR without having to submit an amendment to [the TS of] the operating license. Implementation of revisions to Topical Reports would still be reviewed in accordance with 10 CFR 50.59 and where required receive NRC review and approval.

Although the relocation of the cycle-specific parameter limits to the COLR would allow revision of the affected parameter limits without prior NRC approval, there is no significant effect on the probability or consequences of an accident previously evaluated. Future changes to the COLR parameter limits could result in event consequences which are either slightly less or slightly more severe than the consequences for the same event using the present parameter limits. The differences would not be significant and would be bounded by the existing requirement of TS Section 5.6.5c to meet the applicable limits of the safety analyses.

The cycle-specific parameter limits being transferred from the TS to the COLR will continue to be controlled under existing programs and procedures. The USAR accident analyses will continue to be examined with respect to changes in the cycle-dependent parameters obtained using NRC reviewed and approved reload design methodologies, ensuring that the transient evaluation of new reload designs are bounded by previously accepted analyses. This examination will continue to be performed pursuant to 10 CFR 50.59 requirements ensuring that future reload designs will not involve a significant increase in the probability or consequences of an accident previously evaluated. Additionally, the proposed changes do not allow for an increase in plant power levels, do not increase the production, nor alter the flow path or method of disposal of radioactive waste or byproducts. Therefore, the proposed changes do not change the types or increase the amounts of any effluents released offsite.

[The proposed changes to the expression of the $f_1(\Delta I)$ term, which is in the over temperature ΔT inequality, clarifies and corrects the term. Moving the terms in a Note to the LCO mode applicability is an administrative action.]

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[The proposed changes are programmatic and administrative in nature which do not physically alter safety related systems, nor affect the way in which safety related systems perform their functions.]

The proposed changes that retain the minimum limit for RCS total flow rate in the TS, and that relocate certain cycle-specific parameter limits from the TS to the COLR, thus removing the requirement for prior NRC approval of revisions to those parameters, do not involve a physical change to the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no changes being made to the parameters within which the plant is operated, other than their relocation to the COLR. There are no setpoints affected by the proposed changes at which protective or mitigative actions are initiated. The proposed changes will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alteration in the procedures which ensure the plant remains within analytical limits is being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced.

The proposed changes to reference only the Topical Report number and title do not alter the use of the analytical methods used to determine core operating limits that have been reviewed and approved by the NRC. This method of referencing Topical Reports would allow the use of current Topical Reports to support limits in the COLR without having to submit an amendment to [the TS of] the operating license. Implementation of revisions to Topical Reports would still be reviewed in accordance with 10 CFR 50.59 and where required receive NRC review and approval.

Relocation of cycle-specific parameter limits has no influence or impact on, nor does it contribute in any way to the possibility of a new or different kind of accident. The relocated cycle-specific parameter limits will continue to be calculated using the NRC reviewed and approved methodology. The proposed changes do not alter assumptions made in the safety analysis and operation within the core operating limits will continue.

[The proposed changes to the expression of the $f_1(\Delta I)$ term, which is in the over temperature ΔT inequality, clarifies and corrects the term.]

Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed changes [are programmatic and administrative in nature and] do not physically alter safety related systems, nor does it [a]ffect the way in which safety-related systems perform their functions. The setpoints at which protective actions are initiated are not altered by the proposed changes.

Therefore, sufficient equipment remains available to actuate upon demand for the purpose of mitigating an analyzed event. As the proposed changes to relocate cycle-specific parameter limits to the COLR will not affect plant design or system operating parameters, there is no detrimental impact on any equipment design parameter, and the plant will continue to operate within prescribed limits.

The development of cycle-specific parameter limits for future reload designs will continue to conform to NRC reviewed and approved methodologies, and will be performed pursuant to 10 CFR 50.59 to assure that plant operation [is] within cycle-specific parameter limits.

The proposed changes to reference only the Topical Report number and title do not alter the use of the analytical methods used to determine core operating limits that have been reviewed and approved by the NRC. This method of referencing Topical Reports would allow the use of [the] current Topical Reports to support limits in the COLR without having to submit an amendment to [the TS of] the operating license. Implementation of revisions to Topical Reports would still be reviewed in accordance with 10 CFR 50.59 and where required receive NRC review and approval.

[The proposed changes to the expression of the $f_1(\Delta I)$ term, which is in the over temperature ΔT inequality, clarifies and corrects the term. Moving the terms in a Note to the LCO mode applicability is an administrative action.]

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was

published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.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.*

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: July 9, 2001.

Brief description of amendment: The amendment revised the Administrative Controls Section of the Technical Specifications to provide consistency with the changes to Title 10 of the Code of Federal Regulations (10 CFR), Section 50.59, which were published in the **Federal Register** on October 4, 1999 (64 FR 53582). Specifically, the amendment replaced the term ''safety evaluation'' with ''10 CFR 50.59 evaluation'' and the term ''unreviewed safety question'' with ''requires NRC [Nuclear Regulatory Commission] approval pursuant to 10 CFR 50.59.''

Date of issuance: January 22, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 239.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** August 22, 2001 (66 FR 44162).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 22, 2002.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: October 31, 2001.

Brief description of amendment: The amendment deletes Technical Specification 5.5.3, ''Post-Accident Sampling,'' eliminating the requirement to have and maintain the Post-Accident Sampling System at H. B. Robinson. The amendment also deletes Condition 3.G.(4) of the Operating License.

Date of issuance: January 14, 2002.

Effective date: January 14, 2002.

Amendment No. 192.

Facility Operating License No. DPR–23. Amendment revises the License and Technical Specifications.

*Date of initial notice in **Federal Register:*** December 12, 2001 (66 FR 64286) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 2002.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: October 30, 2001.

Brief description of amendment: The amendment deletes requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post-Accident Sampling System.

Date of issuance: January 14, 2002.

Effective date: As of the date of issuance and shall be implemented within 180 days of issuance.

Amendment No.: 108.

Facility Operating License No. NPF–63: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** December 12, 2001 (66 FR 64287).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: April 11, 2001, as supplemented on September 26 and November 16, 2001.

Brief description of amendment: The amendment approves a change to Technical Specifications 1.12, ''Core Alteration;'' 3.9.1, ''Refueling Operations—Boron Concentration;'' 3.9.2, ''Refueling Operations—Instrumentation;'' and 3.9.11, ''Refueling Operations—Water Level—Reactor Vessel.'' The amendment also revises the Technical Specifications Bases to reflect the changes to the definitions.

Date of issuance: January 11, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 263.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** June 12, 2001 (66 FR 31705).

The September 26 and November 16, 2001, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: October 23, 2001, as supplemented December 20, 2001.

Brief description of amendment: The amendment revised Technical Specification Surveillance Requirement 3.8.4.1 to support replacement of the station batteries. The amendment will allow for separate required terminal voltage values for the new 31 and 32 station batteries.

Date of issuance: January 17, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 209.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 28, 2001 (66 FR 59503).

The December 20, 2001, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 17, 2002.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: October 12, 2001.

Brief description of amendments: The amendments delete TS 6.8.3 requiring a program for post accident sampling, and thereby eliminate the requirements to have and maintain Post Accident Sampling System at Donald C. Cook Nuclear Plant, Units 1 and 2.

Date of issuance: January 16, 2002.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment Nos.: 261—Unit 1, 244—Unit 2.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64295)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 16, 2002.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of application for amendment: November 19, 2001.

Brief description of amendment: The amendment would revise the action statement for Technical Specification (TS) 3.3.3.5, ''Remote Shutdown Instrumentation,'' to add a statement that the provisions of TS 3.0.4 are not applicable.

Date of issuance: January 16, 2002.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 262.

Facility Operating License No. DPR–58: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64295).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: October 22, 2001.

Brief description of amendment: The amendment revised the KNPP TS 6.14, ''Post Accident Sampling and Monitoring,'' and thereby eliminate the requirements to have and maintain the Post Accident Sampling System. Although TS 6.14's title contains the word ''monitoring,'' elimination of this TS does not eliminate the post-accident monitoring instrumentation from KNPP TS. These instruments are contained in KNPP TS section 3.5, which are listed in TS Table 3.5–6, ''Accident Monitoring Instrumentation Operating Conditions for Indication.''

Date of issuance: January 16, 2002.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 160.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64299).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: May 30, 2001.

Brief description of amendment: The amendment eliminates local suppression pool temperature limits from the Updated Safety Analysis Report as the basis for limiting suppression pool mechanical loads due to unstable steam condensation during safety relief valve actuations.

Date of issuance: January 18, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 126.

Facility Operating License No. DPR–22. Amendment revised the licensing basis.

Date of initial notice in ***Federal Register:*** June 27, 2001 (66 FR 34286).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 18, 2002.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 15, 2001, as supplemented by letters dated June 14 and November 21, 2001.

Brief description of amendment: The amendment: (1) replaced the titles of Manager—Fort Calhoun Station and Vice President with generic titles, (2) relocated the requirements for the Plant Review Committee (PRC) and the Safety Audit and Review Committee (SARC) to the Fort Calhoun Station Quality Assurance Program, (3) relocated the requirements for procedure controls and records retention to the Fort Calhoun Station Quality Assurance Program, (4) enhanced and clarified the qualification and training requirements for individuals who perform licensed operator functions, (5) incorporated the Westinghouse/CENP definition of azimuthal power tilt, and (6) eliminated specific mailing address and reporting requirements that are redundant to Title 10 of the Code of Federal Regulations.

Date of issuance: January 11, 2002.

Effective date: January 11, 2002, and shall be implemented within 30 days from the date of issuance.

Amendment No.: 202.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 27, 2001 (66 FR 34287). The June 14 and November 21, 2001, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: April 2, 2001.

Brief description of amendment: This amendment revises the Technical Specifications (TSs) to relocate TS Sections 3/4.9.4, ''Refueling Operations,

Decay Time;'' 3/4.9.5, ''Refueling Operations, Communications;'' 3/4.9.6, ''Refueling Operations, Refueling Platform;'' and 3/4.9.7, ''Refueling Operations, Crane Travel—Spent Fuel Storage Pool'' and the associated TS Bases pages to the Hope Creek Generating Station Updated Final Safety Analysis Report.

Date of issuance: January 17, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 137.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 16, 2001 (66 FR 27177).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 17, 2002.

No significant hazards consideration comments received: No.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 25, 2001.

Brief description of amendment: The amendment deletes Technical Specification Section 5.5.3, ''Post Accident Sampling Program'', and thereby eliminates the requirements to have and maintain the Post-Accident Sampling System.

Date of issuance: January 17, 2002.

Effective date: January 17, 2002.

Amendment No.: 81.

Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64300).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 17, 2002.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: August 24, 2001, as supplemented by e-mail dated November 16, 2001.

Brief description of amendments: The amendments decrease the calculated peak containment internal pressure for the design basis loss-of-coolant accident and main steamline break from 55.1 to 45.9 psig and 56.6 to 56.5 psig, respectively, in Section 5.5.2.15, ''Containment Leakage Rate Testing Program,'' of the Technical Specifications.

Date of issuance: January 24, 2002.

Effective date: January 24, 2002, to be implemented within 60 days of issuance.

Amendment Nos.: Unit 2—182; Unit 3—173.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 3. 2001 (66 FR 50472).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 24, 2002.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: May 24, 2001.

Brief description of amendment: This amendment revises Technical Specifications Sections 4.2.2.2.e and g, and 4.2.2.4.e and g to adopt a modified methodology that relocates the heat flux hot channel factor, $F_Q(z)$, penalty for increasing $F_Q(z)$ versus burnup to a table in the Core Operating Limits Report. The amendment also increases the surveillance region of $F_Q(z)$ to be consistent with the current core design and provide assurance that the peak $F_Q(z)$ is monitored and evaluated near end of core life.

Date of issuance: January 24, 2002.

Effective date: January 24, 2002.

Amendment No.: 153.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 25, 2001 (66 FR 38766).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 24, 2002.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 9, 2001.

Brief description of amendments: The amendments consist of changes to the Technical Specifications, extending the emergency core cooling system accumulator's allowable outage time from 12 hours to 24 hours.

Date of issuance: January 10, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: Unit 1—135; Unit 2—124.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44176).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 10, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: October 31, 2001.

Brief description of amendments: The amendments delete the program requirements of Technical Specification 6.8.4.e, ''Post Accident Sampling.''

Date of issuance: January 14, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 272 and 261.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the TSs.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64302).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: October 31, 2001.

Brief description of amendment: The amendment deletes the program requirements of Technical Specification 5.7.2.6, ''Post Accident Sampling System.''

Date of issuance: January 14, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 34.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64304).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: May 14, 2001.

Brief description of amendment: The amendment incorporates part of TSTF–51, Revision 2 into the Watts Bar Technical Specifications (TS). TSTF–51 allows revising the TS to eliminate engineered safety features operability requirements that do not involve the movement of irradiated fuel during core alterations.

Date of issuance: January 22, 2002.

Effective date: As of the date of issuance and shall be implemented prior to entering Mode 6 for the Cycle 4 refueling outage.

Amendment No.: 35.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 25, 2001 (66 FR 38768).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 22, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: May 14, 2001.

Brief description of amendment: The amendment revises Technical Specification section 3.3.5 ''Loss of Power (LOP) Diesel Generator Start Instrumentation,'' to increase the time delay setting of the 6.9kV shutdown board degraded voltage relays from a nominal 6 seconds to 10 seconds.

Date of issuance: January 23, 2002.

Effective date: As of the date of issuance and shall be implemented prior to startup following the Cycle 4 refueling outage.

Amendment No.: 36.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 25, 2001 (66 FR 38767).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 23, 2002.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: October 2, 2001.

Brief description of amendments: The amendments delete Technical Specification (TS) 5.5.3, ''Post Accident Sampling System,'' and thereby eliminate the requirements to have and maintain the Post Accident Sampling System (PASS) at Comenche Peak Steam Electric Station. In addition, the amendments revise TS 5.5.2, ''Primary Coolant Sources Outside Containment,'' to reflect the elimination of PASS.

Date of issuance: January 15, 2002.

Effective date: As of the date of issuance and shall be implemented by March 15, 2003.

Amendment Nos.: 91 and 91.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 15, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 29th day of January, 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–2567 Filed 2–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1569]

Solicitation of Comments on a Draft Standard Review Plan (NUREG–1569) for Staff Reviews for in Situ Leach Uranium Extraction License Applications

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability; Opportunity for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting comments from interested parties on a Draft Standard Review Plan (NUREG–1569) which provides guidance for staff safety and environmental reviews of applications to develop and operate uranium in situ leach facilities. An NRC Materials License is required, under the provisions of Title 10 of the Code of Federal Regulations, part 40 (10 CFR part 40), Domestic Licensing of Source Material, in conjunction with uranium extraction by in situ leach extraction techniques.

The applicant for a license is required to provided detailed information on the facilities, equipment, and procedures used and an Environmental Report that discusses the effects of proposed operations on the health and safety of the public and on the environment. This information, and the licensee's Environmental Report, are used by the NRC staff to determine whether the proposed activities will be protective of public health and safety and the environment.

This draft Standard Review Plan provides the NRC staff with specific guidance on performing reviews of this information and will be used to ensure a consistent quality and uniformity of staff reviews. Each section in the review plan provides guidance on what is to be reviewed, the basis for the review, how the staff review is to be accomplished, what the staff will find acceptable in a demonstration of compliance with the regulations, and the conclusions that are sought regarding the applicable sections in 10 CFR part 40, Appendix A. The Standard Review Plan is also intended to improve the understanding of interested members of the public, and the uranium recovery industry, of the staff review process.

A draft of NUREG–1569 was issued in October 1997 for public comment. This draft of NUREG–1569 incorporates the staff responses to comments and the results of Commission policy decisions affecting uranium recovery issues, which are described in NRC Regulatory Issue Summary 2000–23, dated November 30, 2000.

Opportunity to Comment: Interested parties are invited to comment on the standard review plan. A final standard review plan will be prepared after the NRC staff has evaluated comments received on the draft standard review plan. Written comments must be received prior to April 22, 2002. Comments on the draft review plan should be sent to the Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

A copy of the Draft Standard Review Plan (NUREG–1569) may be obtained by writing to the Reproduction and Distribution Services Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or e-mail *distribution@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: John Lusher @ (301) 415–7694 or *jhl@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of January, 2002.

For the Nuclear Regulatory Commission.

Melvyn N. Leach,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety, and Safeguards, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 02–2735 Filed 2–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1620]

Solicitation of Comments on a Draft Standard Review Plan (NUREG–1620) for Staff Reviews of Reclamation Plans for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability; Opportunity for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting comments from interested parties on a Draft Standard Review Plan (NUREG–1620) which provides guidance for staff reviews of Reclamation Plans for uranium mill tailings sites covered by Title II of the Uranium Mill Tailings Radiation Control Act. An NRC Materials License is required, under the provisions of Title 10 of the Code of Federal Regulations, part 40 (10 CFR part 40), Domestic Licensing of Source Material, in conjunction with uranium or thorium milling, or with byproduct material at sites formerly associated with such milling.

Appendix A to part 40 establishes technical and other criteria relating to siting, operation, decontamination, decommissioning, and reclamation of mills and tailings. The licensee's site Reclamation Plan documents how the proposed activities demonstrate compliance with the criteria in Appendix A. This information, and the licensee's Environmental Report, are used by the NRC staff to determine whether the proposed activities will be protective of public health and safety and the environment.

This Standard Review Plan provides the NRC staff with specific guidance on performing reviews of this information and will be used to ensure a consistent quality and uniformity of staff reviews. Each section in the review plan provides guidance on what is to be reviewed, the basis for the review, how the staff review is to be accomplished, what the staff will find acceptable in a demonstration of compliance with the regulations, and the conclusions that are sought regarding the applicable sections in 10 CFR part 40, Appendix A. The Standard Review Plan is also intended to improve the understanding of interested members of the public, and the uranium recovery industry, of the staff review process.

A draft of NUREG–1620 was issued in January 1999 for public comment. A final NUREG–1620, which incorporated NRC staff responses to the comments received on the draft, was issued in June 2000. This draft of NUREG–1620 was developed from the final version of the Standard Review Plan. The issue of a new draft Standard Review Plan was a result of Commission policy decisions affecting uranium recovery issues, which are described in NRC Regulatory Issue Summary 2000 –23, dated November 30, 2000.

Opportunity to Comment: Interested parties are invited to comment on the new draft standard review plan. A final standard review plan will be prepared after the NRC staff has evaluated comments received on the draft standard review plan. Written comments must be received prior to April 22, 2002. Comments on the draft standard review plan should be sent to the Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

A copy of the Draft Standard Review Plan (NUREG–1620) may be obtained by writing to the Reproduction and Distribution Services Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or e-mail *distribution@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: John Lusher @ (301) 415–7694 or *jhl@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of January, 2002.

For the Nuclear Regulatory Commission.

Melvyn N. Leach,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety, and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–2736 Filed 2–4–02; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Proposed Information Collection Requests

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget (OMB Control Number 0420–0513).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 USC, Chapter 35), the Peace Corps has submitted to the Office of Management and Budget a request for approval of information collections, OMB Control Number 0420–0513, the Peace Corps Teacher Brochure/Enrollment Form; the Peace Corps Volunteer Enrollment Form; and the follow-up program survey, the World Wise Schools (WWS) annual Teacher Survey. The purpose of this information collection is to include the participation of interested teachers and Peace Corps Volunteers in the WWS Program. The questionnaire serves to better determine which populations we are serving as well as which teachers have access to alternative information channels. The survey also assists in developing WWS Programs to meet the needs of the schools and teachers it serves. The purpose of this notice is to allow for public comments on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether their information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collections information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. A copy of the information collection may be obtained from Ms. Amy Wickenheiser, Peace Corps, Office of Domestic Programs, World Wise Schools, 1111 20th Street, NW, Room 2144, Washington, DC 20526. Ms. Wickenheiser can be contacted by telephone at 202–692–1426 or 800–424–8580 ext 1426. Comments on the form should also be addressed to the attention of Ms. Wickenheiser and should be received on or before April 8, 2002.

Information Collection Abstract

Title: Peace Corps Teacher Brochure/Enrollment Form; Peace Corps Volunteer Enrollment Form; and the World Wise Schools (WWS) annual Teacher Survey.

Need for and Use of This Information: The Peace Corps Teacher and Volunteer Enrollment Forms are completed by interested Teachers and Volunteers who want to participate in the World Wise Schools Program. The Teacher Survey asks questions to better determine which populations we are serving as well as which teachers have access to alternative information channels. The

survey also assists in developing WWS Programs to meet the needs of the schools and teachers it serves. There is other means of obtaining the required data. This program also fulfills the third goal of the Peace Corps as required by Congressional legislation.

Respondents: Teachers and Peace Corps Volunteers.

Respondent's Obligation to Reply: Individuals who voluntarily agree to participate in the WWS educational programs.

Burden on the Public:

	Teacher/volunteer forms	Teacher survey
a. Annual reporting burden	833 hours	1,000 hours.
b. Annual record keeping burden	250 hours	330 hours.
c. Estimated average burden per response	5 minutes	10 minutes.
d. Frequency of response	one time	one time.
e. Estimated number of likely respondents	10,000	6,000.
f. Estimated cost to respondents	$1.84	$3.68.

At this time, responses will be returned by mail.

This notice is issued in Washington, DC on December 19, 2001.

Judy Van Rest,

Associate Director for Management.

[FR Doc. 02–2653 Filed 2–4–02; 8:45 am]

BILLING CODE 6051–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Individual authorities established under Schedule C between December 1, and December 31, 2001, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule C

The following Schedule C authorities were established during December 2001:

Broadcasting Board of Governors

Staff Director to the Director, Office of the Advisory Board for Cuba Broadcasting. Effective December 13, 2001.

Commission on Civil Rights

Special Assistant to a Commissioner. Effective December 3, 2001.

Council on Environmental Quality

Associate Director for Communications to the Chairman, Council on Environmental Quality. Effective December 17, 2001.

Department of Agriculture

Confidential Assistant to the Administrator, Rural Utilities Service. Effective December 17, 2001.

Staff Assistant to the Confidential Assistant, Office of the Secretary. Effective December 26, 2001.

Department of Commerce

Confidential Assistant to the Assistant Secretary for Economic Development. Effective December 3, 2001.

Confidential Assistant to the Director, Office of External Affairs. Effective December 3, 2001.

News Analyst to the Director, Office of Public Affairs. Effective December 3, 2001.

Senior Advisor to the Assistant Secretary for Economic Development. Effective December 7, 2001.

Associate Under Secretary for Communications to the Under Secretary for Economic Affairs. Effective December 7, 2001.

Special Assistant to the Assistant Secretary for Market Access and Compliance. Effective December 7, 2001.

Special Assistant to the Under Secretary for Oceans and Atmosphere. Effective December 17, 2001.

Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective December 17, 2001.

Congressional Affairs Specialist to the Director of Legislative Affairs. Effective December 17, 2001.

Confidential Assistant to the Chief of Staff. Effective December 17, 2001.

Special Assistant to the Under Secretary and Director, Patent and Trademark Office. Effective December 17, 2001.

Special Assistant to the Director of External Affairs. Effective December 17, 2001.

Confidential Assistant to the Executive Assistant to the Secretary. Effective December 17, 2001.

Special Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective December 17, 2001.

Deputy Director to the Director, Executive Secretariat. Effective December 20, 2001.

Public Affairs Specialist to the National Director, Minority Business Development Agency. Effective December 20, 2001.

Confidential Assistant to the Director, Executive Secretariat. Effective December 21, 2001.

Special Assistant to the Director, Office of White House Liaison. Effective December 21, 2001.

Department of Defense

Special Assistant to the Under Secretary of Defense for Policy. Effective December 3, 2001.

Protocol Officer to the Special Assistant to the Secretary of Defense (White House Liaison). Effective December 4, 2001.

Special Assistant to the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict. Effective December 17, 2001.

Department of Education

Secretary's Regional Representative, Region II, to the Deputy Assistant Secretary for Regional Services. Effective December 3, 2001.

Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective December 3, 2001.

Confidential Assistant to the Assistant Secretary for Vocational and Adult Education. Effective December 3, 2001.

Special Assistant to the General Counsel. Effective December 4, 2001.
Special Assistant to the Commissioner of Rehabilitative Service Administration. Effective December 4, 2001.
Secretary's Regional Representative, Region IX, to the Deputy Secretary for Regional Services. Effective December 11, 2001.
Special Assistant to the Secretary of Education. Effective December 19, 2001.
Confidential Assistant to the Chief of Staff to the Deputy Secretary. Effective December 19, 2001.
Special Assistant to the Director, Office of Public Affairs. Effective December 19, 2001.
Special Assistant to the Deputy Secretary. Effective December 21, 2001.
Confidential Assistant to the Assistant Secretary for Management. Effective December 26, 2001.

Department of Energy

Senior Advisor, Communications to the Principal Deputy Assistant Secretary for Energy, Efficiency and Renewable Energy. Effective December 7, 2001.
Chief of Staff to the Assistant Secretary for Energy Efficiency and Renewable Energy. Effective December 11, 2001.
Special Assistant for Communications to the Director, Office of Civilian Radioactive Waste Management. Effective December 11, 2001.
Policy Advisor to the Secretary of Energy. Effective December 11, 2001.
Special Assistant to the Director, Office of Management and Administration. Effective December 11, 2001.
Senior Policy Advisor to the Assistant Secretary for Environmental Management. Effective December 11, 2001.
Special Assistant to the Assistant Secretary for Policy and International Affairs. Effective December 17, 2001.
Deputy White House Liaison to the White House Liaison and Senior Policy Advisor. Effective December 17, 2001.

Department of Health and Human Services

Secretary's Regional Representative to the Director of Intergovernmental Affairs. Effective December 13, 2001.
Secretary's Regional Representative to the Director of Intergovernmental Affairs. Effective December 13, 2001.
Speechwriter to the Assistant Secretary for Public Affairs. Effective December 13, 2001.
Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media). Effective December 17, 2001.
Counselor to the Deputy Secretary. Effective December 19, 2001.
Executive Director, President's Committee on Mental Retardation to the Assistant Secretary for Children and Families, Administration for Children and Families. Effective December 19, 2001.
Deputy Director for Policy to the Director of Intergovernmental Affairs. Effective December 20, 2001.
Special Assistant to the Assistant Deputy Secretary for Public Affairs (Policy and Strategy). Effective December 20, 2001.
Special Assistant to the Deputy Assistant Secretary for Policy and External Affairs, Administration for Children and Families. Effective December 20, 2001.
Associate Commissioner Children's Bureau to the Commissioner, Administration for Children Youth and Families. Effective December 20, 2001.
Confidential Assistant to the Director of Communications. Effective December 20, 2001.
Special Assistant to the Assistant Secretary for Children and Families, Administration for Children and Youth Families. Effective December 20, 2001.
Director, Office of International and Refugees Health to the Assistant Secretary for Health. Effective December 26, 2001.

Department of Housing and Urban Development

Special Assistant to the Director Special Actions. Effective December 20, 2001.
Staff Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations. Effective December 21, 2001.
Special Assistant to the Chief Financial Officer. Effective December 26, 2001.

Department of the Interior

Special Assistant to the Deputy Director for External Affairs (National Park Service). Effective December 13, 2001.
Deputy White House Liaison to the White House Liaison. Effective December 14, 2001.

Department of Justice

Press Assistant to the Director, Office of Public Affairs. Effective December 5, 2001.

Department of Labor

Special Assistant to the Secretary of Labor. Effective December 7, 2001.
Chief of Staff to the Assistant Secretary, Employment Standards Administration. Effective December 11, 2001.
Special Assistant to the Assistant Secretary for Occupational Safety and Health Administration. Effective December 13, 2001.
Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective December 13, 2001.
Secretary's Representative, Seattle, WA to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective December 13, 2001.
Special Assistant to the Assistant Secretary for Administration and Management. Effective December 13, 2001.
Special Assistant to the Director, 21st Century Workforce. Effective December 17, 2001.
Chief of Staff to the Deputy Assistant Secretary. Effective December 20, 2001.
Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective December 20, 2001.

Department of State

Legislative Management Officer to the Assistant Secretary for Legislative Affairs. Effective December 11, 2001.

Department of Transportation

Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance. Effective December 5, 2001.
Associate Director to the Assistant Secretary for Governmental Affairs. Effective December 6, 2001.
Scheduling/Advance Assistant to the Director for Scheduling and Advance. Effective December 27, 2001.
Staff Assistant to the Administrator, Federal Transit Authority. Effective December 28, 2001.

Department of the Treasury

Special Assistant to the Assistant Secretary for Financial Institutions. Effective December 21, 2001.
Senior Advisor to the Deputy Assistant Secretary for Government Financial

Policy. Effective December 21, 2001.
Deputy Executive Secretary to the Executive Secretary. Effective December 26, 2001.

Environmental Protection Agency

Assistant to the Director of Operations, Office of Communications, Education and Media Relations. Effective December 3, 2001.
Director of Operations to the Administrator. Effective December 3, 2001.
Special Assistant to the Associate Administrator for Communications, Education, and Media Relations. Effective December 13, 2001.
Program Advisor (Publications) to the Associate Administrator for Communications, Education and Media Relations. Effective December 13, 2001.
Program Advisor to the Assistant Administrator for Policy, Economics and Innovation. Effective December 13, 2001.

Equal Employment Opportunity Commission

Confidential Assistant to the Chair. Effective December 17, 2001.
Special Assistant (Speech Writer) to the Director, Office of Communications and Legislative Affairs. Effective December 17, 2001.
Confidential Assistant to the Director, Office of Communications and Legislative Affairs. Effective December 20, 2001.

Federal Trade Commission

Consumer Liaison Specialist to the Director, Office of Consumer and Business Education. Effective December 7, 2001.

National Aeronautics and Space Administration

Staff Support Specialist to the Administrator, National Aeronautics and Space Administration. Effective December 21, 2001.
Confidential Assistant to the Administrator, National Aeronautics and Space Administration. Effective December 21, 2001.

Office of Management and Budget

Confidential Assistant to the Associate Director, National Security and International Affairs. Effective December 3, 2001.
Special Assistant to the Associate Director for Information Technology and E-Government. Effective December 28, 2001.

Office of National Drug Control Policy

Public Affairs Specialist to the Director, Office of National Drug Control Policy. Effective December 3, 2001.

Office of Personnel Management

White House Liaison to the Chief of Staff. Effective December 12, 2001.
Special Iniatives Coordinator to the Director, Office of Communications. Effective December 17, 2001.
Deputy General Counsel to the General Counsel. Effective December 17, 2001.
Special Assistant to the Director, Office of Communications. Effective December 17, 2001.
Senior Advisor to the Chief of Staff. Effective December 17, 2001.

President's Commission on White House Fellowships

Executive Director to the President of the United States. Effective December 3, 2001.
Outreach Coordinator to the Executive Director. Effective December 13, 2001.

Small Business Administration

Special Assistant to the Associate Deputy Administrator of Entrepreneurial Development. Effective December 3, 2001.
Regional Administrator, Region I, Boston, MA to the Associate Administrator for Field Operations. Effective December 28, 2001.
Regional Administrator, Region 10, Seattle Washington to the Associate Administrator for Field Operations. Effective December 28, 2001.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–2675 Filed 2–4–02; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45355; File No. SR–NASD–2001–75]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. To Make Permanent a Pilot Amendment to NASD Rule 4120 Relating to Nasdaq's Authority To Initiate and Continue Trading Halts

January 29, 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 October 18, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On January 28, 2002, Nasdaq amended the proposal.[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

Nasdaq proposes to make permanent an amendment to NASD Rule 4120 that the Commission approved on a pilot basis. The amendment clarified Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq. In addition, Nasdaq proposes to make the following amendments to the language of the pilot rule that is currently in effect. Proposed new language is in italics; proposed deletions are in brackets.

4120. Trading Halts

(a) No change.

(1)–(5) No change.

(6) Halt trading in a security listed on Nasdaq when

(i) Extraordinary market activity in the security is occurring, such as the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the national best bid and offer, [and]

(ii) Nasdaq determines that such extraordinary market activity is likely to have a material effect on the market for the security, and

([ii]*iii*) Nasdaq believes that such extraordinary market activity may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* January 25, 2002 letter from Mary M. Dunbar, Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, and attachments (''Amendment No. 1''). Amendment No. 1 completely replaces and supersedes the original proposal.

(b) (1)–(5) No change.

(6) *(i) In the case of a trading halt under Rule 4120(a)(6) based on the possible misuse or malfunction of an electronic quotation, communication, reporting, or execution system that is linked to (but not operated by) Nasdaq, Nasdaq will promptly contact the operator of the system in question to ascertain information that will assist Nasdaq in determining whether a misuse or malfunction has occurred, what effect the misuse or malfunction is having on trading in a security, and what steps are being taken by the operator of the system to address the misuse or malfunction. If the operator of the system is unavailable when contacted by Nasdaq, Nasdaq will continue efforts to contact the operator of the system to ascertain information that will assist Nasdaq in determining whether the trading halt should be terminated.*

(*ii*) A trading halt initiated under Rule 4120(a)(6) shall be terminated as soon as Nasdaq determines either that the system misuse or malfunction that caused the extraordinary market activity [has been corrected] *will no longer have a material effect on the market for the security* or that system misuse or malfunction is not the cause of the extraordinary market activity.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

On May 11, 2001, Nasdaq filed with the Commission a proposed rule change to clarify Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq.[4] On July 27, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change, requesting that the Commission approve the proposed rule change on a three-month pilot basis, expiring on October 27, 2001.[5] Also on July 27, 2001, the Commission approved the proposed rule change.[6] On September 27, 2001, Nasdaq filed a proposed rule change extending the pilot until January 27, 2002.[7] Nasdaq again extended the pilot until April 30, 2002.[8]

NASD Rule 4120 provides Nasdaq with authority to halt trading in securities in a number of circumstances in which Nasdaq deems a trading halt necessary to protect investors and the public interest. Before adopting the pilot amendment, the specific bases for initiating a trading halt focused primarily on ensuring that all investors have access to material news about an issuer. The pilot amendment added a new basis for the imposition of a trading halt, focused on aberrational trading in a particular security.

As a result of the decentralized and electronic nature of the market operated by Nasdaq, the price and volume of transactions in a Nasdaq-listed security may be affected by the misuse or malfunction of electronic systems, including systems that are linked to, but not operated by, Nasdaq. In circumstances where misuse or malfunction results in extraordinary market activity, Nasdaq believes that it may be appropriate to halt trading in an affected security until the system problem can be rectified. In the period during which the rule has been in effect, Nasdaq has not had occasion to initiate a trading halt under the pilot rule, and it continues to be Nasdaq's expectation that the rule would be invoked only in rare circumstances. Nevertheless, Nasdaq believes that the rule is an important component of its authority and responsibility to maintain the fairness and orderly structure of the Nasdaq market and should be approved on a permanent basis.

The rule was drafted to be flexible and to permit rapid action, in order to serve the rule's purpose of guarding against disruptive trading conditions. Thus, the rule allows Nasdaq to halt trading based on a belief that system misuse or malfunction may be the cause of extraordinary market activity.[9] In recognition of the fact that the rule allows Nasdaq to take action in response to problems with systems that Nasdaq does not operate, however, Nasdaq is proposing to amend the rule to specify procedures that Nasdaq will follow in connection with a trade halt based on the misuse or malfunction of a system that is linked to, but not operated by, Nasdaq.

Specifically, Nasdaq will promptly contact the operator of the system in question to ascertain information that will assist Nasdaq in determining whether a misuse or malfunction has occurred, what effect the misuse or malfunction is having on trading in a security, and what steps are being taken by the operator of the system to address the misuse or malfunction. If the operator of the system is unavailable when contacted by Nasdaq, Nasdaq will continue efforts to contact the operator of the system to ascertain information that will assist Nasdaq in determining whether the trading halt should be terminated. In addition, Nasdaq is proposing to amend the rule to require a finding that an observed instance of extraordinary market activity is likely to have a material effect on the market for the security that is the subject of a trading halt.

As is true for all trading halts initiated under NASD Rule 4120, a decision to halt trading requires a determination that the action is necessary to protect investors and the public interest. Moreover, a trading halt initiated under the rule will be terminated as soon as Nasdaq can conclude that the system misuse or malfunction will no longer have a material effect on the market for the security that is the subject of the halt or that system misuse or malfunction is not the cause of an instance of extraordinary market activity.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[10] which requires, among other things, that

[4] Securities Exchange Act Release No. 44307 (May 15, 2001), 66 FR 28209 (May 22, 2001)(SR–NASD–2001–37).

[5] Letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Alton Harvey, Division of Market Regulation, SEC (July 27, 2001).

[6] Securities Exchange Act Release No. 44609 (July 27, 2001), 66 FR 40761 (August 3, 2001)(SR–NASD–2001–37).

[7] Securities Exchange Act Release No. 44870 (September 28, 2001), 66 FR 50701 (October 4, 2001)(SR–NASD–2001–60).

[8] SR–NASD–2002–14.

[9] The phrase ''extraordinary market activity'' is not defined in the rule. Similar phrases, such as ''unusual market conditions,'' have been used in SEC and self-regulatory organization rules without being specifically defined. *See e.g.,* SEC Rule 11Ac1–1(b)(3); New York Stock Exchange Rule 104, Supplementary Material .10(6)(i)(B); New York Stock Exchange Rule 717. A rule that is designed to respond to aberrational market conditions must be somewhat flexible in its application because of the difficulty of defining *ex ante* all situations in which application of the rule might be necessary.

[10] 15 U.S.C. 78o–3.

a registered national securities association's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest. Nasdaq believes the proposed amendments to the rule are consistent with the Act because they establish procedures that Nasdaq will follow in connection with a trading halt that is based on the misuse or malfunction of a system that is not operated by Nasdaq, and will therefore help to ensure that the rule is applied in an appropriate manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will impose no 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

Instinet Corporation (''Instinet'') commented on the proposed rule change as originally proposed, expressing concerns about trading halts that might be premised on the misuse or malfunction of systems that are not operated by Nasdaq.[11] Nasdaq believes that the amendments to the rule proposed in this filing respond to the concerns expressed by Instinet without impairing the flexibility that the rule must retain in order for the rule to assist Nasdaq in meeting its overarching responsibility to maintain the fairness and orderly structure of the Nasdaq market. Written comments on the proposed rule change were neither solicited nor 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 the NASD 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.

[11] *See* July 27, 2001 letter from Jon Kroeper, First Vice President-Regulatory Policy/Strategy, Instinet, to Jonathan G. Katz, Secretary, SEC.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions 2 should refer to file number SR–NASD–2001–75 and should be submitted by February 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2654 Filed 2–4–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before April 8, 2002.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Ruthie Abney, Office Automation Assistant, Office of Business Development, Small Business Administration, 409 3rd Street, SW., Suite 8000, Washington DC 20416.

[12] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: Ruthie Abney, Office Automation Assistant, (202) 205–6410 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: 8(a) Annual Update.
Form No: 1450.
Description of Respondents: 8(a) Program Participants.
Annual Responses: 5,000.
Annual Burden: 13,000.

Title: Semiannual Report on Representatives and Compensation Paid for Services in Connection with Obtained Federal Contracts.
Form No: 1790.
Description of Respondents: 8(a) Program Participants.
Annual Responses: 9,000.
Annual Burden: 9,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–2725 Filed 2–4–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Agency Information Collection; Other Than Those Contained In Proposed Rules or In Current Rules; Transportation for Individuals With Disabilities-Accessibility of Over-the-Road Buses (OTRBs)

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the Department of Transportation's (DOT) amendment of its Americans with Disabilities Act and Final Rule on Accessibility of Over-the-Road Buses.

DATES: Comments on this notice must be received by April 8, 2002.

ADDRESSES: Comments should be directed to the Assistant General Counsel for Regulation and Enforcement, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Linda A. Lasley, Attorney-Advisor, Regulation and Enforcement, Office of the General Counsel, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202)366–4723.

SUPPLEMENTARY INFORMATION:

Title: Transportation For Individuals With Disabilities-Accessibility of Over-the-Road Buses (OTRBs).

OMB Number: 2100–0019.

Type of Request: New Collection.

Affected Public: Bus companies and the disability community.

Abstract: The Department of Transportation (DOT), in conjunction with the U.S. Architectural and Transportation Barriers Compliance Board, issued final access regulations for privately-operated over-the-road buses (OTRBs) as required by the Americans with Disability Act (ADA) of 1990. The final rule has four different recordkeeping/reporting requirements. The first has to do with 48 hour advance notice and compensation. The second has to do with equivalent service and compensation. The third has to do with reporting information on ridership on accessible fixed-route buses. The fourth has to do with reporting information on the purchase and lease of accessible and inaccessible new and used buses. The purpose of the information collection requirements is to provide data that the Department can use in its regulatory review and to assist the Department in its oversight of compliance by bus companies.

Respondents: Charter/Tour Service Operators, Fixed Route Companies, Small Mixed Service Operators.

Estimated Number of Respondents: 3,448.

Average Annual Burden Per Respondent: Variable.

Estimated Total Burden on Respondents: 316,226 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. All responses to this notice, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on January 30, 2002.

Robert Ashby,

Deputy Assistant General, Counsel for Regulation and Enforcement.

[FR Doc. 02–2724 Filed 2–4–02; 8:45 am]

BILLING CODE 4910–6–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To impose and Use a Passenger Facility Charge (PFC) at Metropolitan Oakland International Airport, Oakland, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Metropolitan Oakland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 7, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Hawthorne, CA 90250, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Tay Yoshitani, Executive Director, Port of Oakland, at the following address: 530 Water Street, Oakland, CA 94607. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port of Oakland under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Metropolitan Oakland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 17, 2002, the FAA determined that the application to impose and use a PFC submitted by the Port of Oakland was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 19, 2002.

The following is a brief overview of the application No.: 02–11–C–00–OAK.

Project No. 1 (Use Project) Construct Remote Overnight Aircraft Parking Apron

Level of proposed PFC: $3.00.

Charge effective date: July 1, 1997.

Proposed charge expiration date: July 1, 2002.

Total estimated PFC revenue: $30,000,000.

Project No. 2 (Impose and Use Project) Terminal One Gate Improvement Project

Level of proposed PFC: $4.50.

Proposed Charge effective date: October 1, 2003.

Proposed charge expiration date: January 1, 2003.

Total estimated PFC revenue: $7,000,000.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/On-Demand Air Carriers filing FAA form 1800–31 and Commuters or Small Certificated Air Carriers filing DOT form 298–C of T1 or E1.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Hawthorne, CA 90250. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Port of Oakland.

Issued in Hawthorne, California, on January 25, 2002.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 02–2722 Filed 2–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Reno/Tahoe International Airport, Reno, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Reno/Tahoe International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 7, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Hawthorne, CA 90250, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Christopher Horton, Manager of Finance, Airport Authority of Washoe County, Airport Department, at the following address: P.O. Box 12490, Reno, NV 89510. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Airport Authority of Washoe County under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Reno/Tahoe International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 17, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport Authority of Washoe County was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 18, 2002. The following is a brief overview of the application No. 02–05–C–00–RNO:

Level of proposed PFC: February 1, 2003.

Proposed charge effective date: February 1, 2003.

Proposed charge expiration date: October 1, 2003.

Total estimated PFC revenue: $6,734,192.

Brief description of the proposed project: Replacement of Flight and Baggage Information Display System (FIDS/BIDS), Airfield Signage Standardization (Guidance Signs)—Phase 2, Concourse Escalator Replacement, Terminal Lobby Modernization, 800 Megahertz Radio System and Terminal Apron Reconstruction—Phase 5A.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/on-demand Air Carriers (formerly Air Taxi/Commercial Operators) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTRACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Hawthorne, CA 90250. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Airport Authority of Washoe County.

Issued in Hawthorne, California, on January 25, 2002.

Herman C. Bliss,

Manager, Airports Division Western-Pacific Region.

[FR Doc. 02–2723 Filed 2–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number PS–ACE100–2002–001]

Proposed Issuance of Policy Memorandum, Dive Test for Part 23/CAR 3 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of policy statement; request for comments.

SUMMARY: This document proposes to adopt new policy for certification of normal, utility, acrobatic, and commuter category turbine powered airplanes for dive test.

DATES: Comments sent must be received by April 8, 2002.

ADDRESSES: Send all comments on this proposed policy statement to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Lowell Foster, FAA, Small Airplane Directorate, Regulations and Policy Branch, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127; fax (816) 329–4090; email: <*Lowell.Foster@faa.gov*>.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on the Proposed Policy?

We invite your comments on this proposed policy statement PS–ACE100–2002–001. You may send whatever written data, views, or arguments you choose. We will consider all comments received by the closing date. We may change the proposals contained in this notice because of the comments received.

Please send comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.** Comments sent using the Internet must contain ''Comments to Policy Statement Number PS–ACE100–2002–001'' in the subject line. Commenters should format in Microsoft Word 97 or ASCII any file attachments that are sent using the Internet.

Send comments using the following format:

—Organize comments issue-by-issue. For example, discuss a comment about the analysis and a comment about speed limits as two separate issues.

—For each issue, state what specific change you are requesting to the proposed policy memorandum.

—Include justification (for example, reasons or data) for each request.

If sending your comments using the Internet will cause you extreme hardship, you may send comments using the U.S. Mail, overnight delivery, or facsimile machine. You should mark your comments, ''Comments to Policy Statement PS–ACE100–2002–001'' and send two copies to the above address in the section **FOR FURTHER INFORMATION CONTACT.**

What Would Be the General Effect of This Proposed Policy?

The FAA is presenting this information as a set of guidelines suitable for use. However, we do not intend for this proposed policy to become a binding norm; it does not form a new regulation, and the FAA would not apply or rely on it as a regulation.

The FAA Aircraft Certification Offices (ACO's) and Flight Standards District Offices (FSDO's) that certify changes in type design and approve alterations in normal, utility, and acrobatic category airplanes should try to follow this policy when appropriate. In addition, as with all advisory material, this statement of policy identifies one means, but not the only means, of compliance.

Because this proposed general statement of policy only announces what the FAA seeks to establish as policy, the FAA considers it an issue for which public comment is appropriate. Therefore, the FAA requests comments on the following proposed general statement of policy relevant to compliance with § 23.251 of the Federal Aviation Regulations (14 CFR 23.251), and other related regulations.

Summary

Section 23.251 must be addressed when approving replacement propellers. While flight testing to V-dive may not be required to show compliance for slow, low performance airplanes, it is normally necessary for higher-performance airplanes because they are more likely to inadvertently exceed their maximum speed.

Background

We recently received a large number of supplemental type certification (STC) applications for replacement propeller installations on single engine airplanes with a reciprocating engine. The propellers are type certificated under 14 CFR part 21, § 21.29 (accepted under the bilateral agreement with the exporting country). The applicant questioned whether the airplanes modified with these propellers should be required to fly to dive speed under part 23, § 23.251 as part of the STC program in addition to showing compliance to § 23.33 for propeller overspeed.

Propeller overspeeds can occur during high-speed flight, such as the dive test. Overspeeding refers to a condition where the engine or propeller RPM limit is exceeded; typically because the airplane is going fast enough to drive the propeller (and engine) beyond the engine limits. The intent of § 23.33 is to ensure that propeller overspeeds did not occur within the normal flight envelope. This intent differs from that in the V–Dive requirements, § 23.251, which were intended to address airframe vibration and buffeting. The intent of these requirements are supported by the Flight Test Report Guides for both CAR 3 and early part 23 (FAA Form 8110–11 and 8110–18) which had an allowance for the use of a different propeller for the dive test if the production propeller would overspeed the engine beyond that allowed by the engine manufacturer. This practice of allowing different propellers supports that the original intent of § 23.251 was not an engine/propeller control test, but an airframe test addressing vibration and buffeting.

Service history for light, low-speed (typically 2–4 place) reciprocating engine powered airplanes has validated the testing limits used for both the § 23.33 and § 23.251 requirements. This airplane class is typically slow enough that it is unlikely the pilot would inadvertently exceed V_{NE}. Furthermore, in most cases, at dive speed, the air is driving the propeller and there are not any pressure pulses from the propeller to affect the airframe. The other concern is the propeller overspeeding the engine. Finally, the frequency of the propeller and engine RPM are typically far from any airframe harmonic frequency.

Propellers on multiengine and turboprop airplane installations are more critical than on light, low-speed airplanes and applicants should consider including a dive test for these certification programs. Previous dive tests on a turbine powered, multiengine airplane uncovered a problem with the engine/propeller control system. While § 23.251 is not intended to address propeller or engine control problems directly, this problem was severe enough to warrant a design change because of safety considerations. In addition, It is typically easier and therefore more likely that the pilot of a larger, multiengine airplane or turbine powered airplane will inadvertently exceed V_{NE} or V_{MO} in normal operation. Additionally, there have been propeller/turbine engine runaways caused by over-speeding during the V-dive test. Performing the V-dive test for the propeller installation program would insure that a propeller/engine problem is not discovered inadvertently during follow-on non-propulsion based airplane modifications requiring test pilots to demonstrate the airplane out to V-dive.

Policy

Part 23, § 23.251 requires that the aircraft be free of vibration and buffeting that could interfere with the pilot's ability to safely fly the aircraft, at all speeds up to V_D, in all approved airplane configurations. Compliance with § 23.251 is typically shown with a flight demonstrating that all design analysis and margins related to airframe vibration and buffeting, including those established for the propeller/engine/airframe, are adequate to provide a safe airplane up to its dive speed.

Section 23.251 must be addressed when approving replacement propellers. While dive testing the airplane is one way to demonstrate compliance to § 23.251, it may not be necessary for light, low-speed airplanes that are unlikely to inadvertently exceed the maximum speed of the airplane. Conversely, dive testing should be performed for higher-performance airplanes because they are more likely to inadvertently exceed their maximum speed.

For light, low-speed airplanes, should the applicant choose not to perform a dive test, then other means of compliance acceptable to the FAA must be provided. One way of addressing § 23.251 is for an applicant to provide evidence of positive service history or that the new propeller/engine combination has been tested on a previous program to the same or a higher speed being requested. Applicants have also shown compliance with § 23.251 by analysis and by limiting V_D to a lower value such as V_{NE}. V_{NE} now becomes the new V_D, and a new V_{NE} is established at a lower speed.

Issued in Kansas City, Missouri, on January 29, 2002.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2720 Filed 2–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed [Preliminary] Airworthiness Criteria for Airworthiness Certification of Transport Category Airships

AGENCY: Federal Aviation Administration, DOT.

ACTION: Extension of comment period.

SUMMARY: This notice announces the extension of the comment period for the notice of availability and request for comments for the initiation of a Federal Aviation Administration (FAA) proposed airworthiness criteria for transport category airships. The FAA is extending the comment period to allow companies and individuals adequate time to complete their comments to the proposed criteria.

DATES: The comment period is being extended from February 5, 2002, to April 5, 2002.

ADDRESSES: Copies of the proposed airworthiness criteria for transport

category airships may be requested from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. The proposed airworthiness criteria is available on the Internet at the following address: *http://www.faa.gov/programs _ rsvp2/smart/faa_home_page/certification/ aircraft/small_airplane _ directorate_news_proposed.html.*

Send all comments on the proposed airworthiness criteria for transport category airships to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mike Reyer or Karl Schletzbaum, Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy, ACE–111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4131 (M. Reyer); or (816) 329–4146 (K. Schletzbaum); fax: (816) 329–4090; e-mail: *karl.schletzbaum@faa.gov or michael.reyer@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA issued a notice of availability and request for comments on Proposed Airworthiness Criteria for Airworthiness Certification of Transport Category Airships on September 28, 2001 (66 FR 51090, October 5, 2001). The FAA is extending the comment period to give all interested persons the opportunity to comment on the proposed criteria.

Issued in Kansas City, Missouri on January 23, 2002.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2630 Filed 2–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement Number ANM–01–04; System Wiring Policy for Certification of Part 25 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of final policy.

SUMMARY: In this document, the FAA addresses public comments that were submitted in response to a previously published general statement of policy that is applicable to the type certification process of transport category airplanes. The policy provides guidance to FAA certification teams for the type design data needed. The policy is necessary to correct deficiencies associated with the submittal of design data and instructions for continued airworthiness involving airplane system wiring for type design, amended design, and supplemental design changes.

FOR FURTHER INFORMATION CONTACT: Gregory Dunn, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane and Flight Crew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2799; fax (425) 227–1320; e-mail: *gregory.dunn@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2001, the FAA published in the **Federal Register** (66 FR 34983) a general statement of policy comprising guidance to FAA personnel for reviewing certain certification plans for transport category airplanes. Specifically, the policy statement provides internal guidance to FAA certification teams that will enable them to more thoroughly examine all required information submitted in the type design data package for compliance with wire installation safety standards. This policy will also advise applicants what information needs to be provided in their type design data package to avoid delays in the certification process caused by incomplete or ambiguous information.

The safety standards for civil transport category airplanes are specified in Title 14, Code of Federal Regulations (CFR), part 25. If an applicant demonstrates that a particular design (*i.e.*, a particular model) complies with these standards, the FAA issues it a design approval. The drawings and other data that describe that design are known as the ''type design.'' When an applicant submits the necessary documents required for type certification by the FAA, the compilation of those documents is known as the ''type design data package.''

Based on certification projects submitted to the FAA for review in recent years, the FAA has become aware that there is some confusion among applicants as to the definition of ''type design,'' especially with respect to the inclusion of drawings and specifications necessary to define the wiring configuration associated with equipment installation. In a number of recent certification projects, type design data packages that were submitted did not include wiring diagrams showing the source and destination of all wire associated with the installation. Also, wire installation drawings showing airplane wire routing, grounding, shielding, clamping, conduits, etc., either were missing or lacked sufficient detail. The wiring diagrams and installation drawings did not contain the necessary information intended by the relevant regulations. These drawing packages did not adequately and clearly define the configuration of the model to be certificated. In addition, instructions for continued airworthiness, as required by the regulations, were not defined.

Current Regulatory Requirements

The type and quality of data required for type design data packages and requirements for instructions for continuing airworthiness are indicated in the regulations. The pertinent sections of 14 CFR are as follows:

Section (§) 21.31 (''Type design''): This section defines and describes ''type design.''

§ 21.33 (''Inspection and tests''): This section, specifically § 21.33(b), provides additional insight as to the contents of the type design data package.

§ 21.21 (''Issue of type certificate: normal, utility, acrobatic, commuter, and transport category aircraft; manned free balloons, special classes of aircraft, aircraft engines; propellers''): This section lists pertinent requirements for a type certificate.

§ 21.50 (''Instructions for continued airworthiness and manufacturer's maintenance manuals having airworthiness limitations sections''): This section requires applicants to submit instructions for continued airworthiness as part of their type design data package. Paragraph 21.50(b) is relevant to this policy statement.

§ 21.101 (''Designation of applicable regulations'') and *§ 21.115* (''Applicable requirements''): These sections make it clear that these data requirements apply to changes to type certificates.

Procedures for accomplishing the evaluation and approval of airplane type design data can be found in FAA Order 8110.4B, ''Type Certification,'' dated April 24, 2000. This document gives comprehensive guidance on what constitutes a design package and what is necessary to make acceptable findings of compliance.

Identified Problems

Ambiguous Definition of Configuration

As mentioned above, the FAA has identified a number of recently submitted type design data packages that did not meet the intent of § 21.31(a). Specifically, these packages did not completely define the

certification configuration. For example, these packages did not completely define specific routing and installation of wiring on the airplane, which then left an inordinate portion of the installation to the discretion of the installer.

The routing of wiring is an important aspect not only to the system being modified, but also to other systems that can be affected by that wiring. It is important that the routing of wiring strictly follow the criteria established by the FAA in the certification basis, as reflected in the holder's original or subsequently approved type design. This requires installation drawings and instructions that completely define the required routing and installation with sufficient detail to allow repeatability of the installation.

System Safety Assessment

A system safety assessment is done as part of the installation of any equipment on the airplane. This typically consists of a functional hazard analysis, failure mode and effects analysis, zonal analysis, or other safety analyses appropriate to the system being installed. In the past, insufficient emphasis has been placed on an examination of failures of wiring external to the actual line replaceable units being installed. Failure of wiring in bundles due to chafing, contamination, or other causes may affect the continued safe operation of the airplane.

References to General Guidance

Problems occur when applicants overly rely on ''standard practices'' or other general guidance for installation details. Often, type design data packages make references to FAA Advisory Circular (AC) 43–13, ''Acceptable Methods, Techniques, and Practices—Aircraft Inspection and Repair,'' for installation instructions. That guidance is general in nature and offers applicants multiple options for compliance. Because the installer can choose from a number of options for installation details, it is difficult for the FAA to find that the configuration complies with the criteria established by the FAA in the certification basis for a previously approved type design. An installer could make inappropriate choices of method, depending upon his or her previous experience and training.

The practice of referencing general guidance, on those occasions when safety assurances and certification criteria necessitate strict adherence to specified certification standards, could result in an incomplete definition of the installation configuration. This clarification of FAA policy does not mean that data packages cannot reference AC 43–13 or similar documents, but the applicant is required to provide installation instructions which are unambiguous.

Omission of Manufacturing Process Specifications

There also have been cases where crucial manufacturing process specifications were omitted in the type design data packages pertaining to wiring installation details. This has led to insufficient control of the production of parts, and consequent airworthiness problems related to faulty parts manufacturing. This omission error frequently occurs when the type design approval holder routinely uses a complex process, but has not carefully defined the process in the type design data. As a consequence, it can result in approval of replacement parts that may not comply with necessary but undefined processing requirements.

Modifications Not Compatible With Original Type Design Standards

Another common problem occurs when a modifier is unaware of, or does not specify, installation and routing practices that are compatible with the certification standards established for the original type design.

Some manufacturers provide an abbreviated version of their installation and routing specifications in the maintenance manual that they prepare for their products. These specifications may not be readily available to modifiers. This can result in ''inadvertent non-compliance'' with certification requirements. One example of this kind of inadvertent non-compliance would be the installation of a power wire for a modification in a wire bundle containing critical wiring that the original manufacturer was required to isolate from other systems. This type of situation can be prevented by the applicant using experienced design engineers, doing physical inspections of the airplanes to be modified to ensure compatibility, and using the original airplane manufacturer's wiring installation guidelines.

Instructions for Continued Airworthiness

A review of past certification projects indicates that the maintenance aspects of system wire external to the installed equipment is not being adequately addressed. The integrity of the wiring is typically left to those doing general airplane maintenance that relies on visual inspections. However, visual inspections may not be adequate for wiring routed in metal or opaque conduits, wire in high vibration areas, or wire located in difficult to inspect areas. Equipment installers need to address any special maintenance requirements for the airplane wiring associated with equipment installation.

Disposition of Comments

The FAA received comments on the policy statement from four commenters: two representing industry groups, one an aviation safety inspector, and one a private citizen. The comments generally fall within four specific subject areas. These are addressed below.

1. Editorial Changes for Clarification of Meaning

One commenter suggests that the terms ''complete'' and ''completely,'' ''strictly,'' ''precise,'' and ''definitive,'' used in the Statement of FAA Policy could be regarded as an absolute requirement, overly precise, or unclear. The commenter also requests that certain sentences be reworded.

The FAA accepts these comments with some modifications. The intent of this policy is to define the type design using drawings which are unambiguous with respect to important design details. It is not the intent of the FAA to require that these drawings contain every minute detail. Tests and analyses must be sufficiently detailed so that conformity can be accomplished.

In response to this commenter:

- The following sentence in paragraph 1 has been deleted: ''These packages should completely define the certification configuration.''
- The sentence in paragraph 2, which begins ''Installation drawings that completely define the configuration typically will identify: * * *'' has been changed to the following: ''Installation drawings should identify the configuration. Such drawings typically will identify: * * *''
- The sentence in paragraph 7 which begins ''These tests and analyses require complete * * *'' is changed to ''These tests and analyses should define the parts so that: * * *''
- The sentence in paragraph 8 that contains ''A complete definition * * * requires a drawing package that clearly and completely identifies: * * *'' is changed to ''The definition of the parts, including wiring and wire installation hardware, requires a drawing package that clearly identifies: * * *''
- The word ''strictly,'' as used in the fourth sentence in the first paragraph, beginning ''It is important that the routing of wiring strictly follow the intent of the criteria * * *'' is deleted.

• The word ''definitive'' in the last sentence in paragraph 5 is deleted and the rest of the sentence is rewritten for clarity. The sentence now reads, ''This, in turn, requires a knowledge of the configuration through design control and an understanding of the airplane manufacturer's relevant wire installation practices or procedures, especially any requirements that pertain to wire separation.''

• In paragraph 6, ''definitive drawings'' is changed to ''engineering drawings'' in order to more accurately reflect the intended meaning, and, in the same paragraph, in the last sentence, the word ''precise'' is removed from ''precise location or routing of the wiring'' and the phrase now reads ''location or routing of the wiring.''

A second commenter requests deletion, addition, or revision of sentences for clarification. Specifically, this commenter requests the following changes:

• Remove the following sentence in the ''Background'' section under ''One-Only Approvals'': ''The certification regulations for one-only approvals permit the use of photographs and other similar data to document the modification.'' The commenter notes that this sentence implies that photographs are not acceptable for multiple approvals.

The FAA accepts this comment with modification. The sentence is revised as follows: ''The certification regulations for one-only approvals often use photographs and other similar data to document the modification.''

• Add the following sentence to the end of ''References to General Guidelines'' section: ''This clarification of FAA policy does not mean that data packages cannot reference AC 43–13 or similar documents, but the applicant is required to provide installation instructions which are unambiguous.''

The FAA concurs and the sentence is added as submitted.

• Modify the last sentence of paragraph 5 of ''Statement of FAA Policy'' to read, ''This, in turn, requires definitive knowledge of the configuration through design control and an understanding of the airplane manufacturer's wire installation rules, especially any requirements that pertain to wire separation, as described by the airplane manufacturer in the maintenance manual.''

The FAA does not concur. The purpose of this sentence is to address the need to understand the manufacturer's design as well as installation requirements. These requirements are not necessarily found in the maintenance manuals. However, as noted earlier, the sentence is revised to address a previous commenter's request to remove the word ''definitive.''

2. Consideration for modifications in process

One commenter requests that the policy give reasonable consideration to modification programs presently in process.

The FAA concurs with this comment. It is the Transport Airplane Directorate's position that we will not impose new policy on an applicant for projects well on the way to completion, unless there is a safety concern that calls for an Airworthiness Directive. Consequently, the following sentence is added to the section entitled ''Effect of This Statement of Policy'': ''This policy applies to any new project initiated after July 2, 2001, the date of the original publication of this notice in the **Federal Register**. However, the applicant is encouraged to incorporate the guidance in this policy into any present project where feasible.''

3. Electrical Load

One commenter suggests that the policy should address the need to improve the currency and quality of the airline operator's electrical load report.

The FAA does not concur. The policy is meant to address only those aspects of Part 21 related to type design data and continuing airworthiness for Part 25 airplanes. It is not the intent of this policy to address all design aspects of wire installations on airplanes.

4. Wire Types and Inspections

Another commenter submitted the following three comments relating to wire types and wire inspections:

• The policy should address approved wire types.

The FAA does not concur. As required by other regulations, wire must meet its intended function, pass applicable qualification testing, not pose a hazard to the airplane, and be properly maintained.

• Issues relating to the mixing of wire types are not addressed.

Mixing of wire types is not addressed in this policy statement. Wires in a bundle must be securely clamped and bound and be compatible with their environment (i.e., vibration, temperature, etc.). These details are addressed in the design and installation requirements of the wire. These requirements are called out in the installation drawings.

• Visual inspections were found to be totally inadequate in discerning wiring cracks.

The FAA does not concur. Generally, visual inspections are a very valuable tool in assessing the condition of wire. Additional tools are necessary to detect microscopic wiring cracks. This is an area of research and, currently, non-destructive inspection (NDI) techniques are being developed and/or evaluated. The policy addresses the need for specific wire inspection requirements.

Additional Changes

The words ''when available'' were added to the last sentence in the section on ''Process Specifications and Modifications Compatible with Original Standards,'' for clarification.

Conclusion

After due consideration of the public comments submitted, the FAA has modified the general statement of policy to add clarification. The final policy, as modified, and without preamble, appears below.

Statement of FAA Policy

Unambiguous Definition of Configurations

Type design data packages should meet the intent of § 21.31(a). Specifically, routing and installation of wiring on the airplane should be addressed. It is important that the routing of wiring follow the intent of the criteria established by the FAA in the certification basis as reflected in the original or subsequently approved type design approval holder's design. The installer should provide with each application for design approval the following:

• Wiring diagrams showing source and destination of all airplane wiring associated with equipment installation.

• Installation drawings.

Installation drawings should identify the configuration. Such drawings will typically identify:

• Equipment locations.
• Wiring routings.
• Mounting and support details.
• Other such details of features.

System Safety Assessment

Certain airworthiness criteria require failure analyses (i.e., failure mode and effect analysis, zonal analysis, or other safety analysis) to demonstrate that a failure of the system under consideration:

• Does not, in itself, constitute an unacceptable hazard.

• Does not result in damage to other systems that are essential to safety.

The system safety assessment should include an assessment of the effects of failures of the airplane wire and its associated wire bundle for equipment

installed on the airplane. The analysis should consider the possible effects wire system failures would have on systems required for safe flight and landing due to damage in collocated wiring bundles and the possibility of smoke and/or fire events.

Failure of other systems must not damage a system being modified if the modified system is essential to safety. Such analysis requires that any possible interaction between systems be examined. This, in turn, requires a knowledge of the configuration through design control and an understanding of the airplane manufacturer's relevant wire installation practices or procedures, especially any requirements that pertain to wire separation.

Specific Installation Drawings Instead of General References

The FAA expects the applicant to provide engineering drawings instead of merely statements such as ''install in accordance with industry standard practices,'' or ''install in accordance with AC 43.13.'' The FAA considers such statements inadequate because the standard practices cannot define the location or routing of the wiring.

Process Specifications and Modifications Compatible with Original Standards

As noted in § 21.21, certain of the airworthiness requirements require analysis or tests to define the strength, durability, and life of components associated with the installation of wiring in the airplane (i.e., connectors, brackets, wire constraints, grommets, ground terminations, etc.). These tests and analyses should define the parts so that:

- Conformity of the parts to the type design may be verified.
- The characteristics of the parts important for test or analysis may be determined.

The airplane wiring parts specification provides the basis for necessary stress, durability, and life analysis. The definition of the parts, including wiring and wire installation hardware, requires a drawing package that clearly identifies:

- Shape.
- Material.
- Production processes.
- Any other properties affecting strength or functionality of each part.
- The arrangement of each part in the final assembly.

As an example, the FAA expects drawings to identify the material specification, heat treatment, corrosion protection or other finish, and any other important characteristic of each part subject to test or analysis for showing compliance with the airworthiness requirements. Much of this information can be provided by reference on the drawings to material or process specifications; the references then become part of the drawing and, consequently, part of the type design data package.

Modifiers of aeronautical products should use practices that reflect the certification criteria applicable to the original airplane manufacturer (OAM). The applicant should demonstrate that installation specifications and routing practices for the wiring used by modifiers is either the same as, or compatible with, those that are used presently for showing compliance to the type design certification requirements. Specifically, wire separation, wire types, wire bundle sizes, brackets, and clamping should be consistent with the approved standards. This may require the applicant and/or modifier to:

- Obtain or determine the applicable OAM design standards and/or practices for a given installation.
- Do a physical inspection of the airplanes to be modified to ensure compatibility.
- Develop processes and procedures to address compatibility between the original installation and the modification.

Modifiers and installers should use the airplane manufacturer's maintenance manuals, such as Maintenance Manual Chapter 20 (''Standard Practices Airframe''), Maintenance Manual Chapter 70 (''Standard Practices Engines''), or Chapter 20 (''Standard Practices Wiring'') as the primary source of wiring installation information, when available.

Instructions for Continued Airworthiness

Paragraph 21.50(b) of the regulations requires that instructions for continued airworthiness (ICA) be supplied by the modifier for modifications to aircraft and related products. The ICA for any specific wiring maintenance should be addressed where § 25.1529 is included in the certification basis.

Assessment of wire condition relies heavily on visual inspection. Consequently, the ICA should address inspectability of wire in conduits and difficult to inspect areas of the airplane. Where wire cannot be inspected visually, the ICA should address wire removal for inspection, when necessary, and the use of inspection techniques that do not rely on visual inspection alone. For example, wire in metal conduits may require repeated inspections for wear.

The FAA expects applicants for modifications to provide airworthiness instructions for the proposed changes in a format compatible with other maintenance instructions for the aircraft involved.

Effect of This Statement of Policy

The general policy stated in this document is not intended to establish a binding norm. It does not constitute a new regulation and the FAA would not apply or rely upon it as a regulation. Those tasked with the responsibility of airplane certification should generally attempt to follow this policy, when appropriate. In determining compliance with certification standards, each certification office has the discretion not to apply these guidelines where it determines that they are inappropriate. However, the certification office should strive to implement this guidance to the fullest extent possible to facilitate standardization and ensure that wiring installation details are adequately addressed during certification. Applicants should expect that the certificating officials will consider this information when making findings of compliance relevant to certification actions. Applicants also may consider the material contained in this policy statement as supplemental to that currently contained in 14 CFR part 21 when developing a means of compliance with the relevant certification standards.

This policy applies to any new project initiated after July 2, 2001, the date of the original publication of this notice in the **Federal Register**. However, the applicant is encouraged to incorporate the guidance in this policy into any present project where feasible.

Finally, as with all advisory material, this statement of policy identifies one means, but not the only means, of compliance.

Issued in Renton, Washington, on January 28, 2002.

Vi Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2718 Filed 2–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–43 (Sub–No. 171X)]

Illinois Central Railroad Company—Abandonment Exemption—in McLean County, IL

On January 16, 2002, Illinois Central Railroad Company (IC) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad, known as the Heyworth Spur, extending from milepost 783.42 to the end of the line at milepost 786.5 in Heyworth, McLean County, IL, a distance of approximately 3.08 miles. The line traverses U.S. Postal Service ZIP Code 61745 and includes no stations.[1]

Based on information in its possession, IC states that the line does not contain federally granted rights-of-way. Any documentation in IC's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 6, 2002.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $1,000. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than February 25, 2002. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–43 (Sub-No. 171X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Thomas J. Litwiler, Two Prudential Plaza, Suite 3125, 180 North Stetson Avenue, Chicago, IL 60601–6721. Replies to the IC petition are due on or before February 25, 2002.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at "*www.stb.dot.gov.*"

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: January 28, 2002.

Vernon A. Williams,

Secretary.

[FR Doc. 02–2522 Filed 2–4–02; 8:45 am]

BILLING CODE 4915–01–P

[1] The Heyworth Spur is a single-track, stub-ended line that is located within, and in the immediate vicinity of, the village of Heyworth. It extends from the south side of the village through the village to the end of the line, at milepost 786.5, north of the village. The Heyworth Spur forms the northern portion of IC's Clinton-Heyworth branch line, which connects at Clinton with IC's secondary main line between Gilman and Springfield, IL. IC states that Heyworth will remain a station on its Clinton-Heyworth branch after abandonment of the Heyworth Spur.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 1040–SS, 1040–PR, and Anejo H–PR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040–SS, U.S. Self-Employment Tax Return; Form 1040–PR, Planilla Para La Declaracion De La Contribucion Federal Sobre El Trabajo Por Cuenta Propia—Puerto Rico; and Anejo H-PR, Contribuciones Sobre El Empleo De Empleados Domesticos.

DATES: Written comments should be received on or before April 8, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (CAROL.A.SAVAGE@irs.gov.), Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 1040–SS, U.S. Self-Employment Tax Return, Form 1040–PR, Planilla Para La Declaracion De La Contribucion Federal Sobre El Trabajo Por Cuenta Propia—Puerto Rico; and Anejo H–PR, Contribuciones Sobre El Empleo De Empleados Domesticos.

OMB Number: 1545–0090.

Form Number: Forms 1040–SS, 1040–PR, and Anejo H–PR.

Abstract: Form 1040–SS is used by self-employed individuals in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands to report and pay self-employment tax and provide proper credit to the taxpayer's social security account. Form 1040–PR is a Spanish version of Form 1040–SS for use in Puerto Rico. Anejo H–PR is used to compute household employment taxes. Form 1040–SS and Form 1040–PR are also used by bona-fide residents of Puerto Rico to claim the additional child tax credit.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations and farms.

Estimated Number of Responses: 430,400.

Estimated Time Per Respondent: 7 hours, 31 minutes.

Estimated Total Annual Burden Hours: 3,238,252.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–2745 Filed 2–4–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the electronic process for selling/issuing, servicing, and making payments on or redeeming U.S. Treasury securities.

DATES: Written comments should be received on or before April 8, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or e-mail to *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: New Treasury Direct.

OMB Number: None.

Abstract: The information is requested to establish a new account and process transactions.

Current Actions: None.

Type of Review: New.

Affected Public: Individuals.

Estimated Number of Respondents: 1.93 million.

Estimated Total Annual Burden Hours: 231,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 30, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 02–2657 Filed 2–4–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0085]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Board of Veterans' Appeals (BVA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information required in processing appeals from denial of VA benefits and in regulation of representatives' fees.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 8, 2002.

ADDRESSES: Submit written comments on the collection of information to Sue Hamlin, Board of Veterans' Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *sue.hamlin@mail.va.gov.* Please refer to ''OMB Control No. 2900–0085'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Sue Hamlin at (202) 565–5686.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, BVA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of BVA's functions, including whether the information will have practical utility; (2) the accuracy of BVA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Appeal to Board of Veterans' Appeals, VA Form 9.
b. Withdrawal of Services by a Representative.
c. Filing of Representative's Fee Agreements and Motions for Review of Such Agreements.
d. Motion for Review of Representative's Charges for Expenses.
e. Request for Changes in Hearing Date.
f. Motion for Reconsideration.

OMB Control Number: 2900–0085.

Type of Review: Extension of a currently approved collection.

Abstract:

a. Appeal to Board of Veterans' Appeals, VA Form 9, may be used by appellants to complete their appeal to the Board of Veterans' Appeals (BVA) from a denial of VA benefits. The information is used by BVA to identify the issues in dispute and prepare a decision responsive to the appellant's contentions and the legal and factual issues raised.

b. Withdrawal of Services by a Representative: When the appellant's representative withdraws from a case, both the appellant and the BVA must be informed so that the appellant's rights may be adequately protected and so that the BVA may meet its statutory obligations to provide notice to the current representative.

c. Filing of Representative's Fee Agreements and Motions for Review of Such Agreements: Agreements for fees charged by individuals or organizations for representing claimants and appellants before VA are filed with, and reviewed by, the Board of Veterans' Appeals. The information is used to determine whether such fees are excessive or unreasonable.

d. Motion for Review of Representative's Charges for Expenses: Expense reimbursements claimed by individuals and organizations for representing claimants and appellants before VA have been monitored for fairness for many years. The information is used to review changes by claimants' representatives for expenses to afford protection to such claimants from overreaching by unscrupulous representatives and is useful in monitoring fees charged by representatives and to ensure that fee limitations are not avoided by mischaracterizing fees as expenses.

e. Request for Changes in Hearing Date: VA provides hearings to appellants and their representatives, as required by basic Constitutional due-process and by Title 38 U.S.C. 7107(b). From time to time, hearing dates and/or times are changed, hearing requests withdrawn and new hearings requested after failure to appear at a scheduled hearing. The information is used to comply with the appellants' or their representatives' requests.

f. Motion for Reconsideration: Decisions by BVA are final unless the Chairman orders reconsideration of the decision either on the Chairman's initiative, or upon motion of a claimant. The Board Chairman, or his designee, uses the information provided in deciding whether reconsideration of a Board decision should be granted.

Affected Public: Individuals or households, Business or other for profit, and Not for profit institutions.

Estimated Total Annual Burden: 39,782 hours.

a. Appeal to Board of Veterans' Appeals, VA Form 9—32,500 hours.
b. Withdrawal of Services by a Representative—183 hours.
c. Filing of Representative's Fee Agreements and Motions for Review of Such Agreements—283 hours.
d. Motion for Review of Representative's Charges for Expenses—4 hours.
e. Request for Changes in Hearing Date—1,761 hours.
f. Motion for Reconsideration—877 hours.

Estimated Average Burden Per Respondent

a. Appeal to Board of Veterans' Appeals, VA Form 9—1 hour.
b. Withdrawal of Services by a Representative—20 minutes.
c. Filing of Representative's Fee Agreements and Motions for Review of Such Agreements—1 hour (contract modifications), 10 minutes (basic filing)—2 hours (filing motion or response).
d. Motion for Review of Representative's Charges for Expenses—4 hours (2 hours for motion and 2 hours for response to motion).
e. Request for Changes in Hearing Date—15 minutes (basic request)—1 hour (requests requiring preparation of a motion).
f. Motion for Reconsideration—1 hour.

Frequency of Response: On occasion.

Estimated Total Number of Respondents: 39,782.

a. Appeal to Board of Veterans' Appeals, VA Form 9—32,500.
b. Withdrawal of Services by a Representative—550.
c. Filing of Representative's Fee Agreements and Motions for Review of Such Agreements—1,279.
d. Motion for Review of Representative's Charges for Expenses—2.
e. Request for Changes in Hearing Date—4,574.
f. Motion for Reconsideration—877.

Dated: January 15, 2002.
By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–2697 Filed 2–4–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Spark M. Matsunaga Department of Veterans Affairs Medical and Regional Office Center, Honolulu, Hawaii

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Designation and Intent to Award.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) is designating the Spark M. Matsunaga VA Medical and Regional Office Center, Honolulu, HI, for an enhanced-use leasing development. The Department intends to enter into a 5-year lease of real property with a competitively selected lessee/developer who will finance, design, develop, maintain and manage a transitional housing and homeless services facility, all at no cost to VA.

FOR FURTHER INFORMATION CONTACT: Jake Gallun, Office of Asset Enterprise Management (004B), Department of Veterans Affairs, 810 Vermont Avenue, NW. Washington, DC 20420, (202) 273–8862.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.,* specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: January 25, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 02–2698 Filed 2–4–02; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 67, No. 24

Tuesday, February 5, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

OFFICE OF MANAGEMENT AND BUDGET

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies

Correction

In notice document 02–59 beginning on page 369 in the issue of Thursday, January 3, 2002 make the following corrections:

1. On page 369, in the second column, under the heading **SUPPLEMENTARY INFORMATION**, fifth and sixth lines, ''Office of Management (OMB)'' should read ''Office of Management and Budget (OMB)''.

2. On page 369, second column, first line from the bottom, a semicolon should be inserted, so that it reads, ''disseminated by the agency and;''.

3. On page 369, third column, first full paragraph, eighth line, ''September 20001'' should read ''September 2001''.

4. On page 370, second column, first paragraph, thirteenth line, should read ''procedures required by these guidelines''.

5. On page 370, second column, first paragraph, the sentence beginning on line 27 should read as follows: ''Under the OMB guidelines, agencies need only ensure that their own guidelines are consistent with these OMB guidelines, and then ensure that their administrative mechanisms satisfy the standards and procedural requirements in the new agency guidelines.''

6. On page 371, first column, first full paragraph, line 12 should read ''an annual fiscal year report to OMB (to be''.

7. On page 371, third column, last line of the column, ''objective'' should read ''objectivity''.

8. On page 372, first column, first full paragraph, thirteenth line, insert ''a'' between ''in'' and ''particular''

9. On page 372, first column, first full paragraph, fifteenth line, ''objective'' should read ''objectivity''.

10. On page 372, first column, first full paragraph, twenty-sixth line, ''disclosed'' should read ''disclose''.

11. On page 372, first column, second paragraph, fourth line, ''For example.'' should read ''For example,''.

12. On page 372, second column, second paragraph under the heading *Is Journal Peer Review Always Sufficient?*, in the sixth line, ''or'' should read ''on''.

13. On page 372, second column, in line 18 of the indented quotation, insert ''a'' between ''as'' and ''whole''.

14. On page 372, second column, fifth paragraph, third line, ''significance'' should read ''significant''.

15. On page 373, second column, ninth line, ''*e.g.*'' should read ''*e.g.,*''.

16. On page 373, third column, first paragraph, first line, ''no'', should read ''not''.

17. On page 373, third column, first paragraph, tenth line, ''analytic'' should read ''analytical''.

18. On page 374, first column, last line, ''date'' should read ''data''.

19. On page 374, second column, in the seventh line of the first paragraph, insert ''be'', between ''will'' and ''helpful''.

20. On page 374, second column, third paragraph, first line, ''Commercial'' should read ''Comments''.

21. On page 375, second column, second paragraph, ninth line, ''V.3.ii.C'' should read ''V.3.b.ii.C''.

22. On page 375, third column, third paragraph, ''OMS's'' should read ''OMB's''.

23. On page 376, second column, paragraph ii, fifth line, ''filed'' should read ''file''.

24. On page 376, second column, paragraph 4., first line, ''The Agency's...'' should read ''The agency's...''.

25. On page 376, second column, paragraph 4., fifth line, ''administative's'' should read ''administative''.

26. On page 376, second column, paragraph 4., ninth line, ''October 1, 2001'' should read ''October 1, 2002''.

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28. On page 376, third column, paragraph 5., fourth line, remove the word ''the''.

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30. On page 376, third column, paragraph 2. under *V. Definitions*, sixth line, ''reconsider'' should read ''consider''.

31. On page 376, third column, paragraph 2. under *V. Definitions*, seventh line, insert ''the'' after ''from''.

32. On page 377, first column, paragraph 3., second line, ''presentations'' should read ''presentation''.

33. On page 377, first column, paragraph a., sixteenth line, ''specific'' should read ''scientific''.

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36. On page 377, second column, paragraph A., ninth line, ''practicable'' should read ''practicably''.

37. On page 377, second column, paragraph *ii.*, seventeenth line, ''such'' should read ''which''.

38. On page 377, second line from the bottom of the second column, ''equality'' should read ''quality''.

39. On page 378, first column, paragraph V.10., seventh line, ''tolerate'' should read ''tolerated''.

[FR Doc. C2–59 Filed 2–4–02; 8:45 am]

BILLING CODE 1505–01–D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Consideration of Two Petitions To Alter AGOA Benefits for Canned Pears and Manganese Metal; Notice of Review Timetable and Public Hearings Regarding These Petitions

Correction

In notice document 02–1683 beginning on page 3528 in the issue of Thursday, January 24, 2002, make the following correction:

On page 3529, third column, in the 13th line, ''March 2, 2002'' should read ''March 20, 2002''.

[FR Doc. C2–1683 Filed 2–4–02; 8:45 am]

BILLING CODE 1505–01–D

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[FR Doc. C2–59 Filed 2–4–02; 8:45 am]

BILLING CODE 1505–01–D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

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[FR Doc. C2–1683 Filed 2–4–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
February 5, 2002

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 1 et al.

Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 43, 45, 61, 65 and 91

[Docket No. FAA–2001–11133; Notice No. 02–03]

RIN 2120–AH19

Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing requirements for the certification, operation, maintenance, and manufacture of light-sport aircraft. Light-sport aircraft are often heavier and faster than ultralights and include airplanes, gliders, balloons, powered parachutes, weight-shift-control aircraft, and gyroplanes. This action is necessary to address advances in sport and recreational aviation technology, gaps in the existing regulations, and several petitions for rulemaking and for exemptions from existing regulations. The intended effect of this action is to provide for the manufacture of safe and economical aircraft and to allow operation of these aircraft by the public in a safe manner.

DATES: Send your comments on or before May 6, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh St., SW., Washington, DC 20590–0001. You must identify the docket number at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to http://dms/dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level at the Department of Transportation building at the address above. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Susan Gardner at 202/267–5008 for questions regarding airman certification and operational issues (14 CFR parts 1, 43, 45, 61, 65, and 91). For questions regarding aircraft certification (14 CFR part 21), call Steve Flanagan at 202/267–5008. Due to the large volume of questions we expect from this proposal, please leave a message and we will answer your questions within 3 days. Please use this phone number for questions only. If you wish to submit a public comment, please review the procedures below to ensure that your comments are included in the docket.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Overview of the Proposal
III. Effects of the Proposal on the Public and Industry
IV. Background
A. Current rules
B. The FAA's reasons for this propsal
V. The Aviation Rulemaking Advisory Committee (ARAC)
VI. Section-by-Section Analysis of the Proposal
A. What are the proposed changes to 14 CFR part 1?
B. What are the proposed changes to 14 CFR part 21?
C. What are the proposed changes to 14 CFR part 43?
D. What are the proposed changes to 14 CFR part 45?
E. What are the proposed changes to 14 CFR part 61?
F. What are the proposed changes to 14 CFR part 65?
G. What are the proposed changes to 14 CFR part 91?
VII. Paperwork Reduction Act
VIII. International Compatibility
IX. Regulatory Evaluation Summary'Executive Order 12866 and DOT Regulatory Policies and Procedures
A. Economic evaluation
B. Initial regulatory flexibility determination
C. International trade impact statement
D. Initial unfunded mandates assessment
X. Executive Order 13132, Federalism
XI. Environmental Analysis
XII. Energy Impact

I. Public Comment Procedures

The FAA invites you to participate in this rulemaking action by submitting written data, views, or arguments. We also invite comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document. Substantive comments should contain cost estimates. In your comments, identify the regulatory docket or notice number you are commenting on. Submit them in duplicate to the DOT Rules Docket address specified above.

We will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date.

We will consider all comments received on or before the closing date before taking action on this proposed rulemaking. We will consider comments filed late as far as possible without incurring expense or delay. We may change the proposals in this document in response to comments.

If you want FAA to acknowledge receipt of your comments include a pre-addressed, stamped postcard. In the message area, identify the document you are commenting on by notice or docket number. We will date stamp the postcard and mail it to you.

We also anticipate holding an electronic public meeting during the comment period. You will be able respond on-line via the Internet to questions that we will ask you regarding this proposal. We will publish a notice in the **Federal Register** shortly announcing more details about this virtual public meeting.

Availability of Rulemaking Documents

You can get an electronic copy of this document from the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page, type in the last four digits of the docket number shown at the beginning of this document. Click on ''search.''

(3) On the next page, which contains the docket summary information, click on the item you want to see.

You can also get an electronic copy using the Internet through the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

II. Overview of the Proposal

This proposal addresses three major issues:

- Certification of light-sport aircraft;
- Certification of pilots and flight instructors to operate light-sport aircraft; and
- Certification of repairmen to maintain light-sport aircraft.

We discuss these issues in more detail below.

Certification of Light-Sport Aircraft

Light-sport aircraft are small, simple-to-operate, low-performance aircraft. The FAA is proposing to limit these aircraft to a maximum of 2 occupants, a 1,232-lb. (560 kg.) takeoff weight, a 39-knot stall speed, a 115-knot maximum operating speed, a single engine, and fixed landing gear. Refer to the definition of light-sport aircraft in the proposed rule for a complete list of limits for those aircraft. Helicopters and powered lift would not be light-sport aircraft due to their complexity.

The FAA currently issues two major types of airworthiness certificates—standard and special. The special airworthiness certificate includes six categories—primary, restricted, limited, provisional, special flight permits, and experimental. We propose to add a seventh category of special airworthiness certificate—light-sport. You could use aircraft issued a special light-sport airworthiness certificate for sport and recreation, flight training, or rental. The special airworthiness certificate would ensure that aircraft used for these purposes are designed and manufactured to an identified standard. The FAA would exclude gyroplanes for this certificate.

The FAA currently issues special experimental certificates for eight purposes. We propose to add a new purpose—to operate light-sport aircraft—for issuing an experimental certificate. There would be three ways to get an experimental certificate for the purpose of operating light-sport aircraft. First, if you operate a light-sport aircraft that does not meet the existing definition of ultralight vehicle in 14 CFR 103.1, you would have to apply for an experimental airworthiness certificate for your aircraft under this provision. You would have to apply to register your aircraft not later than 24 months after the effective date of the final rule. You would then have your aircraft inspected and an airworthiness certificate issued not later than 36 months after the effective date of the final rule. You could use aircraft with an airworthiness certificate issued for this experimental purpose for sport and recreation, and flight training. For a period of 3 years after the effective date if the final rule, you could operate these aircraft for compensation or hire, while conducting flight training.

Second, you could get an experimental airworthiness certificate for an aircraft you assembled from an eligible kit. You could use these aircraft only for sport and recreation, and flight training.

And finally, you could get an experimental airworthiness certificate to operate a light-sport aircraft if it previously had been issued a special, light-sport aircraft airworthiness certificate and you do not want to comply with the operating limitations associated with a special light-sport certificate. For example, you could do this if you wanted to alter the aircraft without the manufacturer's authorization, or you choose not to comply with the mandatory safety-of-flight actions. You could use these aircraft only for sport and recreation, and flight training.

Table 1.—Proposed New or Expanded Airworthiness Certificate Categories and Purposes

AIRCRAFT AIRWORTHINESS CERTIFICATE

Airworthiness certificate	Categories/Other	Purposes
I. Standard	A. Normal.	
	B. Utility.	
	C. Acrobatic.	
	D. Commuter.	
	E. Transport.	
	F. Manned free balloons.	
	G. Special classes of aircraft.	
II. Special	A. Primary.	
	B. Restricted.	
	C. Limited.	
	D. Light-Sport (§ 21.186).[1]	
	E. Provisional.	
	F. Special Flight Permits.	
	G. Experimental (§ 21.191)	1. Research and development.
		2. Showing compliance with regulations.
		3. Crew training.
		4. Exhibition.
		5. Air racing.
		6. Market surveys.
		7. Operating amateur-built aircraft.
		8. Operating primary category kit-built aircraft.
		9. Operating light-sport aircraft (§ 21.191(i)).[1]
		a. existing aircraft that do not meet part 103.
		b. kit-built, light-sport aircraft.
		c. aircraft previously certificated under § 21.186.

[1] New airworthiness certificate categories and/or purposes.

Certification of Pilots and Flight Instructors to Operate Light-Sport Aircraft

The FAA is also proposing two new pilot certificates and two new aircraft category ratings to allow operations of light-sport aircraft. Currently, we issue student, recreational, private, commercial, and airline transport pilot certificates. This proposal would add a student pilot certificate for operating light-sport aircraft and a sport pilot certificate. We would issue the sport pilot certificate and flight instructor certificate with a sport pilot rating without any category and class ratings. However, the applicable aircraft category, class, and make and model privileges would be established through logbook endorsements.

The FAA currently issues airplane, helicopter, gyroplane, glider, balloon, airship, and powered-lift aircraft category ratings. We propose to add powered parachute and weight-shift-control aircraft category ratings for the

private pilot certificate. The weight-shift-control aircraft category rating would include land and sea class ratings.

Table 2.—Proposed New or Expanded Pilot/Flight Instructor Categories and Class Ratings

PILOT/FLIGHT INSTRUCTOR CERTIFICATION

Proposed new or expanded pilot/flight instructor certificates	Proposed new aircraft category/class ratings	Proposed new aircraft category/class privileges
Student—operating light-sport aircraft	N/A	Airplane (Land/Sea), Gyroplane, Airship, Balloon, Weight-shift-control (Land/Sea), and aircraft Powered Parachute.
Sport	N/A	Airplane (Land/Sea), Gyroplane, Glider, Airship, Balloon, Weight- shift-control (Land/Sea), and Powered Parachute.
Private	Powered Parachute Weight-Shift-Control (Land/Sea).	
Flight Instructor	Sport Pilot.	

A student pilot operating light sport aircraft, a sport pilot, and a flight instructor with a sport pilot rating could operate or provide training only in a light sport aircraft that meets the definition under 14 CFR part 1. These light sport aircraft could be issued any one of the standard or special airworthiness certificates shown in Table 1.

The FAA proposes to revise recreational pilot certificate privileges to align them with the proposed privileges for sport pilots, primarily to permit operation in Class B, C, and D airspace. To operate in that airspace, you would have to get appropriate training and logbook endorsements. We also propose to revise the training requirements for the private pilot certificate to permit private pilots to operate powered parachutes and weight-shift-control aircraft.

This proposal also addresses flight instructor certification and ground instructor privileges. The FAA would add a new rating for flight instructors—the sport pilot rating—and would revise privileges for ground instructors to train sport pilots and flight instructors with a sport pilot rating.

Certification of Repairmen To Maintain Light-Sport Aircraft

We also would add a new repairman certificate, which we would issue with a maintenance or inspection rating. If we issue you an inspection rating, you could perform the annual condition inspection on your own aircraft that has an experimental, light-sport airworthiness certificate. If we issue you a maintenance rating, you could perform all of the inspections required for an aircraft with an experimental, light-sport airworthiness certificate, and the inspections and other maintenance required on an aircraft with a special, light-sport airworthiness certificate. A maintenance rating would allow you to work on category—specific aircraft that you may not own.

III. Effects of the Proposal on the Public and Industry

This section of the preamble describes in general terms how the proposal would affect certain categories of people. A reader who is interested in a quick overview of the proposal may find this part useful. In preparing this overview, we condensed the material and focused on the major concepts of this proposed rule. If you are looking for a detailed description, you should read the section-by-section analysis portion of the preamble.

I Own or Plan To Purchase a Light-Sport Aircraft Within 24 Months After the Rule Is Effective. How Would This Proposal Affect Me?

If you own or plan to purchase an ultralight that meets the definition of ultralight vehicle in part 103 of our regulations (14 CFR part 103), this proposal doesn't affect you.

If your aircraft or the aircraft you plan to purchase doesn't meet the definition of ultralight vehicle in 14 CFR part 103, you would have to apply to register your aircraft with the FAA not later than 24 months after the effective date of the final rule. You would then have your aircraft inspected by the FAA (or representative of the FAA) and an experimental, light-sport airworthiness certificate must be issued not later than 36 months after the effective date of the final rule.

If you currently operate an ultralight vehicle under a training exemption and you also have applied to the FAA for aircraft registration, you would be allowed to continue to operate under the training exemption until you are issued an experimental, light-sport airworthiness certificate. If your aircraft does not meet 14 CFR part 103 and you are not authorized to operate under a training exemption, you would not be allowed to operate under 14 CFR part 91 until you register your aircraft with the FAA and receive an airworthiness certificate for your aircraft.

I'd Like To Buy a Ready-to-Fly Light-Sport Aircraft and Use It for Training and Rental. How Would This Proposal Affect Me?

If you buy a U.S.-manufactured, ready-to-fly light-sport aircraft after the effective date of the final rule and intend to use it for training or rental, you could apply for a special airworthiness certificate in the light-sport category. To get the certificate, you would have to present the following information to the FAA:

- The manufacturer's statement of compliance;
- The applicable maintenance and inspection procedures;
- The pilot flight training manual;
- The pilot operating handbook; and
- Statements concerning any prior or future alterations.

You'd also have to get the aircraft registered and inspected by the FAA.

If you buy an imported light-sport aircraft, you would have to provide the same information as required for a U.S.-manufactured aircraft, and you would also have to provide the additional information under 14 CFR 21.186(d).

I'd Like To Buy a Light-Sport Aircraft Kit. How Would This Proposal Affect Me?

If you buy a light-sport aircraft kit after the effective date of the final rule, you would have to assemble the kit according to the manufacturer's instructions and could apply for an experimental airworthiness certificate for the purpose of operating light-sport aircraft. To get the certificate you would provide evidence that the kit is an eligible kit. You would also have to present the following information to the FAA:

• The kit manufacturer's statement of compliance;
• The applicable maintenance and inspection procedures;
• The pilot flight training manual; and
• The pilot operating handbook.

In addition, you'd have to get the aircraft registered and inspected by the FAA.

I Would Like To Fly a Light-Sport Aircraft and I Don't Hold a Pilot Certificate. How Would This Proposal Affect Me?

For most types of light-sport aircraft, including powered parachutes and weight-shift-control aircraft, you would have to obtain at least a sport pilot certificate. First, you would have to get a student pilot certificate for operating light-sport aircraft (called a ''student certificate'' in this preamble).

To get a student certificate, you would have to—
• Meet certain eligibility requirements related to language and age (at least 16 years old, or 14 years old to operate a glider or balloon);
• Have a U.S. driver's license or an airman medical certificate;
• Receive and log ground and flight training in specific aeronautical areas; and
• Meet specific requirements for solo and solo cross-country.

As a student certificate holder, you'd be subject to most of the existing limits on student certificate holders. You also couldn't fly when visibility is less than 3 miles, at night, above certain altitudes and speeds, in certain airspace, contrary to any operating limitation for the aircraft or the pilot, and outside the United States.

To get a sport pilot certificate, you would have to—
• Obtain a student certificate for operating light-sport aircraft;
• Meet certain eligibility requirements related to language and age (at least 17 years old, or 16 years old to operate a glider or balloon);
• Have a U.S. driver's license or an airman medical certificate;
• Receive and log ground and flight training in specific aeronautical areas;
• Meet aeronautical experience requirements; and
• Pass a knowledge test and a practical test.

The FAA would issue you a sport pilot certificate and your logbook would be endorsed authorizing you privileges in that specific category, class, and make and model of aircraft.

As a sport pilot certificate holder, you couldn't fly—
• When visibility is less than 3 miles;
• At night;
• Above certain altitudes and speeds;
• In certain airspace;
• For other than sport and recreational purposes;
• Contrary to any operating limitation for the aircraft or the pilot;
• While towing an object;
• While carrying a passenger for compensation or hire; or
• Outside the United States without authorization.

You also couldn't demonstrate an aircraft in flight if you're an aircraft salesperson. You could share operating expenses with another pilot.

Once I Hold a Sport Pilot Certificate, What Must I Do To Fly a Different Category, Class, or Make and Model of Light-Sport Aircraft?

To fly an additional make and model of light-sport aircraft, you'd have to receive and log aircraft-specific ground and flight training for the additional make and model from an authorized instructor.

To fly another category or class of light-sport aircraft, you'd have to receive and log ground and flight training in certain operational areas from an authorized instructor, and successfully complete a proficiency check from a different authorized instructor. The authorized instructor who certifies your proficiency for the additional make and model or category and class privileges would endorse your logbook establishing those specific privileges.

I Would Like To Become a Light-Sport Aircraft Instructor. How Would This Proposal Affect Me?

If you don't hold a flight instructor certificate issued under 14 CFR part 61, you would have to obtain a flight instructor certificate with a sport pilot rating. To get it, you would have to—
• Meet certain eligibility requirements related to language and age (at least 18 years old);
• Have a sport pilot certificate or a private pilot certificate;
• Receive and log ground training in the fundamentals of instruction;
• Receive and log ground and flight training in specific aeronautical areas;
• Meet aeronautical experience requirements; and
• Pass a knowledge test and a practical test.

The FAA would issue you a flight instructor certificate with a sport pilot rating and your logbook would be endorsed authorizing you privileges to provide training in that specific category, class, and make and model of aircraft.

If you already hold a current and valid flight instructor certificate issued under 14 CFR part 61, you could provide flight training toward a sport pilot certificate without further showing of proficiency. You would be subject to certain limitations.

Once I Hold a Flight Instructor Certificate With a Sport Pilot Rating, What Must I Do To Provide Training In a Different Category, Class, Or Make And Model Of Light-Sport Aircraft?

To provide training in an additional make and model of light-sport aircraft, you'd have to receive and log aircraft-specific ground and flight training for the additional make and model from an authorized instructor.

To provide flight training in another category or class of light-sport aircraft, you'd have to receive and log ground and flight training in certain operational areas from an authorized instructor, and successfully complete a proficiency check from a different authorized instructor.

The authorized instructor who certifies your proficiency authorizing you to provide training for the additional make and model or category and class privileges would endorse your logbook establishing those specific privileges.

I'm an Ultralight Pilot and an Ultralight Flight Instructor With an FAA-Recognized Organization. How Will This Rule Affect Me?

The training programs of FAA-recognized ultralight organizations already cover many of the proposed requirements. This proposal would establish how you would credit your experience toward the aeronautical experience requirements for a sport pilot certificate and a flight instructor certificate with a sport pilot rating.

I Already Have An FAA Pilot Certificate and Want To Fly Light-Sport Aircraft. How Would The Proposal Affect Me?

If you already have at least a private pilot certificate, you would have to—
• Receive and log specific training for any make and model of light-sport aircraft for which you hold a category and class rating and that you haven't piloted; and
• Get a logbook endorsement from the authorized instructor who trained you certifying your proficiency.

If you want to add category and class privileges for which you do not have an aircraft category or class rating on your private pilot certificate, you would have to meet the requirements for the addition of those privileges established in this proposal.

Who Can Perform Maintenance, Which Includes Inspections, On a Ready-To-Fly Aircraft With a Special, Light-Sport Airworthiness Certificate?

The following persons could perform maintenance and preventive maintenance on an aircraft with a special light-sport airworthiness certificate: (1) An appropriately rated mechanic, (2) an appropriately rated repair station, and (3) a repairman (light-sport aircraft) with a maintenance rating. Certificated pilots could also perform preventive maintenance.

Who Can Perform Inspections On an Aircraft With an Experimental, Light-Sport Airworthiness Certificate?

The following persons could perform inspections on an aircraft with an experimental, light-sport airworthiness certificate: (1) An appropriately rated mechanic, (2) an appropriately rated repair station, and (3) a repairman (light-sport aircraft) with a maintenance rating. Additionally, if you want to perform inspections on your own experimental aircraft, you would have to obtain a repairman certificate (light-sport aircraft) with an inspection rating.

How Do I Get a Repairman Certificate (Light-Sport Aircraft) With a Maintenance or Inspection Rating?

To get a repairman certificate (light-sport aircraft), you would have to—

- Meet certain eligibility requirements relating to age, language, and citizenship or residency;
- Demonstrate the requisite skill to determine whether a light-sport aircraft is in a condition for safe operation; and
- Meet the requirements for one of the following ratings:

For an inspection rating, you would have to—

- Complete a 16-hour training course on the inspection requirements of the particular make and model of light-sport aircraft.

For a maintenance rating, you would have to—

- Complete an 80-hour training course on the maintenance requirements of the particular category of light-sport aircraft.

I Manufacture Light-Sport Aircraft. How Does This Proposal Affect Me?

If you manufacture aircraft intended for certification as a special, light-sport aircraft, you would have to—

- Manufacture those aircraft in accordance with airworthiness standards developed by a consensus of industry and FAA (consensus standards);
- Attest on a Statement of Compliance for each aircraft that it conforms to the consensus standards;
- Test each aircraft in accordance with a production acceptance test specifications described in the consensus standard;
- Develop and identify the system you would use for monitoring and correcting safety-of-flight issues in accordance with the consensus standards;
- Develop and make available a Pilot Operating Handbook for safe operation applicable to the aircraft;
- Develop and make available a manufacturer's pilot flight training manual for the aircraft; and
- State that you will provide FAA unrestricted access to your facilities.

I Manufacture Light-Sport Aircraft Kits. How Does This Proposal Affect Me?

If you manufacture aircraft kits, intended to be assembled by the purchaser into aircraft eligible for certification as an experimental aircraft for the purpose of operating light-sport aircraft, you would have to—

- Manufacture at least one ready-to-fly aircraft. For the purposes of this certificate, an aircraft make and model is eligible for a kit if the aircraft make and model has been issued a special, light-sport airworthiness certificate;
- Manufacture the aircraft kit in accordance with standards developed by a consensus of industry and the FAA (consensus standard);
- Attest on a statement of compliance that the kit conforms to the consensus standard.
- Provide complete assembly instructions; and
- Develop and make available the applicable supporting documentation.

Does This Proposal Impose Any Requirements on the Light-Sport Aircraft Industry?

Yes, industry would have to work with the FAA to develop consensus standards governing the following:

- Design and performance criteria;
- Quality assurance system requirements;
- Completed aircraft production acceptance or ''pass-through'' test specifications; and
- A system for continued operational safety monitoring.

Although aircraft issued special airworthiness certificates in the light-sport category would not need a type certificate or have to be produced under a production certificate, the FAA proposes that these aircraft meet consensus standards. By consensus standards, we mean standards developed by the industry through a consensus process with FAA participation. Industry would present those standards to the FAA for review and publication in the **Federal Register** for public comment. After the FAA accepts the consensus standards, we would publish them in the **Federal Register**.

There would be separate standards for each aircraft class to which FAA could issue a certificate in the light-sport aircraft category. We have determined it is appropriate to use consensus standards, consistent with Office of Management and Budget (OMB) Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' February 10, 1998.

I. Background

A. Current Rules

Several FAA regulatory initiatives have addressed sport and recreational general aviation needs:

- We issued regulations regarding ultralight vehicles under 14 CFR part 103 (47 FR 38776; September 2, 1982),
- We created the recreational pilot certificate under 14 CFR part 61 (54 FR 13028; March 29, 1989), and
- We established a new category of aircraft, primary category, under 14 CFR part 21 (57 FR 41367; September 9, 1992).

We discuss these regulatory initiatives below.

Ultralight Vehicle Regulations

The FAA adopted part 103 in 1982 (47 FR 38776; September 2, 1982) in response to existing and rapidly growing hang glider activity. This activity made our earlier guidance inadequate.

Part 103 defines an ultralight as either an unpowered or powered vehicle with certain weight, speed, and other limitations. An ultralight can carry only one occupant and be used for sport and recreational purposes. It does not have a U.S. or foreign airworthiness certificate. Ultralight vehicle operators must comply with certain operating restrictions. Generally, you can operate these vehicles only between sunrise and sunset; you must yield the right-of-way to all aircraft; you may not operate over congested areas or over any open air assembly of people, and you may not operate for compensation or hire. See part 103 for more information on limits on ultralight vehicles.

Ultralight vehicles are not subject to the aircraft certification requirements of 14 CFR part 21, the maintenance

requirements of 14 CFR part 43, the identification and marking requirements of 14 CFR part 45, or the registration requirements of 14 CFR part 47. In addition, to operate one of these vehicles, you do not need to comply with the airman certification requirements in 14 CFR part 61, medical certification requirements in 14 CFR part 67, or the operating rules in 14 CFR part 91.

Recreational Pilot Certificate Regulations

The FAA established the recreational pilot certificate under part 61 in 1989 (54 FR 13028; March 29, 1989). We intended this certificate to be a lower cost alternative to the private pilot certificate. We believed this new certificate would be attractive for persons interested in flying basic, experimental, or homebuilt aircraft.

As a recreational pilot, you may operate a single-engine airplane or rotorcraft certificated for no more than four occupants with a powerplant of no more than 180 horsepower (hp). You are not only subject to the limits of a private pilot, but also have additional limits. These additional limits include not being permitted to carry more than one passenger; tow an object; fly between sunset and sunrise; fly above 10,000 feet MSL or 2,000 feet AGL, whichever is higher; fly without visual reference to the surface; or operate in airspace in which you need to communicate with air traffic control (ATC). See part 61 for information on other limits placed on recreational pilots.

However, in this current rulemaking we are proposing to allow a recreational pilot to operate in airspace in which communication with ATC is required, as long as the pilot receives training on that operation and a logbook endorsement authorizing it. This would parallel a similar privilege we are proposing for sport pilots.

Primary Category Aircraft Regulations

In 1992, the FAA established a new category of aircraft, primary category aircraft, under §§ 21.24 and 21.184 (57 FR 41367, September 9, 1992), because of concerns that the decline in general aviation in the United States was in part due to higher certification costs for aircraft. The new category had simplified procedures for type, production, and airworthiness certification.

Primary category aircraft must be unpowered or have only a single, naturally aspirated engine. They are also subject to speed, weight, and load limits. They may not be used to carry persons or property for hire, although under certain conditions they may be rented or used for flight instruction. See part 21 at the sections listed above for more information about the limits placed on this category of aircraft.

The Status of Current Rules

Despite the efforts discussed above to address sport and recreation general aviation needs, those rules, for various reasons, have not achieved the regulatory goals we set out to achieve. Since we issued the regulations, the state of the art in ultralight vehicles has advanced considerably and our rules are out-of-date. New advancements in technology have improved safety, including light-engine technology and reliability, more effective application of low-speed aerodynamic principles, and new materials. Although part 103 covers ultralight activities, an increasing number of ultralight vehicles are operating outside the current regulations. This is because the vehicles either exceed the part 103 ultralight weight limit (254 pounds) or they have two seats. For many operators, installing any new equipment or using new materials (some of which increase the level of safety) causes the vehicle to exceed the weight requirements of part 103.

Seeing the need for training to reduce accidents, manufacturers have built two-place training vehicles and organizations have established programs to qualify ultralight flight instructors. However, these vehicles do not meet the current definition of ultralight vehicle, and are not manufactured, certificated, or maintained to a standard. So, while the FAA currently does not require certification for ultralight vehicle operators, flight instructors, or vehicles, we issued exemptions to allow these larger ultralights to be used for training, but not for other sport or recreational flight. You can find a detailed discussion of exemptions for two-place ultralight training vehicles in the following documents: Aero Sports Connection (ASC) Exemption No. 6080, docket No. 27953; Experimental Aircraft Association (EAA) Exemption No. 3784, docket No. 23477; United States Hang Glider Association (USHGA) Exemption No. 4721, docket No. 23492; and United States Ultralight Association (USUA) Exemption No. 4274, docket No. 24427.

Neither the recreational pilot certificate nor the primary category airworthiness certificate regulations have accommodated the sport and recreational flying community. Only about half of the recreational pilot certificates we have issued are active. Specifically, as of January 10, 2001, the FAA has issued 638 recreational pilot certificates, but only 336 of those were active. Most initial pilot applicants have chosen to pursue a private pilot certificate, rather than a recreational pilot certificate, because the former provides more benefits for little extra cost. Since the primary category aircraft certification option covers only single-engine airplanes and rotorcraft, it excludes increasingly popular aircraft such as powered parachutes and weight-shift-control aircraft. And, although we intended the certification process for these aircraft to be abbreviated and economical compared to standard category certification, we have not achieved that goal. As of March 14, 2001, we have certificated only two aircraft in the primary category.

Finally, we have received numerous requests for exemptions from part 103, a petition for rulemaking from the United States Ultralight Association (docket No. 25591), and two petitions for exemption relating to powered parachutes, one from North American Powered Parachute Federation (NAPPF) and one from Aero Sports Connection (ASC) (docket No. 29674). The last petition also dealt with weight-shift-control aircraft.

The FAA currently does not have aircraft category ratings or training and certification requirements for powered parachutes and weight-shift-control aircraft in part 61. Before you fly one of these aircraft, you don't have to receive any training specific to them, but you must get a pilot certificate with a rating in another aircraft category and class. This requires pilots to get training in aircraft that do not have the same operating characteristics as the aircraft they will be flying. Although current regulations do not require any additional training in the powered parachute or weight-shift-control aircraft, many pilots exercise reasonable judgement and get that additional training. This significantly increases the cost of getting a pilot certificate to operate powered parachutes and weight-shift-control aircraft without any added benefit to the pilot or to public safety.

B. The FAA's Reason for This Proposal

The FAA is proposing this rule to increase safety in the light-sport aircraft community by closing the gaps in existing regulations and accommodating new advances in technology. Although we issued exemptions to temporarily resolve the training issues, to extend them on a long-term basis would be an inappropriate use of the exemption process. The FAA believes that a permanent and appropriate level of regulation is necessary.

The FAA analyzed the existing accident data of ultralights that do not meet part 103 to determine deficiencies in safety. Accident data from the NTSB and part 103 exemption holders show that 36 accidents occurred between 1995–2001 involving aircraft that would meet the proposed definition of light-sport aircraft. Those accidents resulted in 51 fatalities. (The organizations that hold part 103 training exemptions are required to report to the FAA accidents involving two-place training vehicles.) The data indicate that some of these accidents also involve vehicles that are not covered under part 103 and were not used for training under an exemption. Because light-sport flying is becoming more and more popular, there is concern that more accidents could occur without regulatory intervention.

We believe that many of these accidents could have been avoided with this proposed rule. There are many safety benefits of certificating sport pilots, light-sport aircraft, and repairmen who would maintain these aircraft. The FAA has identified a number of factors related to training and certification that contribute to the prevention of accidents. For example, certificated sport pilots would—

(1) Meet minimum requirements to be eligible to operate aircraft,

(2) Be trained and tested to a standard,

(3) Routinely receive notices of FAA safety programs and are eligible to participate in that supplemental training (current operators of ultralight vehicles do not received these notices),

(4) Be required to be aware of safety- and security-related information contained in Notices to Airmen (NOTAMs), which could impact a flight and potentially reduce accidents (current operators of ultralight vehicles are not required to receive these NOTAMs),

(5) Be required to receive weather briefings and therefore are better prepared to avoid bad weather (current operators of ultralight vehicles are not required to receive weather briefings),

(6) Have access to DUAT (direct user access terminal) automated weather service, and

(7) Be required to complete recurrent training, which would maintain pilot skills.

Under this proposal, certificated sport pilots could credit ultralight flight time toward higher-level certificates, which would increase the experience level and qualification of sport pilots. In addition, sport pilots would receive make and model training, which is not required for any other pilot certificate.

Certificated light-sport aircraft would—

(1) Be designed, manufactured, tested, and supported according to the latest standard,

(2) Be manufactured under a quality assurance system that meets a standard,

(3) Receive safety-of-flight bulletins, similar to airworthiness directives and service bulletins (there are no safety-of-flight bulletins currently being issued to operators of ultralight vehicles),

(4) Be required to have make- and model-specific training and maintenance instructions,

(5) Have a make- and model-specific pilot operating handbook for safe operation of the aircraft,

(6) Have a make- and model-specific maintenance and inspection procedures manual, and

(7) Be eligible to use airports, which provide more access to maintenance facilities and emergency services. Vehicles without airworthiness certificates typically are not allowed to use airports.

Certificated repairmen (light-sport aircraft) would—

(1) Meet minimum training and testing requirements, which would ensure that repairmen have the necessary skills to inspect (or maintain) light-sport aircraft and certify that they are safe to fly (currently no certificated repairman or mechanic receives any safety and training information targeted to light-sport aircraft),

(2) Meet minimum requirements ensuring that the persons working on the aircraft are mature individuals who can read and understand maintenance manuals and instructions. These proposed requirements are similar to requirements for part 145 repair stations and repairmen for amateur-built aircraft,

(3) Receive FAA's aircraft-specific safety and training information targeted to repairmen needs,

(4) Be trained on how to report faults or failures to the FAA and light-sport aircraft manufacturers. This would greatly improve how light-sport aircraft manufacturers correct faults and make a safer product.

Also, certificating sport pilots, light-sport aircraft, and repairmen would allow the FAA to identify and take certificate action against them. The threat of certificate action could improve compliance with the regulations, and therefore, improve safety.

Certificated sport pilots and operators of light-sport aircraft would have better access to insurance. They would be more widely recognized by existing industry and trade organizations because the pilots and aircraft would meet the same operating rules as all other pilots and aircraft. These organizations would likely publish more safety-related material addressing sport flying.

Finally, the NTSB would investigate any accidents or incidents involving certificated sport pilots or light-sport aircraft, which could help identify ways to improve safety and reduce future accidents. (The NTSB generally does not investigate accidents involving ultralight vehicles.) The FAA bases many of its policy and rule changes on NTSB recommendations following accidents and incidents. Industry also uses NTSB data to develop safety initiatives and new training materials.

The ultralight aircraft industry has urged us to initiate rulemaking to address light-sport aircraft and has received strong support among its members. According to most of these supporters, regulating this industry would significantly increase the popularity of sport flying and would consequently have a positive impact on their businesses. Thriving businesses typically have more resources to improve their products, and, in this case, could produce safer aircraft. We agree with these statements and also believe that regulating this industry would offer other safety enhancements.

Although there would be some costs involved with this proposal, we believe it to be the least costly of the viable alternatives. (Refer to section IX ''Regulatory Evaluation Summary'' for more details on the costs and benefits of the proposal.) Industry leaders have indicated that regulations ultimately would lower the cost to participate in light-sport aircraft activities, while ensuring appropriate public safety. In a letter sent to the Director of the Office of Management and Budget on August 10, 2001, EAA stated that they see this proposal as an opportunity to decrease the cost of aircraft ownership and operation. The General Aviation Coalition indicated its support of sport pilot and light-sport aircraft regulations to the Administrator at its July 18, 2001, meeting with the FAA Administrator. According to one manufacturer of sport aircraft kits, rules covering these aircraft would benefit public safety in several ways, including: (1) Providing appropriate rules for students to learn to fly light-sport aircraft, (2) improving flight instructor training on light-sport aircraft, and (3) providing rules for the continued airworthiness of the aircraft. Another manufacturer states that new regulations would improve pilot skills to fly these aircraft, encourage new flying skills, and would ensure that the aircraft are safe and high quality.

Finally, one manufacturer of kit planes believes that regulating the light-sport aircraft certification process would increase safety by eliminating aircraft that do not meet a certain standard.

Several letters were received while the Department of Transportation and the Office of Management and Budget were reviewing this proposal. Buckeye Industries, Inc., Flightstar Sportplanes, and EAA all expressed their support of this proposal and requested expedited review of this proposal. You may find copies of all of the above letters in the docket.

The FAA is especially interested in receiving specific comments regarding the various costs of the proposal and the extent to which the affected public is willing to bear these costs as an acceptable part of business or recreation. These costs can be broken down into the following three components: aircraft certification; annual condition inspection and repairman certification; and sport pilot certificate and flight instructor certification (with a sport pilot rating). Each of these costs is discussed further in section IX ''Regulatory Evaluation Summary''. The FAA seeks information and data regarding each of these cost areas and if these costs are considered reasonable.

In summary, the FAA believes that these proposed regulations would improve safety and would:

- Provide an economical means for manufacturers to obtain FAA certification for light-sport aircraft;
- Provide an economical means for pilots to obtain a certificate to fly those aircraft;
- Provide a reasonable and appropriate means to overcome the limits of the ultralight regulations, the recreational pilot certificate, and the primary category airworthiness certificate;
- Eliminate the need for exemptions from part 103 to conduct flight training in aircraft that do not meet the requirements of that part;
- Provide the public safe access to general aviation without creating a significant financial barrier; and
- Create more eligible pilots to meet the needs of future airline and military demand.

V. The Aviation Rulemaking Advisory Committee (ARAC)

ARAC's Role in This Rulemaking

The FAA established the Aviation Rulemaking Advisory Committee (ARAC) in 1991 to help us by providing input from outside the Federal government on major regulatory issues affecting aviation safety. The ARAC includes representatives of air carriers, manufacturers, general aviation, labor groups, universities, associations, airline passenger groups, and the general public. In 1993, we formed an ARAC working group to review part 103 and recommend whether we needed new or revised standards for sport aircraft (58 FR 47172, September 7, 1993). In 1995, we revised our charge to ARAC (60 FR 33247, June 27, 1995).

The ARAC considered a variety of alternatives to deal with light-sport aircraft issues. In their final recommendation, they focused on three areas. You can read ARAC's entire report in the docket for this proposed rule.

ARAC's Recommended Sport Pilot Certificate

The ARAC recommended FAA include detailed privileges and limits in part 61, tailored to diverse aircraft types, and appropriate to the low weight and speed of those aircraft. They wanted to enhance safety by providing a pilot certificate for those who wish to exercise pilot privileges that exceed the current limits of part 103. They wanted to achieve this goal without making the certificate requirements so stringent they were economically impractical.

In addition, ARAC recommended FAA allow the training and flight time used to obtain a sport pilot certificate to be applicable to higher-level airmen certificates. They believed this would encourage individuals to obtain a higher-level airman certificate.

ARAC's Airman Medical Certification Recommendations

The ARAC recommended a self-evaluation medical requirement that would allow sport pilot applicants to certify at the time of application that they have no known medical defect. They considered but did not recommend requiring that an applicant hold a current and valid U.S. driver's license; requiring a letter from an aviation medical examiner (AME) or a personal physician addressing that physician's knowledge of the applicant's health; and allowing a Flight Standards Review Board (FSRB) to define medical requirements unique to each specific type of aircraft. They rejected these options because, in their opinion, a driver's license requirement would involve unnecessary paperwork and recordkeeping, a letter from an AME or other physician would create yet another class of airman medical certificate, and involving a medical examiner through the FSRB would be unnecessary because the activities allowed under the proposed sport pilot certificate would be of a limited nature and the medical requirements for each rating would always be the same.

ARAC's Recommended Flight Standards Review Board (FSRB)

Under this recommendation, a person interested in a sport pilot class or ''type'' rating not previously established by FAA could request that we establish an appropriate class or ''type'' rating using an FSRB. The requester would suggest to FAA requirements and limits for the specific category, class, and ''type'' rating. Typically, an aircraft manufacturer or a national organization whose members are interested in the sport pilot class would make these requests. If you wanted to be certificated for these aircraft, you would apply under the appropriate generic requirements of the proposed sport pilot certificate and the specific requirements for your aircraft as established by the FSRB.

FAA's Response to the ARAC Recommendations

The ARAC working group submitted its recommendations to FAA for review in July, 1998. Much of FAA's proposal is based on ARAC's sport pilot certification recommendation, but it also addresses many issues not considered by the ARAC. We decided we needed to cover aircraft and airman certification as well as operational and maintenance issues. Therefore, we have expanded on ARAC's recommendation and are proposing a complete regulatory solution that would address these issues. Our proposal expands pilot certification and training requirements; addresses the airworthiness certification of light-sport aircraft, to include powered parachutes and weight-shift-control aircraft; establishes a new repairman certificate to ensure continuing airworthiness requirements are met; and revises operational requirements to address these aircraft.

There are several specific points on which FAA does not agree with ARAC. We do not agree we should allow sport pilots to tow objects. We believe pilots who tow objects should have a higher level of experience and training than the sport pilot certificate will allow. Existing regulations allow private pilots to do this. We did not agree with permitting an aircraft salesperson to demonstrate an eligible aircraft in flight to a potential buyer. We believe sales demonstration flights are not consistent with the nature of sport and recreational flying.

While the FAA agrees a sport pilot certificate would not warrant a separate

class of airman medical certification, we do not agree that a U.S. driver's license requirement is unreasonable or a paperwork burden. The FAA would amend Form 8710–1, ''Application for an Airman Certificate and/or Rating,'' to add an item for applicants to verify at the time of application that they hold a current and valid U.S. driver's license or a current and valid airman medical certificate. The FAA's proposal does not include ARAC's recommendation for an FSRB because of the potential administrative burden a board could create. We discuss specific ARAC recommendations more fully in the section-by-section analysis of this notice.

VI. Section-by-Section Analysis of the Proposal

A. What Are the Proposed Changes to 14 CFR Part 1?

Proposed section 1.1 would be revised to add the terms ''light-sport aircraft,'' ''consensus standard,'' ''powered parachute,'' and ''weight-shift-control aircraft'' to the list of definitions.

Definition of ''Light-Sport Aircraft''

This proposal would establish a new category of aircraft—light-sport aircraft that would include airplanes, gliders, gyroplanes, powered parachutes, lighter-than-air, and weight-shift-control aircraft. These aircraft fall between ''small aircraft'' as defined in current § 1.1 and ''ultralight vehicles'' as defined in current § 103.1. Helicopters and powered-lift aircraft would be excluded from the definition of light-sport aircraft due to their complex operation, maintenance, design, and manufacture.

A light-sport aircraft would have a maximum takeoff weight of 1,232 lbs (560 kilograms), or a maximum gross weight of 660 lbs (300 kilograms) for lighter-than-air aircraft. These weight limits should accommodate a significant number of aircraft that are simple, low performance, and have no more than two occupants. These aircraft may be manufactured in the United States or another country.

A light-sport aircraft would have a maximum speed in level flight with maximum continuous power (V_H) of 115 knots. This limits the commanded kinetic energy of an aircraft flown by a pilot holding a sport pilot certificate. The FAA chose to use V_H as the limiting speed for powered, light-sport aircraft as it is simple to verify during testing. The FAA believes that aircraft with a V_H greater that 115 knots would be inappropriate for operation by persons with the minimum training and experience of a sport pilot, which prepares them for flying simple, low performance aircraft for sport and recreation. This value is consistent with light-sport aircraft airworthiness design standards adopted by other airworthiness authorities.

An unpowered light-sport aircraft (*e.g.* glider) would have a maximum never-exceed speed (V_{NE}) of 115 knots, as V_H is not applicable. This speed limitation also limits the commanded kinetic energy of an aircraft flown by a pilot holding a sport pilot certificate. For a V_{NE} equal to 80% of the aircraft's structural design limit speed, a 115-knot V_{NE} limit for aircraft would mean that structural design limits would preclude gliders with a speed capability in excess of 144 knots from being approved as light-sport aircraft ($144 \times .80=115$).

A light-sport aircraft would have a maximum stall speed in the landing configuration (V_{S0}) of 39 knots. This value for a maximum stall speed is a characteristic of low-performance aircraft and would assist in ensuring that light-sport aircraft possess handling characteristics commensurate with the training and experience of sport pilots. It is also consistent with foreign airworthiness standards for similar performance aircraft.

A light-sport aircraft would have a maximum stall speed in the landing configuration without the use of lift-enhancement devices (V_{S1}) of 44 knots. The FAA selected this value to allow for the use of simple lift-enhancing systems that can result in a 5-knot stall speed decrease. With this limit, if more effective lift-enhancement systems are used on the aircraft, the resulting V_{S0} would be lowered further. The FAA recognizes that this limitation, combined with the V_{S0} limit, also would limit the maximum speed of the aircraft.

A light-sport aircraft would carry no more than two occupants, including the pilot. This limitation is consistent with the size of the aircraft and the limitations of a sport pilot certificate.

A light-sport aircraft would be limited to a single, non-turbine engine, if powered. The FAA believes that the requirement for no more than one engine keeps the aircraft simple and limits speed. The requirement for a non-turbine engine is intended to limit the engine to a simple-to-operate design, such as a conventional reciprocating engine (including a rotary or diesel engine) and would also permit simple alternatives, such as electric engines.

A light sport aircraft, if powered, would be limited to a fixed or ground-adjustable propeller. The FAA determined that a propeller that could not be adjusted in pitch in flight was necessary to limit the operational complexity of the aircraft and would be consistent with the skills necessary to hold a sport pilot certificate.

The cabin of a light-sport aircraft would be unpressurized. Cabin pressurization systems and the associated pressure vessel are complex to design and manufacture and the systems can be difficult to operate. The FAA determined that the requirement for an unpressurized cabin is consistent with the skills necessary to hold a sport pilot certificate and with the philosophy of light-sport aircraft design and manufacture.

A light-sport aircraft would have fixed landing gear, except that for seaplanes, repositionable landing gear that would allow the wheels to be rotated for amphibious operations would be acceptable. Retractable gear systems are complex to design, manufacture, and maintain, and may be complex to operate in flight. The FAA determined that the requirement for fixed landing gear is consistent with the philosophy of keeping light-sport aircraft design, manufacture, and operation simple. Repositionable gear on a seaplane is of simple design and operation. Accordingly, the FAA has determined that repositionable gear would be consistent with the skills necessary to hold a sport pilot certificate as it is analogous to a ground adjustable pitch propeller.

Definition of ''Consensus Standard''

The FAA is proposing that the light-sport aircraft industry develop and reach a consensus on an airworthiness standard that would govern light-sport aircraft—(1) design and performance, (2) quality assurance system requirements, (3) production acceptance test specifications, and (4) continued operational safety monitoring system characteristics. This standard would be used by the manufacturer of an aircraft intended to be issued a special light-sport airworthiness certificate or of a kit intended for certification as a light-sport aircraft. Consensus standard means, for the purpose of certificating light-sport aircraft, an industry-developed consensus airworthiness standard that addresses these four topics, as described below.

(1) Design and performance. The consensus standard would govern light-sport aircraft design and performance. A suitable standard would identify minimum aircraft flight and ground performance standards, in addition to design practices to prohibit, that would ensure a safe aircraft for the operator. It would also establish flight proficiency training requirements that would be

applicable to the particular class of light-sport aircraft. Design and performance standards maintained or recognized by other civil aviation authorities (CAA's) could be selected or otherwise form the basis for a light-sport aircraft airworthiness standard. Examples of commonly used design and performance standards for conventional fixed-wing airplanes are BCAR section S (Britain), TP10141 (Canada), and JAR–VLA (JAA). The light-sport aircraft industry also may choose to utilize other nationally recognized airworthiness design standards for the consensus standards.

(2) Quality assurance. The consensus standard would govern the necessary quality assurance system requirements used in the manufacture of light-sport aircraft. The standard would establish quality assurance procedures so a manufacturer could attest that individual aircraft produced all meet the same minimum safety standards and are built as intended.

(3) Production acceptance. The consensus standard would govern the necessary characteristics of the production acceptance test specifications used in the manufacture of light-sport aircraft. A suitable standard would identify the required final product acceptance test procedures that ensure a completed product is safe and performs as intended.

(4) Safety monitoring. The consensus standard would govern the characteristics of the manufacturer's continued operational safety monitoring system. The consensus standard would establish reference system requirements for monitoring and correcting safety-of-flight issues. A suitable standard would include a process by which aircraft owners and operators would be notified of occurrences that are hazards to safety of flight and the appropriate corrective action. A suitable standard would ensure that the manufacturer reviews the operational experience of the fleet and corrects any deficiencies. In addition, it would identify processes that would ensure manufacturers learn about problems experienced on aircraft in service. Safety monitoring also would include processes by which manufacturers evaluate the reported problems for their safety of flight. It would also define the processes by which manufacturers develop repairs and communicate them to operators for problems that are determined to be hazards to flight safety.

A suitable consensus standard would also establish the procedures by which the industry reviews and updates the consensus standards. It would establish procedures to periodically review the standard every two years, and to update the standard when if necessary. Industry may chose to initiate a shorter review period.

Definitions of ''Powered Parachute'' and ''Weight-Shift-Control Aircraft''

This proposal would establish two new kinds of light-sport aircraft-powered parachutes and weight-shift-control aircraft. The aircraft would be controlled by a pilot within a suspended fuselage. The inclusion of a fuselage permits the designer of the aircraft to standardize a design based on structural geometry and engineering principles of flight rather than the individual characteristics of the pilot. The definitions describe the characteristics of powered parachutes and weight-shift-control aircraft as they exist today. While the proposed definitions are not intended to hinder future developments of these aircraft designs, they specifically intend to exclude configurations in which the engine and/or wing is mounted on the person operating the aircraft.

A powered parachute would be defined as powered aircraft that derive their lift from a non-rigid wing that inflates into a lifting surface when exposed to a wind. A powered parachute consists of a non-rigid wing, a suspended fuselage, and an engine that is an integral part of the aircraft.

Weight-shift-control aircraft would be defined as powered aircraft with a framed pivoting wing and a fuselage. The aircraft is controllable only in pitch and roll by the pilot's ability to change the aircraft's center of gravity. For these two-axis-control aircraft, the line of action of the thrust and the suspended mass of the fuselage would ensure that a laterally applied control force would result in motion about the roll axis. An aircraft with these characteristics, but with three-axis control (i.e. also controllable about the yaw axis) would not meet the definition of a weight-shift control aircraft.

B. What Are the Proposed Changes to 14 CFR Part 21?

Proposed section 21.175 would add light-sport aircraft to the list of special airworthiness certificates in current § 21.175(b).

Proposed section 21.181 would be revised to indicate that a light-sport aircraft airworthiness certificate is effective as long as the aircraft is maintained in accordance with its operating limitations and the aircraft is registered in the United States. The FAA notes that the proposal would not require the maintenance requirements of part 43 to apply to these aircraft.

This section also would be revised to indicate that certificates for experimental and primary category kit-built aircraft would be of unlimited duration, unless the FAA finds good cause to establish a specific period.

Proposed section 21.182 would be revised to require all aircraft issued experimental certificates for the purpose of operating light-sport aircraft to be identified under § 45.11.

Proposed section 21.186 would establish the eligibility requirements for the issuance of a special airworthiness certificate in the light-sport category [''special light-sport aircraft''] and the purposes for which the FAA would issue such a certificate. It would set forth the required contents of a manufacturer's Statement of Compliance for a light-sport aircraft. It also would set forth requirements for importing light-sport aircraft. Special light-sport aircraft are designed and manufactured without an FAA type or production certificate and are accordingly limited to operating for sport and recreation, flight training, or rental.

Only complete, ''ready-to-fly'' aircraft would be eligible for special light-sport airworthiness certificates. If there is a change to the consensus standard, all newly manufactured aircraft would have to comply with the changed standard. This would ensure that a new aircraft always meets the latest standard. Changes to a consensus standard would not apply retroactively to previously manufactured aircraft, unless required by the changed standard. Industry may agree to apply a change to the consensus standards retroactively. If a change addresses an unsafe condition, it would need to be handled as a mandatory safety-of-flight action.

Aircraft that would be eligible for this certificate would not need a type or production certificate. However, the proposal would require the aircraft manufacturer to attest that the aircraft design and manufacture complies with a consensus standard. The manufacturer would indicate this on a Statement of Compliance, which would be provided to the original purchaser of the aircraft. The person who will be the registered owner of the aircraft will identify and register these aircraft in accordance with 14 CFR parts 45 and 47.

To maintain eligibility for the special light-sport aircraft airworthiness certificate, the operator would be required to comply with operating limitations under the proposed § 91.327 as part of the aircraft's airworthiness certificate. The operating limitations would also address the maintenance and inspection requirements, preventive

maintenance, as well as flight test programs, operations in various airspace classes, and pilot qualification. This is because these aircraft would not have a type certificate and, therefore, would not be required to be maintained in accordance with 14 CFR part 43. Maintenance and inspection procedures required by the operating limitations would meet the scope and detail of Appendix A to 14 CFR part 43. Similar to part 43, a certificated pilot could perform preventive maintenance.

The operating limitations would also require the operator to accomplish any safety-of-flight actions (maintenance or alterations) that the manufacturer deems necessary for continued operational safety. This is proposed because the aircraft would not be manufactured in accordance with a type design and hence the FAA would not issue Airworthiness Directives. If an operator chooses not to perform this maintenance, the special airworthiness certificate in the light-sport category would no longer be valid; however, the operator may still apply for an experimental certificate for the aircraft. These restrictions on the special light-sport aircraft would provide the higher level of safety required for an aircraft to be used for flight training or rental.

The special airworthiness certification option would be in addition to existing methods of obtaining airworthiness certification. No existing airworthiness certification option would be eliminated or restricted for aircraft that meet the definition of light-sport aircraft. An aircraft that meets the proposed definition of light-sport aircraft is not required to have a special light-sport certificate and may be eligible to hold other airworthiness certificates, provided that it meets the applicable requirements of subpart H of part 21.

Aircraft that otherwise meet the light-sport aircraft criteria that are shown via test to have a higher V_H would not be issued a special airworthiness certificate under the terms of this rule. Such higher performance aircraft currently could be type-certificated in other categories such as normal, primary, or special class (e.g., JAR–VLA); and could be operated by the holder of at least a recreational pilot certificate.

An aircraft would no longer be eligible for the special light-sport certificate if it is altered such that it no longer meets the definition of light-sport aircraft. For example, an alteration to a powered aircraft that results in a V_H greater than 115 kts (e.g., installation of a cruise propeller on an aircraft initially certificated with a climb propeller) would render the aircraft ineligible.

The definition of light-sport aircraft includes gyroplanes; however, gyroplanes would not be issued special airworthiness certificates in the light-sport category under proposed § 21.186. The FAA would issue an experimental, operating light-sport aircraft airworthiness certificate under § 21.191(i)(1) to existing gyroplanes that do not meet part 103 but meet the proposed definition of light-sport aircraft. Because gyroplanes could not be certificated under § 21.186, they would not be eligible for airworthiness certificates under § 21.191(i)(2) and (3). The FAA recognizes that this may limit the number and types of gyroplanes that a sport pilot may fly; however, the FAA notes that a sport pilot may fly a gyroplane that has a standard or special category airworthiness certificate provided the aircraft meets the definition of light-sport aircraft.

The FAA may issue special, light-sport aircraft airworthiness certificates to aircraft manufactured before the effective date of the rule. These aircraft would be required to meet the consensus standard in effect at the time of manufacture. To get the certificate you would have to make application for registration not later than 24 months after the effective date of the rule. You would also have to present the required information (as above) to the FAA and make the statements concerning any prior or future modifications. This would require the manufacturer of your aircraft to be in a position to issue a retroactive Statement of Compliance for your specific aircraft serial number. If it is an imported aircraft, you would also have to provide the additional import information on a retroactive basis.

Because of these requirements, not all aircraft models will be eligible for a special airworthiness certificate. While the FAA does not expect many manufacturers would retroactively issue Statements of Compliance for aircraft manufactured before the effective date of the rule, the FAA does not want to rule out this possibility.

Proposed § 21.186(b) would define the requirements for getting a special light-sport aircraft airworthiness certificate.

Proposed § 21.186(b)(1) describes the items that the registered owner would be required to present to be eligible for a special airworthiness certificate in the light-sport category. The registered owner would submit a copy of the manufacturer-issued Pilot Operating Handbook for the aircraft and the manufacturer-issued maintenance and inspection procedures. These items would be required to provide the registered owner with access to the information on how to operate aircraft safely and the technical data to inspect and properly maintain the aircraft. The registered owner would also present a manufacturer's Statement of Compliance to ensure that the aircraft presented is in a condition for safe operation.

Proposed § 21.186(b)(2) would exclude aircraft that have been previously issued an airworthiness certificate in the standard or primary category from being eligible for a special light-sport certificate. The intent of this proposal is to enable aircraft that can meet a consensus standard to obtain an airworthiness certificate without demonstrating to the FAA that the aircraft complies with the standards for the issuance of a standard or primary category airworthiness certificate. The FAA believes that to allow aircraft with existing certificates in the standard or primary category to attain a special light-sport certificate would be an unnecessary burden on the manufacturers, the operators, and the FAA. This is because the proposal would require the manufacturers of light-sport aircraft to implement a system specific to their aircraft models to monitor the continued airworthiness. Additionally, the FAA believes there would be little interest in ''downgrading'' from a standard or primary category certificate to a special light-sport, as the airworthiness certificate would have more restrictive operating limitations.

Proposed § 21.186(b)(3) would require that the aircraft be inspected by the FAA (or an FAA-designated representative) and be in a condition for safe operation. The person conducting the inspection would rely upon Manufacturer's Statement of Compliance to assist in determining that the aircraft complies with consensus standards unless FAA experience with the manufacturer dictates otherwise.

Proposed § 21.186(b)(4) would address authorized modifications to light-sport aircraft. The registered owner would provide a statement indicating that either the aircraft has not been altered after the date of manufacture, or that the aircraft was altered with the authorization of the manufacturer. Absent a responsible manufacturer, other persons acceptable to the FAA who have established a program to review the alterations to the manufacturer's aircraft may also authorize an alteration. That person would review the alteration for compliance with the applicable standard. In order to authorize an alteration the person must accept continued airworthiness responsibility for the altered aircraft. This requirement

would assist in ensuring that the aircraft meets the applicable consensus standard throughout its useful life.

Proposed § 21.186(b)(5) would address authorized modification to the aircraft. The registered owner would provide a statement indicating that any future alterations to the aircraft will be performed with the authorization of the manufacturer. Other persons acceptable to the FAA who have established a program to review the alterations to the manufacturer's aircraft may also authorize an alteration. That person would review the alteration for compliance with the applicable standard. In order to authorize an alteration the person must accept continued airworthiness responsibility for the altered aircraft. This requirement would assist in ensuring that the aircraft meets the applicable consensus standard throughout its useful life.

Proposed § 21.186(c) would require manufacturers of aircraft intended for certification as a special, light-sport aircraft, or of kits intended for certification as experimental aircraft for the purpose of operating light-sport aircraft (under proposed § 21.191(i)(2)), to produce those aircraft or aircraft kits in accordance with consensus standards. The FAA believes that light-sport aircraft can be designed and manufactured with less FAA oversight than that required for an aircraft with a type or production certificate. Accordingly, light-sport aircraft would conform to an industry-developed consensus airworthiness standard, which the FAA would define as a ''consensus standard.''

The manufacturer would have to perform specific tasks and attest to their satisfactory completion on a manufacturer's Statement of Compliance. A Statement of Compliance would be required for each specific aircraft to be issued a special, light-sport aircraft airworthiness certificate; or for each kit issued an experimental certificate for the purpose of operating light-sport aircraft.

Furthermore, proposed § 21.186(c) would define the items that must be contained in the manufacturer's Statement of Compliance. The manufacturer's quality assurance system would identify a company official who would be authorized to make the certifications on the Statement of Compliance. The official who makes the certifications would need to have control and direct supervisory participation in the activities that the statement addresses.

Proposed § 21.186(c)(1) would require the Statement of Compliance to contain the aircraft make and model designation, aircraft serial number, class of light-sport aircraft, and date of manufacture for each aircraft or kit intended for certification under proposed § 21.186 or 21.191(i)(2). This provision is intended to specify the minimum basic identification on the Statement of Compliance for each aircraft (or kit, when applicable) produced. A manufacturer could include in its Statement of Compliance additional information to help describe or otherwise identify the aircraft.

Proposed § 21.186(c)(2) would require the Statement of Compliance to fully identify the consensus standard used to manufacture the aircraft. The identification would include the effective date of the consensus standard. This requirement would provide a permanent record of compliance by aircraft and by serial number with a particular consensus standard.

Although aircraft issued special airworthiness certificates in the light-sport category would not have a type certificate or be produced under a production certificate, the FAA proposes that these aircraft would meet consensus standards, which would mean an industry-developed consensus airworthiness standard. The light-sport aircraft industry, with FAA participation, would develop an acceptable minimum airworthiness standard for each aircraft class that could be issued a special airworthiness certificate in the light-sport category. The airworthiness standards would govern light-sport aircraft design and performance, quality assurance system requirements, production acceptance test specifications, and continued operational safety monitoring system characteristics. These standards would provide a level of safety that is higher than that provided by the standards permitted for an experimental certificate issued for the purpose of operating amateur-built aircraft under current § 21.191(g).

For aircraft that would be eligible for the special, light-sport aircraft airworthiness certificate, the FAA believes that the use of consensus standards is appropriate. The FAA has made this determination in accordance with Office of Management and Budget (OMB) Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' dated February 10, 1998. Specifically, the FAA believes that this determination is consistent with a primary goal of the government in using voluntary consensus standards'reduced regulatory development costs to the government and reduced regulatory compliance costs to the industry.

Proposed § 21.186(c)(3) would require the Statement of Compliance to include a statement that the aircraft complies with the current consensus standard identified in proposed § 21.186(c)(2). This would attest to the satisfactory completion of all analyses, tests, and inspections necessary to demonstrate that the aircraft complies with that standard.

Proposed § 21.186(c)(4) would require the Statement of Compliance to include a statement that the manufacturer has found that the specific aircraft conforms to the manufacturer's design data. This determination would be made using a quality system that conforms to the consensus standard. This determination would apply to the aircraft (or kit, when applicable) and its components, including purchased components. Thus, this statement would attest to the existence of a quality assurance system that complies with the consensus standard.

Proposed § 21.186(c)(5) would require the Statement of Compliance to include full identification of the following:

(1) The Pilot Operating Handbook describing the proper methods and procedures for safely operating the aircraft.

(2) The manufacturer's inspection and maintenance program for the continued airworthiness of the aircraft. This would require the manufacturer to establish and make available the technical information necessary to inspect and maintain the aircraft.

(3) The pilot flight training providing information on the model-specific features and characteristics of the aircraft, because the sport pilot certificate would require specific training by make and model. (Without such a manual, a sport pilot would not be able to receive a make and model logbook endorsement and thus could not operate the aircraft.)

Under the proposal, this paragraph would also require the Statement of Compliance to include a statement that the manufacturer would make this information available to any interested party.

Proposed § 21.186(c)(6) would require the Statement of Compliance to fully identify the document describing the system the manufacturer agrees to use for monitoring and correcting safety-of-flight issues. The FAA believes this is an important requirement because light-sport aircraft would not have a type certificate, and therefore, the manufacturer may not have the service difficulty reporting and correcting responsibilities required of a type

certificate holder. The intent of this requirement is to require a system to monitor and correct safety-of-flight issues for these aircraft. By making this statement, the manufacturer would also attest that the manufacturer's continued operational safety monitoring system complies with the consensus standard.

This proposal would establish a requirement for manufacturers to have a system to monitor and correct safety-of-flight issues, because aircraft holding a special, light-sport aircraft airworthiness certificate would not have a type certificate. The manufacturer would be responsible for monitoring and notifying operators to correct unsafe conditions in aircraft that have been issued special airworthiness certificates in the light-sport category for as long as these aircraft are U.S.-registered. The manufacturer also would be responsible for issuing corrective actions in accordance with its program to monitor and correct safety-of-flight issues and would notify the owner of the affected aircraft of the corrective action to resolve problems. The FAA does not normally issue airworthiness directives (AD's) against products without a type certificate. Therefore, to ensure the success of this proposal, the FAA expects manufacturers to implement a vigorous system to monitor and correct safety-of-flight issues. The FAA specifically requests comments on the manner in which the continued airworthiness of light-sport aircraft should be addressed.

To ensure continued airworthiness of the aircraft, the FAA proposes that when an aircraft is certificated, the FAA would assign appropriate operating limitations requiring certain inspections. The operating limitations associated with the airworthiness certificate would specify that the manufacturer's safety-of-flight actions must be complied with. This proposal also addresses how the continued airworthiness would be handled for these aircraft and who would perform the maintenance and inspections to ensure continued airworthiness.

Under this proposal, the owner would ensure that the corrective action is addressed in accordance with the operating limitations proposed for the special, light-sport aircraft airworthiness certificate. Failure to comply with mandatory safety-of-flight actions from the manufacturer would mean that the aircraft is no longer in compliance with the conditions of its airworthiness certificate. However, an operator who chooses not to comply with the manufacturer's program may seek an experimental certificate for the aircraft.

If public safety requires issuance of an AD, the FAA has the ability to issue one; however, the FAA expects that such action would be needed only as a consequence of a serious breakdown in the manufacturer's fulfillment of its responsibilities for maintaining continued airworthiness.

If a manufacturer ceases to exist (or ceases to provide continued airworthiness support), the lack of a responsible party for the continued airworthiness support of in-service aircraft would be a potential safety hazard for the aircraft operator and the public. Thus, the proposal would permit the manufacturer to transfer responsibility for monitoring and correcting safety-of-flight issues to a suitable third party capable of supporting the fleet. The consensus standard would include procedures to ensure that a person acceptable to the FAA can be identified to assume the continuing airworthiness responsibilities of the manufacturers of light-sport aircraft. If an airworthiness issue arises and there is no known responsible person, the FAA could take certificate action against the individual aircraft.

Proposed § 21.186(c)(7) would require the Statement of Compliance to include a statement that the manufacturer would provide the FAA unrestricted access to its facilities, upon request. Access to facilities would include access to design, manufacturing, and quality system data. Because the light-sport aircraft manufacturer would not be required to hold an FAA design or production approval, this requirement would be needed to facilitate the FAA's ability to make any inspections and tests necessary to determine compliance with the provisions of this section. The FAA may also need to preserve this access under its bilateral obligations.

Proposed § 21.186(c)(8) would require a manufacturer's statement that completed (non-kit) aircraft were tested in accordance with a production acceptance test procedure that meets the consensus standard. Furthermore, the manufacturer would be required to make a determination that a completed aircraft is in a condition for safe operation before the FAA could issue an airworthiness certificate. This statement would also attest that the manufacturer has determined that the aircraft's performance is acceptable and that the aircraft is in a condition for safe operation.

Proposed § 21.186(d) would specify the additional requirements that the registered owner must meet to obtain a special airworthiness certificate in the light-sport category when importing a light-sport aircraft. These requirements are in addition to those in proposed § 21.186(b).

Proposed § 21.186(d)(1) would require the applicant for the special airworthiness certificate to provide evidence that an imported light-sport aircraft was manufactured in a country with which the United States has an agreement for the import/export of that product. This is because the FAA would rely on the CAA's of other countries to assess the airworthiness of these aircraft. The agreement must address aircraft with special airworthiness certificates and the appropriate class of light-sport aircraft for these aircraft to be imported or exported. Typically, these agreements are in the form of Bilateral Airworthiness Agreements or Bilateral Aviation Safety Agreements with Implementation Procedures for Airworthiness, but other types of agreements would be suitable. The FAA would consider agreements that address ''all aeronautical products'' as being applicable to all classes of light-sport aircraft, including those new classes such as powered parachutes and weight-shift-control aircraft.

Proposed § 21.186(d)(2) would require the applicant for the special airworthiness certificate to provide evidence that the make and model of the aircraft to be imported is eligible for an airworthiness certificate or flight authority in the country of manufacture. This would constitute evidence that the civil aviation authority (CAA) of the country of manufacture has established a proper level of oversight for this type of product and would perform its export bilateral obligations with regard to the continued airworthiness of the product.

Proposed § 21.186(d)(3) would require the applicant for the special airworthiness certificate to provide evidence that the CAA of the country of export has found that the aircraft is in a condition for safe operation. This requirement would be the same for used or new aircraft. However, if a used aircraft is imported from a country that is not the country of manufacture, additional inspection and documentation may be required to demonstrate the airworthiness of the aircraft.

Proposed section 21.191(i) would establish a new purpose for which the FAA may issue an experimental airworthiness certificate for the purpose of operating light-sport aircraft. Under the proposal, there would be three methods for obtaining an experimental airworthiness certificate for this purpose. Experimental certificates could be issued for: (1) Existing aircraft that exceed the weight, occupant, or

performance limitations of the current part 103; (2) kit-built light-sport aircraft; and (3) aircraft previously certificated under the proposed § 21.186.

The FAA created this new purpose for the experimental certificate in lieu of combining this purpose with the current purpose of operating amateur-built aircraft. The FAA did not want to have aircraft that could not demonstrate compliance with § 21.191(g) (the 51-percent rule) to be certificated under that paragraph.

The experimental airworthiness certification option set forth in this proposal would be in addition to existing methods of obtaining airworthiness certification. No existing airworthiness certification option would be eliminated or restricted for aircraft that meet the definition of light-sport aircraft. Additionally, this proposal wouldn't affect vehicles eligible to operate under part 103.

Aircraft that otherwise meet the light-sport aircraft definition that are shown via test to have a higher V_H would not be issued an airworthiness certificate under the terms of this rule. An aircraft would no longer be eligible for the experimental light-sport certificate if it is altered such that it no longer meets the definition of light-sport aircraft. For example, an alteration to a powered aircraft that results in a V_H greater than 115 kts (e.g., installation of a cruise propeller on an aircraft initially certificated with a climb propeller) would render the aircraft ineligible.

An aircraft issued an experimental, operating light-sport aircraft airworthiness certificate under proposed § 21.191(i) would be issued operating limitations under current § 91.319(b) as part of the certificate. The limitations would address maintenance, flight test programs, operations in various airspace classes, and pilot qualification. Operating limitations would prohibit the operation of experimental light-sport aircraft for compensation or hire, except when operated while conducting flight training in aircraft certificated under proposed § 21.191(i)(1), and also would prohibit rental of these aircraft.

Operating limitations also would address the different purposes for which an experimental certificate would be issued. Operating limitations for existing aircraft that exceed the weight, occupant, or performance limitations of part 103 would be similar to those that currently exist for vehicles operating under part 103, although flight training, under certain circumstances described previously, would be an allowable use. Operating limitations for new aircraft, either assembled from an eligible kit or previously issued a special certificate under § 21.186, would be similar to those for aircraft issued experimental, operating amateur-built aircraft.

When an experimental, operating light-sport aircraft airworthiness certificate is issued for an aircraft that has not previously completed flight testing, operating limitations would require the owner to complete phase I flight testing to demonstrate that the aircraft is safe for flight. Operating limitations issued for these aircraft would be similar to those currently issued for experimental, amateur-built aircraft. Upon completion of phase I flight test, the pilot should record in the aircraft records that the aircraft meets § 91.319(b). The aircraft would be considered to have completed phase I flight testing if the aircraft has met the phase I flight test requirement at the time of application, and the owner can attest that the aircraft meets the requirements for safe flight and has made the appropriate entry in the aircraft's maintenance record.

The continued airworthiness of light-sport aircraft issued experimental certificates would follow the experience and precedent that has been established for the continued airworthiness of experimental amateur-built aircraft. The aircraft owner would be responsible for ensuring the continued airworthiness of the aircraft. The FAA has not generally issued AD's for aircraft with experimental certificates in the past and expects this policy to continue. Similar to aircraft with special, light-sport aircraft airworthiness certificates, the FAA would issue an AD if public safety requires; however, the FAA expects that such action would be required only as a consequence of a serious breakdown in the manufacturer's fulfillment of its responsibilities for maintaining continued airworthiness.

Under the proposal, there would be three ways a person could obtain an experimental airworthiness certificate for the operation of light-sport aircraft [''experimental light-sport'']. Proposed 21.191(i)(1) would establish the eligibility requirements and time frame for the first method of issuing an experimental airworthiness certificate for the operation of light-sport aircraft [''experimental light-sport'']. This method would allow a person to obtain an experimental certificate for the operation of light-sport aircraft if that person applies to register the aircraft not later than 24 months after the effective date of the rule. The FAA would have to issue an experimental airworthiness certificate for the aircraft not later than 36 months after the effective date of the rule. This provision would not apply to aircraft that meet the definition of ultralight vehicle in § 103.1. Light-sport aircraft could be used only for sport and recreation and flight training. However, for 36 months after the effective date of the rule, a person could operate these aircraft for compensation or hire while conducting flight training.

The owner of an aircraft that does not meet the current definition of ultralight vehicle in § 103.1 would be able to obtain an experimental certificate for their aircraft. To get the certificate, the owner would have to apply to the FAA to register the aircraft not later than 24 months after the effective date of the rule. Then, the registered owner would be required to have the aircraft inspected and an airworthiness certificate issued by a qualified representative of the FAA not later than 36 months after the effective date of the rule. The FAA wouldn't issue experimental, operating light-sport aircraft airworthiness certificates under § 21.191(i)(1) after 36 months after the effective date of the final rule.

Once the FAA has inspected the aircraft and determined it is safe to operate, the FAA would issue an experimental, operating light-sport aircraft airworthiness certificate with the appropriate operating limitations. Identification of the aircraft with a data plate per current § 45.11 would be required.

The process for getting an experimental, operating light-sport aircraft airworthiness certificate would be the same for an imported aircraft as for an aircraft manufactured in the United States.

Aircraft certified under this method could be used only for sport and recreation and flight training; however, until 36 months after the effective date of the rule, flight training would be permitted in existing light-sport aircraft that do not meet part 103 (those certificated under proposed § 21.191(i)(1)) and are operated for compensation or hire. Permitting these aircraft to be used for flight training while the aircraft is being used for compensation or hire for a 36–month period would ensure that flight training currently permitted under exemptions could continue while light-sport aircraft manufacturers begin production of aircraft that could be certificated under proposed § 21.186. This 36–month period also would provide industry with time to develop and reach a consensus on the airworthiness standards appropriate for light-sport aircraft. The owner of an aircraft certificated under proposed § 21.191(i) would be authorized to receive flight

training in the aircraft regardless of this 36-month provision.

Persons who currently operate vehicles under a training exemption and who have applied for an aircraft registration would be allowed to continue to operate under the training exemption until the FAA issues an experimental, operating light-sport aircraft airworthiness certificate. Persons operating aircraft under a training exemption would still have to apply for registration and for an airworthiness certificate, as proposed. Persons with vehicles that exceed the weight/occupant limitations of part 103 and who do not hold a training exemption would not be permitted to operate under part 91 until the aircraft is registered and is issued an experimental, operating light-sport aircraft airworthiness certificate. The FAA intends for the experimental, operating light-sport aircraft airworthiness certificate to be for aircraft meeting the criteria for light-sport aircraft that do not currently hold a valid airworthiness certificate and that cannot be operated under the provisions of part 103.

Proposed 21.191(i)(2) would establish the eligibility requirements and time frame for the second method of issuing an experimental airworthiness certificate for the operation of light-sport aircraft [''experimental light-sport'']. A person could obtain an experimental certificate for the operation of light-sport aircraft, if the aircraft was assembled from an eligible kit without the supervision and quality system of the manufacturer. The aircraft could be used only for the purpose of sport and recreation and for receiving flight training.

An aircraft assembled from a kit could alternatively be eligible for an experimental amateur-built certificate, provided the assembler can meet the requirements of § 21.191(g).

A gyroplane kit could not be an eligible kit, because a gyroplane would not be issued an airworthiness certificate in the light-sport category under proposed § 21.186

Experimental, kit-built aircraft may also benefit from manufacturer support provided to aircraft with special, light-sport aircraft airworthiness certificates.

Proposed 21.191(i)(3) would establish the eligibility requirements and time frame for the third method of issuing an experimental airworthiness certificate for the operation of light-sport aircraft [''experimental light-sport'']. In this method a person could obtain an experimental certificate for the operation of light-sport aircraft if the aircraft previously was issued a special airworthiness certificate in the light-sport category under § 21.186. These aircraft also could be used only for sport and recreation and flight training, even if they were previously operated for compensation or hire while conducting flight training or used as rental aircraft.

This method is intended to permit aircraft previously issued a special, light-sport aircraft airworthiness certificate under proposed § 21.186 that no longer meet the operating limitations of proposed § 91.327 to be certificated for this purpose. The operating limitations would then be to those of current § 91.319(b).

An aircraft that did not comply with a manufacturer's mandatory safety of flight bulletin or had unauthorized alterations would be eligible for the experimental certificate using this method.

Proposed section 21.193(e) would include general requirements for registered owners who seek to obtain an experimental certificate for a light-sport aircraft under proposed § 21.191(i)(2) assembled from a kit. This section has similar requirements to those of § 21.186(b) for aircraft eligible for special light-sport airworthiness certificates.

Proposed § 21.193(e)(1) would define the requirements that an eligible kit must meet. A kit would be considered eligible if the aircraft make and model previously has been issued a special airworthiness certificate in the light-sport category and that aircraft was manufactured and assembled by the aircraft kit manufacturer. This requires that the manufacturer has completed the process of designing, manufacturing, assembling, and testing the same make and model aircraft.

Under the proposal, the owner would have to provide evidence that the aircraft was assembled per the kit manufacturer's instructions, and would have the aircraft inspected by the FAA. The applicant also would need to provide the Statement of Compliance issued by the manufacturer. Once the aircraft has been inspected and determined to be safe to operate, the FAA would issue an experimental, operating light-sport airworthiness certificate with the appropriate operating limitations. Aircraft assembled from a kit and imported complete into the United States would not be eligible for an experimental certificate under proposed § 21.191(i)(2). This person could obtain only an experimental airworthiness certificate if the aircraft is eligible under § 21.191(g).

Proposed § 21.193(e)(2) would require registered owner to have a copy of the Pilot Operating Handbook. This would provide the registered owner access to information on how to safely operate the aircraft.

Proposed § 21.193(e)(3) would require the registered owner to have a copy of the maintenance and inspection procedures for the aircraft. This would provide the registered owner access to information on how to safely maintain the aircraft.

Proposed § 21.193(e)(4) would require the registered owner to provide a Statement of Compliance for the design and manufacture of the kit aircraft. This Statement would include all the items required on a Statement of Compliance for a special light-sport aircraft, except for a statement that it has been tested in accordance with a production acceptance procedure. This statement would not be required because the Statement of Compliance for a kit would address only the work performed by or under the control of the kit manufacturer. In lieu of a statement that the aircraft has been tested in accordance with a production acceptance procedure, this proposal would require the kit manufacturer to provide assembly instructions for the aircraft kit. The instructions should provide enough detail so that if the kit were assembled by a qualified person, the completed aircraft would perform acceptably and be in a condition for safe operation.

Proposed § 21.193(e)(5) would require the registered owner to present the completed assembly instructions used to assemble the aircraft to the FAA.

Proposed § 21.193(e)(6) would require that an imported kit be manufactured in a country that has an agreement with the United States for the import and export of the aircraft to be made from the kit. This would preclude the manufacture of kits in countries that the United States has not assessed with respect to the manufacture of these kits.

C. What Are the Proposed Changes to 14 CFR Part 43?

Proposed section 43.1 would be revised to reflect that part 43 would not apply to an aircraft for which a special airworthiness certificate in the light-sport category was issued. The FAA has made this determination because these aircraft would not be issued a type certificate.

D. What Are the Proposed Changes to 14 CFR Part 45?

The FAA is proposing revisions to part 45 to require aircraft registration markings for powered parachutes and weight-shift-control aircraft. The revisions would set forth requirements

for the size of these registration marks and how they should be displayed.

Proposed section 45.27 would require each operator of a powered parachute or weight-shift-control aircraft to display registration marks. The marks would be required to be displayed horizontally and in two diametrically opposite positions on any structural member or airfoil.

Proposed section 45.29 would permit an aircraft issued an experimental certificate for the purpose of operating a light-sport aircraft to display marks at least 3 inches high when the maximum cruising speed of the aircraft does not exceed 180 kts CAS. This proposal is identical to that contained in § 45.29(b)(iii) for exhibition aircraft and amateur-built aircraft. The proposal also would require marks displayed on all powered parachutes and weight-shift-control aircraft. This proposal is similar to the current requirement for airships, balloons, and non-spherical balloons.

E. What Are the Proposed Changes to 14 CFR Part 61?

The FAA is proposing a new sport pilot certificate and flight instructor certificate with a sport pilot rating. The proposal would establish two new aircraft category and class ratings, weight-shift-control (with land and sea class ratings), and powered parachute, in addition to new training and certification requirements for these new aircraft ratings at the sport pilot and private pilot levels.

The FAA would establish a Special Federal Aviation Regulation (SFAR) under part 61 that would apply to the issuance of a student pilot certificate to operate light-sport aircraft, a sport pilot certificate, a flight instructor certificate with a sport pilot rating, and ground instructor privileges for these certificates. The FAA's decision to propose many of these rule changes in the format of an SFAR was based on a number of factors. First, the proposed SFAR would consolidate all requirements for sport pilot certification, flight instructor certification with a sport pilot rating, student pilot certification to operate a light-sport aircraft, and ground instructor privileges applicable to certificates issued under the SFAR in one location. The FAA believes that this approach would make it easier for you to use the certification rules that apply to you. Additionally, because this proposal would be a significant amendment to part 61, we see this as an opportunity to revise our regulations using plain language writing techniques, which would make the regulations clearer to you. Finally, it provides us with greater flexibility to further refine the new regulations over a period of time. We will evaluate the impact of the SFAR after we have had operational experience with the regulations. At that point, we will determine the most appropriate location for the provisions of the SFAR and we expect to integrate them into the permanent portion of 14 CFR part 61. The proposed certification of sport pilots is a new concept that may require revisions once it is put into place. Although the question-and-answer format in the rule text is a departure from what you may be used to, it is easier to understand and apply. The FAA specifically requests that you comment on the language of the NPRM and on the proposal to incorporate these rules initially as an SFAR, rather than in the body of part 61.

Part 61 SFAR No. 89

General

Proposed section 1 would set forth the scope of SFAR 89. It would state that the SFAR would establish the requirements to apply for a student pilot certificate to operate a light-sport aircraft, a sport pilot certificate, and a flight instructor certificate with a sport pilot rating. It would also establish requirements for ground instructors who would provide training for a sport pilot certificate or a flight instructor certificate with a sport pilot rating.

Proposed section 3 of SFAR 89 would list the eligibility requirements for student pilot, sport pilot, and flight instructor certificates.

If you are an applicant for a student pilot certificate, you would have to be at least 16 years old to operate a light-sport aircraft other than a glider or a balloon. You would have be at least 14 years old to apply for a certificate to operate a light-sport glider or balloon.

If you are an applicant for a sport pilot certificate, you would have to be at least 17 years old to operate light-sport aircraft other than a glider or balloon. You would have to be at least 16 years old to apply for a certificate to operate a light-sport glider or balloon. These age limitations are consistent with the current age requirements for recreational and private pilot certificates.

If you are an applicant for a flight instructor certificate with a sport pilot rating, you would have to be at least 18 years old. This age requirement is consistent with age requirements for all other flight instructor certificates.

The FAA is not considering changes to the existing age requirements, because there has not been any indication of a decrease in the level of safety due to the age of a pilot or flight instructor.

Student pilots, sport pilots, and flight instructors would have to be able to read, speak, write, and understand the English language, which currently is required of all student pilots, private pilots, and flight instructors. The FAA may place operating limitations on you, as necessary, for the safe operation of light-sport aircraft. This procedure would be identical to that used for current student pilot, private pilot, and flight instructor applicants.

Proposed section 5 would indicate that the SFAR would remain effective until superceded or rescinded. The FAA expects to incorporate the provisions of SFAR 89 into the permanent portions of 14 CFR part 61 after evaluating the operational needs of the SFAR.

Proposed section 7 of SFAR 89 would establish that a sport pilot certificate issued under this SFAR would not expire.

Proposed section 9 of SFAR 89 would indicate that the term ''light-sport aircraft,'' as used in the SFAR, would be defined in § 1.1. This definition would provide the criteria for a light-sport aircraft and which aircraft you would be authorized to fly. A light-sport aircraft may hold either a standard or special airworthiness certificate.

Proposed section 11 of SFAR 89 would indicate that the term ''authorized instructor,'' as used in this SFAR, would be defined under § 61.1. The definition of authorized instructor would be amended to include a flight instructor with a sport pilot rating.

Proposed section 13 of SFAR 89 would require that as a sport pilot, you would have to comply with parts 61 and 91 and any other applicable regulations under 14 CFR.

Proposed section 15 of SFAR 89 would require you, while exercising the privileges of a student pilot operating light-sport aircraft or a sport pilot (other than a glider or balloon), to hold and possess either a current and valid U.S. driver's license or a current and valid airman medical certificate issued under part 67. The FAA would consider a U.S. driver's license to be any license to operate a motor vehicle issued by a state, the District of Colombia, Puerto Rico, a territory, a possession, or the Federal government. Consistent with all other pilot certificates, if you are a student pilot or a sport pilot operating a light-sport balloon or glider, you would not be required to hold a current and valid U.S. driver's license or a current and valid airman medical certificate.

If you do not possess a current and valid airman medical certificate and

your driver's license is revoked or rescinded for any offense, you couldn't exercise the privileges of your sport pilot certificate until your license is reinstated. If you choose to use your driver's license to satisfy the medical requirements for your sport pilot certificate (or a student pilot operating light-sport aircraft), your driver's license must be in your personal possession at all times when you conduct operations under your sport pilot certificate. Similarly, if you choose to use a current and valid airman medical certificate to meet the medical requirements for your sport pilot certificate, you would be required to carry that medical certificate at all times when you conduct operations under your certificate.

It should be noted that any restrictions on a U.S. driver's license (e.g., vision restrictions) also would apply when exercising the privileges of a student pilot certificate operating light-sport aircraft or a sport pilot certificate.

The FAA proposes to require a pilot to hold and possess a U.S. driver's license because it provides generally accepted evidence of basic health. Further, the FAA believes the medical standards that permit an individual to drive an automobile in close proximity to other automobiles at high speeds provides an adequate level of safety to operate a light-sport aircraft.

Although the process for applying for a driver's license varies throughout the United States, U.S. issuing authorities typically require applicants to verify some basic level of health on their various driver's license applications. Each State requires an applicant to meet minimum vision standards. Additionally, many authorities require applicants to provide a summary of any medical condition(s) that might preclude them from obtaining a U.S. driver's license in that jurisdiction. In the District of Columbia, for example, applicants for a driver's license are asked to indicate whether they have ever been treated for any of the following: stroke or paralysis; loss of function in an extremity; alcoholism or drug abuse; a mental disorder; a brain disorder; diabetes; glaucoma; cataracts or other eye diseases; any heart disorder; seizure disorder or fainting spells; poor muscle control, or dizzy spells. If a driver's license applicant affirms having received treatment for any of these conditions, a licensed physician must further evaluate whether that person should be allowed to drive a motor vehicle. The FAA believes that the level of health evidenced by a U.S. driver's license is a necessary prerequisite to safely operate a light-sport aircraft.

If the U.S. driver's license of a pilot who does not possess a current and valid airman medical certificate is revoked or rescinded for any offense—including, among others, substance abuse, excessive speeding, careless and reckless operation of a vehicle, numerous traffic violations—the individual's pilot certificate would not be valid until the license is reinstated. Unless and until the U.S. driver's license is reinstated, a pilot would not be authorized to operate a light sport aircraft. If an individual is precluded from driving an automobile, then the FAA believes that the individual should not operate a light-sport aircraft '' a more complex and demanding activity.

It is possible that a student pilot or a sport pilot whose U.S. driver's license has been revoked or rescinded could seek airman medical certification as a means to obtaining certification to operate light-sport aircraft. However, on FAA Form 8500–8, Application for Airman Medical Certificate or Airman Medical and Student Pilot Certificate, under Items 18 and 20, applicants must state whether their U.S. driver's license has been denied, suspended, cancelled, or revoked. An applicant must authorize the FAA, as set forth under existing § 67.7, access to search the National Driver Register to obtain information on and condition(s) that might preclude the issuance of an airman medical certificate.

Under the proposal if a pilot knows or has reason to know of any medical condition that would affect his or her ability to operate a light-sport aircraft, then the pilot would have to refrain from acting as a pilot in command. Data available in the National Aviation Safety Data Analysis Center (NASDAC) accident database indicates that a pilots medical condition is rarely a causal factor in general aviation accidents. A review of balloon and glider accidents contained in that database from 1990 to 2000 revealed that only two accidents occurred because of a pilot's medical condition. The absence of any medical certificate requirement for persons operating balloons and gliders has not resulted in a demonstrated reduction in safety.

The ARAC, in its findings, provided accident summary data from 1986 through 1992 indicating that the percentage of aviation accidents involving medical causal factors is lower for those activities that do not require medical certificates than for those activities that do. During this 7-year timeframe, the ARAC indicates there were 761 accidents in lighter-than-air aircraft and gliders—operations that do not require airman medical certification. Only one of the 761 accidents showed a medical cause, according to ARAC (slightly more than one-tenth of one percent of total accidents). For general aviation operations requiring airman medical certification, ARAC indicates there were 46,976 total accidents, 99 of which (slightly more than one-fifth of one percent) showed a medical cause. The FAA believes, therefore, that medical conditions are not a significant cause of accidents in aircraft that are used for sport and recreational purposes.

Copies of the following items are filed in the docket for this rulemaking: examples of medical questions asked on selected U.S. driver's license application forms and on FAA Form 8500–8; NASDAC accident data; and ARAC's final recommendation containing it's accident data findings.

Proposed section 17 of SFAR 89 consists of a table that sets forth the circumstances under which a medical deficiency would preclude a student pilot or sport pilot from operating a light-sport aircraft. These provisions would be consistent with the prohibitions against operating with a medical deficiency specified in § 61.53.

Student Pilot Certificate—Operating Light-Sport Aircraft

Proposed section 31 of SFAR 89 consists of a table that sets forth the procedures that you would follow when you apply for a student pilot certificate to operate a light-sport aircraft. This proposed process to obtain a student pilot certificate to operate a light-sport aircraft is consistent with current part 61 rules to obtain a student pilot certificate.

Proposed section 33 of SFAR 89 would establish that you could not operate a light-sport aircraft in solo flight unless you have met the requirements under § 61.87(a)–(c). Those requirements are the general, aeronautical knowledge, and pre-solo flight training requirements for all student pilots. Additionally, the proposal would establish that you must meet the existing student pilot requirements under § 61.87(d), (g), and (i)–(k). Those requirements are the maneuvers and procedures for your pre-solo flight training in a single-engine airplane, glider, gyroplane, airship, or balloon. This proposal would establish new maneuvers and procedures for pre-solo flight training in a powered parachute or weight-shift-control aircraft. These maneuvers and procedures would be similar to those specified in current § 61.87 with certain

variations due to the unique nature of those aircraft.

This proposal also would establish that a student pilot may not operate a light-sport aircraft on a solo cross-country flight, unless he or she meets the general solo cross-country requirements of current § 61.93(a) and receives the endorsements specified in § 61.93(b)–(c).

This proposal also would establish the maneuvers and procedures for solo cross-country flight training in a single-engine airplane, glider, gyroplane, or airship. A student pilot would have to receive and log flight training for the maneuvers and procedures specified in § 61.93(e), (h), (j), and (k), as applicable. This proposal also would establish new maneuvers and procedures for solo cross-country flight training in a powered parachute or weight-shift-control aircraft. There would be no cross-country requirements for balloons.

Proposed section 35 of SFAR 89 would set forth limits for you to operate light-sport aircraft as a student pilot. You would have to comply with §§ 61.87(l), 61.89(a)(1)–(4), (a)(7), and (a)(8). You would be restricted from operating a light-sport aircraft that has a VH that exceeds 87 knots CAS. The FAA believes that limiting a student pilot to this airspeed would establish an acceptable level of safety in view of the minimal amount of training required to be eligible for a student pilot certificate.

Additionally, you could not operate a light-sport aircraft with a flight or surface visibility of less than 3 statute miles, at night, at an altitude of more than 10,000 feet MSL or 2,000 feet AGL (whichever is higher), or outside the United States. However, you could operate light-sport aircraft on a solo flight in Class B, C, or D airspace if you have received the ground and flight training from an authorized instructor. You must also receive a logbook endorsement specifying that you are proficient to operate in the specific airspace or the airport at which you intend to fly solo.

Current part 103 operating rules permit an ultralight pilot to operate in Class B, C, or D airspace only if the area over which the pilot operates is not congested, and the pilot has obtained prior authorization from ATC. The FAA does not want to restrict you from operating light-sport aircraft in the same airspace, but in the interest of safety, decided to require you to get additional training and an endorsement from an authorized instructor if you want to operate and carry passengers in this airspace.

You would have to comply with any operating limitation placed on the light-sport aircraft's airworthiness certificate. You also would have to comply with any limitation or endorsement on your pilot certificate, airman medical certificate, U.S. driver's license, or any other limitation or endorsement from an authorized instructor.

You would have to hold a student pilot certificate, FAA Form 8710–2, ''Student Pilot Certificate'' or FAA Form 8420–2 ''Medical Certificate__Class and Student Pilot Certificate,'' identical to all other student pilots. All applicable endorsements for your student pilot certificate and logbooks would apply. The FAA would revise AC No. 61–65 ''Certification: Pilots and Flight and Ground Instructors'' to address the new endorsements for a student pilot operating light-sport aircraft.

Proposed section 37 of SFAR 89 would establish how to obtain a logbook endorsement for operations in Class B, C, or D airspace and at airports located in Class B, C, or D airspace. The FAA would require this endorsement within 90 days before you conduct flights in that airspace or at those airports. This proposal is consistent with the requirements established for other student pilots operating in Class B airspace. Persons operating ultralight vehicles are authorized to fly into Class B, C, or D airspace that is not over a congested area without training, but they must have ATC prior authorization. The new requirement has the potential to raise the level of safety for pilots operating similar aircraft in this airspace by requiring training before conducting such operations.

Sport Pilot Certificate

Proposed section 51 of SFAR 89 would establish the aeronautical experience requirements needed for a sport pilot certificate. You would have to receive and log ground training from an authorized instructor or complete a home-study course on aeronautical knowledge areas that would be applicable to the light-sport aircraft category or class privilege you seek. Your instructor would review your home-study course to determine that it adequately addresses the aeronautical knowledge areas. The proposed aeronautical knowledge areas are partly based on existing criteria for part 103 FAA-recognized training programs, and partly based on existing criteria contained in part 61 for existing pilot certificates. The FAA believes the training in these subject areas would be appropriate for an applicant for a sport pilot certificate and they reflect the simplicity of the aircraft and the less complex operating environment in which a sport pilot would operate. There would be no requirement for training on radio communications with ATC or for operations in Class B, C, or D airspace, because operation in that airspace requires an additional endorsement that has specific training requirements under proposed section 37 of SFAR 89.

Proposed section 53 of SFAR 89 would establish that you would have to receive and log ground and flight training from an authorized instructor on the areas of operations applicable to the light-sport aircraft category or class privileges you seek. These areas would be consistent with the flight proficiency requirements established for higher certificate levels under part 61. The FAA would establish new flight proficiency requirements for weight-shift-control aircraft and powered parachutes. The flight proficiency requirements are partly based on existing criteria for part 103 FAA-recognized training programs, and partly based on criteria contained in part 61 for existing pilot certificates.

Proposed section 55 of SFAR 89 would set forth the aeronautical experience requirements for your sport pilot certificate. To obtain your sport pilot certificate for all category and/or class privileges, with some variations for lighter-than-air aircraft and gliders, you would have to log at least 20 hours of flight time. This experience would include aeronautical experience requirements for weight-shift-control aircraft and powered parachutes. This experience generally would include at least 15 hours of flight training in an aircraft from an authorized instructor and 5 hours of solo flight training in the areas of operation established for a student pilot operating light-sport aircraft. The training for each category, with some variations for the different categories of aircraft, would include at least 2 hours of cross-country flight training; 10 takeoffs and landings to a full stop; 1 solo cross-country flight; and 3 hours of flight training in preparation for the practical test.

The proposal would specify cross-country distances for each category of aircraft. Due to the slow operating speeds of powered parachutes, the FAA would amend the definition of ''cross-country time'' in § 61.1(b)(3). Any flight over 15 nm would be considered a cross-country flight for training purposes in a powered parachute. The aeronautical experience requirements for a sport pilot are partly based on existing criteria for part 103 FAA-recognized training programs, and partly based on criteria contained in part 61 for existing pilot certificates.

The FAA considered, but did not agree with, the ARAC proposal, that cross-country flight should be permitted through a separate endorsement, so that cross-country privileges would be needed only by those sport pilots who choose to operate outside the small radius of their local airport. However, the FAA concluded that most ultralight operators conduct short cross-country flights. Therefore, to ensure a minimum level of safety is met for carrying a passenger, the FAA is proposing to require cross-country training for all sport pilot certificates. The FAA notes that many instructors within FAA-recognized ultralight organizations conduct some cross-country training, even though it is not required by all of those organizations. The FAA determined that, unless a sport pilot receives a minimum amount of training on cross-country procedures, the pilot would not have the skills necessary to navigate properly and avoid airspace that he or she would be prohibited from entering.

Proposed section 57 of SFAR 89 would establish the tests that you would have to take to obtain a sport pilot certificate. You would have to pass a test on the aeronautical knowledge areas, after receiving a logbook endorsement from an authorized instructor certifying that you are prepared for the knowledge test. That instructor would have conducted your training or reviewed and evaluated your home-study course on the aeronautical knowledge areas. If you completed a home-study course, the authorized instructor would be required to review your home-study course to ensure that it prepared you for the knowledge test on the aeronautical knowledge areas listed in section 51 of the SFAR. The FAA would develop this general knowledge test with industry input; it would not be aircraft-category specific.

You would have to pass the required practical test on the areas of operation that apply to the light-sport aircraft privilege you seek. You would have to receive a logbook endorsement from an authorized instructor certifying that you have met the applicable aeronautical knowledge and experience requirements and are prepared for the required practical test. That instructor would have conducted the required flight training in preparation for the practical test on the areas of operation that apply to the light-sport aircraft privilege you seek. An FAA designated pilot examiner or an FAA aviation safety inspector who is qualified in that category, class, and make and model of light-sport aircraft would conduct this practical test. After successfully passing the practical test for a sport pilot certificate, you would be issued a pilot certificate and the FAA designated pilot examiner or FAA aviation safety inspector would make the appropriate logbook endorsements establishing that you are proficient in this category, class and make and model of light-sport aircraft.

The FAA envisions that the initial cadre of FAA-designated examiners would come from the group of ''advanced'' flight instructors established in FAA-recognized ultralight organizations, or existing designated pilot examiners who are currently qualified in these types of light-sport aircraft. These advanced flight instructors serve in a similar role as pilot examiners for the FAA-recognized ultralight organizations. The initial cadre of FAA-designated pilot examiners authorized to certificate these new pilots would receive standardized FAA-designated examiner training and would be designated under 14 CFR part 183 as a representative of the FAA. Although an FAA aviation safety inspector would still have the authority to give the practical test for the certification of a sport pilot or flight instructor with a sport pilot rating, the FAA expects that most tests would be administered by FAA-designated examiners.

The FAA would develop Practical Test Standards for each category and class of aircraft for the sport pilot certificate. The FAA intends to seek industry input in developing these standards. Additionally, the FAA would amend AC No. 61–65, ''Certification: Pilots and Flight and Ground Instructors,'' to address the new endorsements that would be necessary for this proposed certificate.

Proposed sections 59 and 61 of SFAR 89 would establish that your sport pilot certificate would not list aircraft category and class ratings. You would receive logbook endorsements for each category and class of light-sport aircraft that you are entitled to operate. The designated pilot examiner or FAA inspector who conducted your practical test would provide your initial endorsements.

You would be required to have a logbook endorsement from an authorized instructor in your logbook for each additional category and class of light-sport aircraft you operate. You must also have a logbook endorsement for each additional make and model of light-sport aircraft that you operate.

The ARAC's proposal called for the establishment of ''type ratings'' in addition to category and class ratings for these new light-sport aircraft. The ARAC thought this was necessary because the listed ''classes of light-sport aircraft'' may be further divided to address such dissimilar features as pusher and tractor engine locations; single- and double-surface wings; conventional tail, canard tail, and tail-less aircraft in many of the above categories; and tricycle or conventional landing gear configurations. The FAA does not think that it is necessary to establish ratings on the sport pilot certificate to operate various types of light-sport aircraft. However, the FAA believes that a pilot should be required to demonstrate proficiency to operate each aircraft and is proposing to require a one-time logbook endorsement by an authorized instructor for each additional make and model of light-sport aircraft the sport pilot wishes to fly, in lieu of the ARAC ''type rating'' recommendation. The proposed training and one-time logbook endorsement requirement would ensure that any time a pilot exercising sport pilot privileges chooses to fly a new make and model of aircraft within a specific category he or she would receive the appropriate training.

This new concept requiring a logbook endorsement for each make and model of light-sport aircraft would ensure that if you fly any of the unique light-sport aircraft that fall into the broad aircraft categories and class ratings of aircraft established in § 61.5, you would receive training and demonstrate a minimum level of proficiency to an authorized instructor.

The FAA will work with industry to develop procedures to allow flight instructors with a sport pilot rating to issue logbook endorsements for a particular group of make and model aircraft having similar operating characteristics. This process should reduce the administrative burden of obtaining logbook endorsements for all make and models of aircraft the pilot wishes to fly. The FAA has implemented a similar policy for check airmen and pilots operating under part 135. The FAA specifically requests comments on whether the make and model endorsements for sport pilots is in the public interest.

Proposed sections 63 and 65 of SFAR 89 would establish how you receive sport pilot privileges to operate additional categories, classes, or makes and models of light-sport aircraft.

If you want to fly an additional category or class of light-sport aircraft, you would have to receive training from an authorized instructor in the specific make and model aircraft you intend to operate. That instructor would endorse your logbook, certifying that you meet the aeronautical experience

requirements. After completing this training, you would be required to receive a proficiency check and an additional logbook endorsement from a different authorized instructor. This instructor's endorsement would certify you are proficient on the areas of operation for the additional light-sport aircraft category or class and make and model privilege you seek. Having a second instructor conduct your proficiency check would serve as an independent verification of your abilities.

If you want to fly an additional make and model of light-sport aircraft within the same category of aircraft for which you already have privileges, you would have to receive training from an authorized instructor on the specific training requirements for the light-sport aircraft make and model you seek. Then, that authorized instructor would endorse your logbook certifying that you are proficient in that make and model of light-sport aircraft. You would not need the additional proficiency check required for the operation of an additional category or class of aircraft. This is similar to the ''type rating'' concept proposed by ARAC.

This new concept of requiring logbook endorsements authorizing privileges, rather than obtaining ratings through flight tests with FAA personnel or designated examiners, would make the sport pilot certificate more affordable than a recreational pilot or a private pilot certificate. It also would significantly reduce the number of FAA aviation safety inspectors and FAA designated examiners needed to support airman certification.

Proposed section 67 of SFAR 89 would establish that as a sport pilot, you would have to carry on all flights your pilot certificate and a logbook or documented proof of appropriate endorsements specified in § 61.31, for example, a tail-wheel endorsement. This is necessary because you would not carry ratings listed on the certificate like other pilot certificates. Your sport pilot privileges would be documented through logbook endorsements. The FAA would permit other ''documented proof,'' because in some light-sport aircraft it may be impracticable to carry a logbook. Documented proof could include a photocopy of your logbook endorsements or a preprinted form that includes your endorsement.

Privileges and Limits of Holders of a Sport Pilot Certificate

Proposed sections 71–79 of the SFAR would contain your sport pilot certificate privileges and limits. You would be permitted to operate a light-sport aircraft, as defined in § 1.1, for which you hold the proper logbook endorsements. You could not operate light-sport aircraft at night, in Class A airspace; however, you could operate in class B, C, or D airspace if you receive the ground and flight training and a logbook endorsement. You also would not be permitted to operate an aircraft outside the United States unless you have prior authorization from the country in which you want to operate. Your sport pilot certificate does not meet minimum ICAO requirements and would carry the limitation ''Holder does not meet ICAO requirements.''

You would be required to operate a light-sport aircraft in accordance with part 91 but could not carry more than one passenger, or operate for a purpose other than sport and recreational flying, such as carrying a passenger for compensation or hire. You could share the operating expenses of a flight with a passenger, and you could demonstrate an aircraft in flight to a prospective buyer unless you are an aircraft salesperson. You could not to tow any object.

The FAA also considered permitting you to be reimbursed for aircraft operating expenses that are directly related to search and location operations. However, the FAA believes that search and location operations go beyond the scope of sport and recreational flying and that this privilege should be limited to pilots who hold at least a private pilot certificate.

You also could not operate light-sport aircraft: (1) In a passenger-carrying airlift sponsored by a charitable organization; (2) at an altitude of more than 10,000 feet MSL or 2,000 feet AGL, whichever is higher; (3) when the flight or surface visibility is less than 3 statute miles; (4) without visual reference to the surface; (5) that exceeds a V_H of 87 kts CAS (unless the pilot received ground and flight training and a logbook endorsement); (6) contrary to any limitations placed on an aircraft's airworthiness certificate; or (7) contrary to any limitation or endorsement on that person's pilot certificate, airman medical certificate, U.S. driver's license or any other limitation or endorsement from an authorized instructor.

You would not be authorized to fly at night, which currently is defined in § 1.1 as the time between the end of evening civil twilight and the beginning of morning civil twilight as published in the American Almanac. An ultralight vehicle can usually operate only between sunrise and sunset, which is more restrictive than the provisions for a sport pilot. However, when the vehicle is operated in uncontrolled airspace and with anti-collision lights, it can be operated during the twilight periods 30 minutes before official sunrise and 30 minutes after official sunset.

Unlike ultralight vehicles, light-sport aircraft could operate in congested areas and controlled airspace. Therefore, you would be permitted to operate light-sport aircraft at night only if it is equipped with lights, as required by § 91.209 and you are appropriately certificated. Although you could not operate at night with a sport pilot certificate, you could operate, even light-sport aircraft, at night with a private pilot certificate.

The FAA would allow you to fly over congested areas, which is not allowed under part 103. However, any particular light-sport aircraft may have operating limitations that prohibit such operations. You could not conduct any operation prohibited by the operating limitations of the light-sport aircraft.

As a sport pilot, you would have to comply with any limits on your pilot certificate, airman medical certificate, and driver's license (if your driver's license is being used to meet the medical requirements of the SFAR). For example, if your driver's license requires you to wear glasses while driving, you also would have to wear them while flying.

Proposed section 81 of SFAR 89 would establish how you receive a logbook endorsement to operate in Class B, C, or D airspace. You would receive specific ground and flight training on the use of radios, communications, navigation systems/facilities, and radar services; operations at airports with an operating control tower; and operations within Class B, C, or D airspace. The authorized instructor who conducts your training would then endorse your logbook with a one-time logbook endorsement. Similar to current part 103 and the recreational pilot certificate, you couldn't operate in Class A airspace, because your sport pilot certificate wouldn't be issued with an instrument rating.

If you want to operate in airspace that requires communication with ATC, you would complete the training requirements above; however, the FAA would not require this training for you to get your sport pilot certificate. You can avoid some training costs by choosing to operate outside that airspace. The FAA believes that many sport pilots would operate outside of this type of airspace, because their aircraft is not properly equipped for operations within this airspace, because of the aircraft's operating limitations, or by choice. Many pilots choose not to

equip their aircraft for operations in this airspace due to the additional costs to purchase, install, and maintain the equipment, in addition to the extra weight it adds.

Proposed section 83 of SFAR 89 would establish how to receive a logbook endorsement to operate a light-sport aircraft exceeding a V_H of 87 knots CAS. You would receive and log ground and flight training from an authorized instructor, and then receive a one-time logbook endorsement certifying proficiency in the operation of this type of light-sport aircraft.

Again, by establishing separate training requirements that can be accomplished at any time, the FAA would relieve you from incurring these training costs if you chose not to operate in this type of aircraft. The FAA believes that most light-sport aircraft a sport pilot would operate would not exceed a V_H of 87 knots. Therefore the FAA is not proposing more extensive training requirements for the issuance of the sport pilot certificate than would be necessary to operate aircraft exceeding a V_H of 87 knots.

The FAA recognizes the need to allow for aircraft with a V_H as high as 115 knots to meet the definition of a light-sport aircraft, but we also recognize the need for additional training requirements and a one-time logbook endorsement to provide the appropriate level of safety for operation of these aircraft. This concept is similar to the requirements specified in § 61.31 for additional training and endorsements (e.g., high-performance airplanes, complex airplanes).

The FAA considered proposing no maximum V_H for these aircraft, but determined that aircraft that exceed a V_H of 115 kts CAS would not be suited solely for sport and recreational operations. The FAA believes that the operation of aircraft that exceed a V_H of 115 kts is more appropriate for persons who meet the training and experience requirements of at least a recreational pilot certificate. When a pilot has the ability to use an aircraft primarily for other than sport and recreational purposes, the FAA believes that pilot should have the minimum training required at the private pilot certificate level. That training provides basic instrument training, night training, and additional navigation and cross-country training. Pilots who use aircraft for other than sport and recreational purposes need more training and experience because they are more likely to encounter flight into marginal weather, inadvertent flight into instrument meteorological conditions, or night flight.

Transitioning to a Sport Pilot Certificate

Proposed section 91 of SFAR 89 would allow you to exercise the privileges of the holder of a sport pilot certificate if you already hold a current and valid private pilot certificate, or higher, issued under part 61. You would not be required to demonstrate any further level of proficiency to exercise the privileges of a sport pilot certificate. However, you would be limited to the aircraft category and class ratings listed on your private pilot certificate, or higher, when exercising sport pilot privileges. You also would have to meet the training and endorsement requirements in proposed sections 63 and 65 of the SFAR for any additional categories or classes, and makes and models of light-sport aircraft you currently are not rated in and wish to fly. If you have not acted as pilot in command of a specific make and model aircraft, you would be required to receive training on the make and model of light-sport aircraft you wish to fly. You would have to log your pilot-in-command time in accordance with § 61.51. For aircraft manufactured after the effective date of the rule, the manufacturer would provide a flight training manual that would include specific training requirements. If you meet these specific training requirements, you would satisfy the training required by this section for the operation of a particular make and model of light-sport aircraft.

You also would need a logbook endorsement from an authorized instructor who certifies you are proficient to fly that make and model aircraft. You also would have to carry your logbook or documented proof of endorsements to verify the proper endorsements.

Proposed section 93 of SFAR 89 would set forth procedures for you to obtain a sport pilot certificate if you have been flying ultralight vehicles under part 103 but do not hold a pilot certificate issued under part 61. If you are an ultralight pilot registered with an FAA-recognized ultralight organization before 24 months after the effective date of the rule, you would have to meet minimum age, language, and medical requirements established in proposed sections 3 and 15 of the SFAR. You also would have to pass the appropriate knowledge and practical tests for the certificate. You would not have meet the aeronautical knowledge, flight proficiency, and aeronautical experience requirements in proposed sections 51–55 of the SFAR. The FAA has concluded that if you have successfully completed the training conducted by an FAA-recognized ultralight organization and you are a pilot registered with that organization, you would meet the level of experience required by proposed sections 51–55 of the SFAR. You wouldn't need a separate endorsement from an authorized instructor recommending you for the knowledge and practical test.

The proposal would require you to obtain a notarized copy of your ultralight pilot records from the FAA-recognized ultralight organization. Those records would document that you are a registered ultralight pilot with that FAA-recognized ultralight organization; and would list each category and class of ultralight vehicle that the organization recognizes that you are qualified to operate. You would still have to pass the knowledge test and practical test for a sport pilot certificate.

The proposal would require you to present records, along with the results from the knowledge test, to a designated pilot examiner or FAA inspector when applying for your sport pilot certificate. The designated pilot examiner or FAA inspector would review these records and document the appropriate endorsements for each category and class of ultralight vehicle that you are qualified to operate in your logbook, after you successfully complete the practical test.

Proposed section 93(b) of the SFAR would address ultralight pilots registered with an FAA-recognized ultralight organization after 24 months after the effective date of the rule. These pilots would be required to meet the same requirements set forth in proposed section 93(a) of the SFAR. However those pilots would be required to meet proposed sections 51–55 of SFAR 89. In meeting the requirements, a pilot would be permitted to credit his or her ultralight flight and ground time in accordance with the logging of flight and ground time requirements under proposed section 177 of the SFAR.

Proposed section 93(c) of SFAR 89 would apply to you if you are not registered with an ultralight organization. You would be required to meet the eligibility requirements in proposed sections 3 and 15 of SFAR 89, the experience requirements in proposed sections 51–55 of SFAR 89, and pass the appropriate knowledge and practical tests for the certificate. When you successfully complete the practical test, the designated pilot examiner or FAA inspector would document in your logbook the appropriate endorsements for the category, class, and make and model of light-sport aircraft. You would not be permitted to credit your ultralight flight and ground time toward the

experience requirements in proposed sections 51–55 of the SFAR. The FAA has concluded that although you may have received some form of training, we would not have evaluated the training or the qualifications of the trainers. Therefore, we would be unable to assess whether it would be appropriate to credit that training toward the issuance of your sport pilot certificate.

With the adoption of part 103, the FAA chose not to promulgate rules regarding ultralight pilot certification, vehicle certification, and vehicle registration, preferring that the ultralight community assume the initiative for developing these important safety programs. The FAA has granted exemptions to permit the ultralight industry to conduct flight training in aircraft that do not meet the definition of ultralight vehicles specified in part 103. Aero Sports Connection (ASC), Experimental Aircraft Association (EAA), and the United States Ultralight Association (USUA) currently are conducting such flight training programs under exemptions. The FAA issued these exemptions because the organizations demonstrated to the FAA that they have the capability to establish the training programs, aircraft and operator certification and registration programs, and safety programs for ultralight vehicle owners and operators. At this time, the FAA considers only these organizations to be ''FAA-recognized ultralight organizations.''

The ARAC noted that the flight training provided by these FAA-recognized ultralight organizations has resulted in an improving safety record for ultralight vehicle operations. The success of these flight training programs exemplifies the ability of the aviation industry to take responsibility for the safety of its flight operations. Therefore, the FAA concurs with the ARAC recommendation to allow credit of ultralight flight and training experience.

The FAA-recognized ultralight organizations have established training programs that today meet most of the training requirements established for a sport pilot certificate. Any requirements that may not be met by these programs, such as the cross-country requirements, must be met by the applicant in addition to the 3 hours in preparation for the practical test.

Proposed section 95 of SFAR 89 would require you to meet all the requirements under proposed sections 3, 15, and 51 through 57 of the SFAR if you don't hold a pilot certificate and have never flown an ultralight vehicle.

Flight Instructor Certificate With a Sport Pilot Rating

Proposed section 111 of SFAR 89 would apply to you if you are exercising your privileges of a flight instructor certificate with a sport pilot rating. If you are acting as pilot in command of a light-sport aircraft other than a glider or balloon, the FAA would require you to hold and possess a current and valid U.S. driver's license or a current and valid airman medical certificate issued under 14 CFR part 67. You would not need to meet this requirement if the other pilot is acting as pilot in command.

Proposed section 113 of SFAR 89: To apply for a flight instructor certificate with a sport pilot rating, you would have to receive and log ground training from an authorized instructor on the aeronautical knowledge areas applicable to the category or class of light-sport aircraft in which you want to provide instruction. You also would have to receive and log ground training on the fundamentals of instructing unless you are a certified teacher. The aeronautical knowledge requirements are partly based on existing criteria for part 103 FAA-recognized training programs and on criteria contained in part 61 for existing flight instructor certificates. Consistent with all flight instructor certificates, you would not have to comply with the fundamentals of instructing requirements if you meet any of the experience requirements established in proposed section 113(b) of SFAR 89.

Proposed sections 115 and 117 of SFAR 89 would establish the flight proficiency and aeronautical experience requirements for you to get a flight instructor certificate with a sport pilot rating. You would have to receive and log ground and flight training on the areas of operation applicable to the flight instructor privileges you seek. The flight proficiency requirements are partly based on existing criteria for part 103 FAA-recognized training programs and on existing criteria contained in part 61 for existing flight instructor certificates. The FAA also would establish new flight proficiency requirements for weight-shift-control aircraft and powered parachutes.

Traditionally, the FAA requires a flight instructor to hold a commercial pilot certificate and, in some cases, an instrument rating. The FAA does not think this is necessary for flight instructors with a sport pilot rating due to the simplicity of the aircraft, the limited operating environment, and the purposes of the operations (sport and recreation). However, the FAA believes it is necessary to have a minimum amount of aeronautical experience to be eligible for a flight instructor certificate with a sport pilot rating. You would have to meet a minimum level of aeronautical experience, which would include up to 150 hours of flight time with variations for the different aircraft categories. The specific aeronautical experience requirements would be established in proposed section 117 of the SFAR for each category and/or class of light-sport aircraft. This would include the aeronautical experience requirements for weight-shift-control aircraft and powered parachutes.

Proposed section 119 of SFAR 89 would establish which FAA tests you would have to take to receive a flight instructor certificate with a sport pilot rating. You would have to pass the required knowledge test on the fundamentals of instructing, unless you qualify for credit for this knowledge under proposed section 113(b) of SFAR 89. In addition, you would have to pass the required knowledge test on the aeronautical knowledge areas appropriate to a sport pilot certificate listed in section 113(c) of SFAR 89 and receive a logbook endorsement from an authorized instructor certifying that you are prepared to take the knowledge tests.

You would have to pass the practical test on the areas of operation that apply to the flight instructor privilege you seek. You would have to receive a logbook endorsement from an authorized instructor certifying that you have met the applicable aeronautical knowledge and experience requirements and are prepared for the required practical test. You would have to receive the flight training in preparation for the practical test on the areas of operation that apply to the light-sport aircraft privilege you seek. An FAA designated pilot examiner or an FAA aviation safety inspector who is qualified in that category, class, and make and model of light-sport aircraft would conduct this practical test. If you pass the practical test, the FAA-designated pilot examiner or FAA aviation safety inspector would make the appropriate endorsements showing that you are proficient to provide training in the category, class, and make and model of light-sport aircraft in which you passed the practical test.

The FAA would develop Practical Test Standards for each category and class of aircraft for the flight instructor certificate with a sport pilot rating. Additionally, the FAA would amend AC No. 61–65, ''Certification: Pilots and Flight and Ground Instructors,'' to address the new endorsements that

would be necessary for this new certificate.

If you wish to obtain flight instructor privileges in an airplane, glider, or weight-shift-control aircraft, you would be required to obtain training and demonstrate proficiency in stall awareness, spin entry, spins, and spin recovery procedures in those aircraft. After you demonstrate instructional proficiency in all those areas, an authorized instructor would again endorse your logbook, indicating specifically that you are competent and possess instructional proficiency in those areas. If you fail to show proficiency in the knowledge or skill of stall awareness, spin entry, spins, or spin recovery instructional procedures, an examiner must retest you on all those items in the appropriate category of aircraft certificated for spins.

Proposed section 121 of SFAR 89 would establish recordkeeping requirements for flight instructors with a sport pilot rating. You would have to retain the records required by this section for at least 3 years. You would sign the logbook of each person for whom you provided flight training or ground training, and would maintain a record in a logbook or a separate document that contains the requirements established in this section. These proposals are consistent with the requirements established for other flight instructors certificated under part 61.

Proposed section 123 of SFAR 89: After successfully passing the practical test for the issuance of your flight instructor certificate with a sport pilot rating, regardless of the particular light-sport aircraft privilege you sought, your certificate would not include category and class ratings. You would receive the initial logbook endorsements, as a sport pilot, for the category, class, and make and model of light-sport aircraft from the designated pilot examiner or FAA inspector who conducted the practical test. This is consistent with proposals for the sport pilot certificate explained in section 59 of the SFAR above.

Proposed section 125 of SFAR 89 would require you to have the proper logbook endorsements from an authorized instructor in your logbook for each additional category and class of light-sport aircraft in which you would provide training. This is in addition to your logbook endorsement for each additional make and model of light-sport aircraft you will provide training in. This is consistent with proposals for the sport pilot certificate explained in proposed section 61 of SFAR 89 above.

Proposed section 127 of SFAR 89 would establish how you would obtain privileges to provide flight training for an additional category or class of light-sport aircraft. You would receive a logbook endorsement from an authorized instructor certifying your training on the areas of operation for the additional category or class. Then you would receive a proficiency check and a logbook endorsement from a different authorized instructor certifying you are proficient in the areas of operation for the additional category or class. The FAA is proposing that your proficiency check be conducted by a second instructor so you have an independent verification of your abilities.

Proposed section 129 of SFAR 89 would establish how to you would obtain privileges to provide flight training in an additional make and model. You would receive a logbook endorsement from the authorized instructor who conducted your training on the requirements for that make and model. Your logbook endorsement would certify that you are proficient to provide flight training in that additional make and model. You would not need a proficiency check by another flight instructor.

Proposed section 131 of SFAR 89 would require you to carry a logbook or documented proof of endorsements on all flights while exercising the privileges of your flight instructor certificate with a sport pilot rating.

Proposed section 133 of SFAR 89 would state your authority as a flight instructor with a sport pilot rating. Within the limitations of your flight instructor certificate, you could give training and endorsements for: (1) A student pilot certificate for operating light-sport aircraft; (2) a sport pilot certificate; (3) a sport pilot privilege; (4) a flight review; (5) a practical test for a sport pilot; (6) a knowledge test for a sport pilot; and (7) a proficiency check for an additional category or class and make and model privilege as described above.

Proposed section 135 of SFAR 89 proposes that you would be subject to specific limitations as a flight instructor with a sport pilot rating. You must have received proper logbook endorsement(s) for your pilot certificate and flight instructor certificate in the category, class, and make and model of light-sport aircraft. You would have to comply with the limitations established in § 61.87(n), limitations on flight instructors authorizing solo flight; § 61.93(d), limitations on authorized instructors to permit solo cross-country flights; § 61.195(a), hours of training; § 61.195(d)(1)–(d)(3), limitations on endorsements for student pilots; and § 61.195(d)(5), limitations on endorsements for flight reviews.

You could not provide flight training required for the issuance of a sport pilot certificate or privilege, or a flight instructor certificate with a sport pilot rating or privilege, unless you have at least 5 hours of pilot-in-command time in the specific make and model of light-sport aircraft in which your training is provided. The FAA believes it would be in the best interest of safety to require you to have at least 5 hours of pilot-in-command time in the specific make and model of light-sport aircraft before you are authorized to provide flight instruction. This is in addition to the minimum flight experience required for the issuance of a flight instructor certificate. A similar requirement exists today in § 61.191(f) for flight instructors providing training in a multiengine airplane, helicopter, or powered-lift. Many of these light-sport aircraft have unique operating characteristics. This proposal would prevent flight instructors qualified in other aircraft from providing training in light-sport aircraft without any experience in the specific make and model of light-sport aircraft. Lack of specific make and model experience has contributed to a number of ultralight accidents, and the FAA believes that this proposal would reduce these types of accidents.

You could not provide training for operations in Class B, C, or D airspace, unless you have the endorsement specified in proposed section 81 of the SFAR or are authorized to conduct operations in this airspace. Additionally, you couldn't provide training in a light-sport aircraft with a V_H greater than 87 knots CAS, unless you have the endorsement specified in proposed section 83 of the SFAR or are otherwise authorized to operate that aircraft.

Proposed section 137 of SFAR 89 would specify that you would not be required to meet any additional requirements for training first-time flight instructor applicants. The FAA may, however, revise these provisions based upon a review of safety data obtained after the implementation of this proposal. Instructors who would initially train first-time flight instructor applicants may not have a level of experience commensurate to that of instructors who currently train first-time flight instructor applicants under part 61.

Proposed section 139 of SFAR 89 would establish that flight instructors with a sport pilot rating would not be allowed to make any self-endorsement for a certificate, privilege, flight review, authorization, practical test, knowledge test, or proficiency check required by

the SFAR. This is consistent with existing requirements in § 61.195(i).

Transitioning to a Flight Instructor Certificate With a Sport Pilot Rating

Proposed section 151 of SFAR 89 would allow you to exercise the privileges of a flight instructor with a sport pilot rating if you already hold a current and valid flight instructor certificate issued under part 61. You would be limited to providing instruction in the same aircraft category and class listed on your existing pilot certificate and flight instructor certificate. Additionally, you would have to receive training on any specific make and model of light-sport aircraft in which you have not acted as pilot-in-command. You would need a logbook endorsement from the authorized instructor who conducted your training certifying proficiency in that make and model of light-sport aircraft. You also would have to comply with the requirement in proposed section 135 of SFAR 89, which would require at least 5 hours of pilot-in-command time in the specific make and model light-sport aircraft before you could provide instruction in that aircraft.

If you want to provide training in additional categories, classes, or makes and models of light-sport aircraft, you would have to obtain the proper logbook endorsement(s), as proposed in sections 127 and 129 of the SFAR.

Proposed section 153 of SFAR 89 would allow you to apply for a flight instructor certificate with a sport pilot rating if you are an ultralight flight instructor. You must be registered with an FAA-recognized ultralight organization not later than 36 months after the effective date of the rule, and hold either a current and valid sport pilot certificate, or a current and valid private pilot certificate issued under part 61.

You would have to comply with proposed sections 3 and 111 of SFAR 89, which would establish the minimum age, language, and medical requirements. You would not need to meet the experience requirements in sections 115 and 117 of the SFAR, establishing the aeronautical knowledge, flight proficiency, and aeronautical experience, except that you would have to have at least the minimum total pilot flight time in the category and class of light-sport aircraft specified in proposed section 117 of SFAR 89.

You would not need to meet the pilot-in-command, time in aircraft category, or cross-country pilot flight time requirements specified in proposed section 117 of SFAR 89. You would be allowed to credit flight time as the operator of an ultralight vehicle in accordance with the logging of flight and ground time requirements in section 177 of SFAR 89.

You would not need to meet the aeronautical knowledge requirement specified in section 113 of SFAR 89 if you passed the Fundamentals of Instruction knowledge test given by the FAA or an FAA-recognized ultralight organization.

The FAA believes that if you are a flight instructor with an FAA-recognized ultralight organization, you would have a level of experience equivalent to that required by sections 113–117 of the SFAR. You would not need a separate logbook endorsement from an authorized instructor recommending you for the practical test.

The proposal would require you to obtain a notarized copy of your ultralight flight instructor records from your FAA-recognized ultralight organization. Those records must document that you are a registered ultralight flight instructor with that FAA-recognized ultralight organization and must list each category and class of ultralight vehicle in which the organization recognizes you are qualified to operate and authorized to provide flight training. You would be required to pass the knowledge test on the aeronautical knowledge areas specified in proposed section 113 of SFAR 89 and the practical test on the areas of operation listed in proposed section 115 of SFAR 89.

The proposal would require you to present these records, as well as the results from your knowledge test, to a designated pilot examiner or FAA inspector when you apply for a flight instructor certificate with a sport pilot rating. After you pass the practical test, the examiner or inspector would review your records and endorse your logbook for each category and class of ultralight vehicle in which you are qualified and authorized to provide flight training.

This proposal would establish a transition phase to ensure that ultralight flight instructors have ample time to obtain both their sport pilot and flight instructor certificates with a sport pilot rating. Also, this would allow the FAA-recognized ultralight organizations to continue to instruct under the existing exemptions. During this 36-month transition phase, an ultralight flight instructor could continue to instruct in a two-place vehicle under an existing exemption. This same flight instructor could also hold a flight instructor certificate with a sport pilot rating and be authorized to instruct a sport pilot, a student pilot operating light-sport aircraft, or a flight instructor with a sport pilot rating.

At the end of the 36 months, the existing training exemptions would expire and would not be renewed. At that point, all two-place training vehicles that meet the definition of a light-sport aircraft would be required to be certificated as light-sport aircraft and there would no longer be a need for these exemptions. Any flight training in a light-sport aircraft would be required to be conducted by a certificated flight instructor. The FAA recognizes that persons who wish to operate ultralight vehicles under part 103 would still need to receive training to safely operate a single-place vehicle. Under this proposal, a certificated flight instructor with a sport pilot rating could train an ultralight pilot to fly a single-place ultralight under part 103.

Proposed section 155 of SFAR 89 proposes that, if you have never provided flight or ground training in an aircraft or an ultralight vehicle, you would have to meet all the requirements in sections 3 and 111–117 of the SFAR to apply for a flight instructor certificate with a sport pilot rating.

Pilot Logbooks

Proposed section 171 of SFAR 89 would require you, as the holder of a sport pilot certificate or a flight instructor certificate with a sport pilot rating, to document and record training time and aeronautical experience. You would be allowed to credit ground and flight time earned as a sport pilot toward a higher certificate under § 61.51.

Proposed section 173 of SFAR 89 would allow you, as the holder of a sport pilot certificate, to log flight time as pilot in command only when you are the sole manipulator of the controls of an aircraft for which you have privileges. This includes any time during which you are the sole occupant of the aircraft. This is equivalent to the provisions in § 61.51(e) for the logging of pilot-in-command time for all other certificates.

Proposed section 175 of SFAR 89 would allow you to credit training time and aeronautical experience documented as a sport pilot toward the requirements for a higher certificate or rating.

Proposed section 177 of SFAR 89 would allow you to credit training time and aeronautical experience as the operator of an ultralight vehicle toward the experience requirements for a sport pilot certificate. Your ultralight training time and aeronautical experience would have to be documented as specified by an FAA-recognized ultralight

organization with which you are a registered ultralight pilot. You would be allowed to credit only the training time and aeronautical experience logged in the same category and class of ultralight vehicle as the category and class of light-sport aircraft for which privileges you seek.

Proposed section 179 of SFAR 89 would prohibit you from crediting aeronautical experience obtained as the operator of an ultralight vehicle to meet the requirements for a higher level certificate or rating specified in § 61.5 if you have a sport pilot certificate. However, you would be allowed to credit time used to meet the requirements for the issuance of a sport pilot certificate under the SFAR (i.e., a maximum of 20 hours) for the issuance of a higher level certificate. The FAA does not generally permit aeronautical experience obtained in a noncertificated aircraft to be used to meet the requirements for the issuance of a certificate under part 61; however, the FAA has proposed this limited exception to this policy to facilitate the issuance of airman certificates to sport pilots who have obtained their aeronautical experience in ultralight vehicles.

Recent Flight Experience Requirements for a Sport Pilot Certificate or a Flight Instructor Certificate With a Sport Pilot Rating

Proposed section 191 of SFAR 89 would require a sport pilot to comply with the recent flight experience requirements under § 61.57, which is applicable to all other pilots. The FAA thinks that the recent flight experience requirements for persons acting as pilot in command are minimum standards that should apply to all certificated pilots. We do not find any benefit to making this requirement less restrictive.

Proposed section 193 of SFAR 89 would require a sport pilot to comply with the flight review requirements under § 61.56, which is applicable to all other pilots. As with proposed section 191 of SFAR 89, the FAA thinks that the flight review requirements for persons acting as pilot in command are minimum standards that should apply to all certificated pilots, and we do not find any benefit to making this requirement less restrictive.

Proposed section 195 of SFAR 89 would specify that to renew your flight instructor certificate, you would have to comply with the requirements in § 61.197, which is consistent with the requirement for all other flight instructors.

Proposed section 197 of SFAR 89 would specify that, if your flight instructor certificate with a sport pilot rating expires, you may exchange that certificate for a new certificate by passing a practical test as prescribed in section 119 of SFAR 89. Any privilege authorized by the expired certificate would be reinstated. This proposal is consistent with the requirement for all other flight instructors.

Ground Instructors

Proposed section 211 of SFAR 89 would specify that a ground instructor would continue to be required to meet only the eligibility requirements established in § 61.213 for a ground instructor certificate or rating.

Proposed section 213 of SFAR 89 would specify that if you hold the privileges of a ground instructor certificate with a basic ground instructor rating under § 61.215(a), you would remain authorized to provide the training and recommendations specified in that paragraph. To accommodate the proposed sport pilot certificate, this paragraph also would permit you to provide: (1) Ground training in the aeronautical knowledge areas required for the issuance of a sport pilot certificate or privileges; (2) ground training required for a sport pilot flight review; and (3) a recommendation for a knowledge test required for the issuance of a sport pilot certificate.

Proposed section 215 of SFAR 89 would specify that if you hold the privileges of an advanced ground instructor rating under § 61.215(b), you would continue to be authorized to provide the training and recommendations specified in that paragraph. The privileges specified by that section permit an advanced ground instructor to provide: (1) Ground training in the aeronautical knowledge areas required for the issuance of any certificate or privileges under the SFAR, (2) ground training required for a sport pilot flight review, and (3) a recommendation for a knowledge test required for the issuance of any certificate under the SFAR.

The following discussion of the changes to 14 CFR part 61 address amendments to current sections and would not be included in SFAR 89.

Proposed section 61.1 would be amended to permit an authorized instructor to provide ground or flight training under the proposed SFAR. It also would be modified to revise the definition of cross-country time to accommodate the certification of persons seeking a sport pilot certificate with powered parachute privileges, or private pilot certificate with a powered parachute rating. For these certificates, the FAA would consider cross-country time as time acquired during a flight that includes a point of landing at least a straight-line distance of 15 nm from the original point of departure. This revision reflects the slow operating speed of powered parachutes.

Proposed section 61.5 would add a sport pilot certificate, and a flight instructor certificate with a sport pilot rating, to the list of certificates and ratings issued under this part. It also would add ratings for the powered parachute aircraft category, weight-shift-control aircraft category, and weight-shift-control aircraft class ratings for land and sea.

Proposed section 61.31 would be amended by revising the exceptions to that section. Currently, paragraph (k)(2) lists those persons to whom the rating limitations of this section do not apply. Paragraph (k)(2)(iii) states that the rating limitations do not apply to the holder of a pilot certificate when operating an aircraft under the authority of an experimental or provisional aircraft type certificate. Therefore, the rating limitations in this section currently do not apply to pilots when operating aircraft with experimental or provisional aircraft type certificates even if they carry passengers.

The proposal would revise this provision to state that the rating limitations of this section would apply for flight operations involving the carriage of passengers in these aircraft. In this case, pilots would need to hold an appropriate category and class rating to operate the aircraft when carrying passengers. The FAA notes the logbook endorsements that provide sport pilots with additional category and class privileges do not constitute category and class ratings under part 61. These aircraft have varying performance characteristics, operational profiles, and diverse control and flight features. In addition, the pilots who would be flying these aircraft will have varying levels of experience. Therefore, in the interest of safety and to protect the public, the FAA is proposing to change § 61.31(k). Certificated pilots who operate experimental aircraft would be required to hold an appropriate category and class rating if they wish to carry passengers.

Proposed section 61.99 would be revised to correct the introductory language of the section. The proposal would delete the word ''training'' from the phrase ''flight training time.'' This revision would make this section consistent with those sections that establish aeronautical experience requirements for other certificates issued under this part.

Proposed section 61.101 would be revised by adding the phrase ''current and valid'' before the term ''recreational pilot certificate.'' The proposal also would add a new paragraph (d), which would permit you to operate in Class B, C, or D airspace if you hold a current and valid recreational pilot certificate. You would have to receive and log ground and flight training from an authorized instructor on the aeronautical knowledge and areas of operation appropriate to the aircraft rating you hold and operation in that airspace. Secondly, you would have to be found proficient on these ground and flight training requirements. And thirdly, you would have to receive a logbook endorsement from an authorized instructor certifying that you have received training on these ground and flight training requirements and been found proficient.

The FAA also is proposing to allow recreational pilots to operate on a flight outside the United States only with prior authorization from the country in which the operation would be conducted. This proposal is consistent with a similar proposal for the sport pilot certificate.

Proposed section 61.107 would be revised to include new flight proficiency requirements for a person obtaining a private pilot certificate with a powered parachute rating or a weight-shift-control aircraft rating.

Proposed section 61.109 would include new aeronautical experience requirements for a private pilot obtaining a powered parachute rating or a weight-shift-control aircraft rating. Consistent with ICAO requirements for a private pilot certificate and all other private pilot requirements under part 61, the minimum flight time proposed for the issuance of the certificate with either rating would be 40 hours. The 40 hours would include 20 hours of flight training from an authorized instructor and 10 hours of solo flight training in specified areas of operation. These areas of operation would address night training, cross country training, and operations at airports with operating control towers.

Proposed section 61.195 would establish the qualifications for a flight instructor who provides training for the issuance of a private pilot certificate with a weight-shift-control aircraft or powered parachute rating. You would have to hold at least a flight instructor certificate with a sport pilot rating and at least a private pilot certificate with a category and class rating appropriate to the aircraft in which the training is sought. Unlike the private pilot certificate, commercial pilot certificates would not have powered parachute or weight-shift-control aircraft ratings. Therefore, the FAA would not require a flight instructor conducting flight training in those aircraft to hold a commercial pilot certificate. Similarly, because instrument ratings would not be issued for the operation of these aircraft, the FAA would not require a flight instructor conducting flight training in these aircraft to also hold an instrument rating.

F. What Are the Proposed Changes to 14 CFR Part 65?

Under this proposal, the FAA would establish the repairman certificate (light-sport aircraft). That certificate would be issued with inspection and maintenance ratings. The purpose of this new certificate is to permit persons, in addition to appropriately rated mechanics and repair stations, to perform maintenance on light-sport aircraft that have special airworthiness certificates. The FAA envisions that this new certificate would facilitate the maintenance of these aircraft by their owners and operators.

Proposed section 65.101 would be revised to indicate that its requirements would not apply to the repairman certificates established by this proposal.

Proposed section 65.107 would set forth the eligibility requirements, privileges, and limitations if you want to obtain a repairman certificate (light-sport aircraft). This proposal would require you to be at least 18 years of age, which would be identical to the requirements for all current repairman certificates. The proposal would require you to read, speak, write, and understand the English language. This is identical to the requirement for current repairmen who are not employed outside the United States. The proposal also includes provisions for the FAA to place limitations on the certificate if you are unable to meet any of the English language eligibility requirements for medical reasons. This provision is similar to those in the eligibility requirements for pilot certificates issued under part 61. The proposal would require you to meet citizenship or residency requirements identical to those for repairman certificates issued to experimental aircraft builders under § 65.104. The proposal also would require you to demonstrate the requisite skill to determine whether a light-sport aircraft is in a condition for safe operation.

The proposal also would establish additional eligibility requirements if you want to obtain a repairman certificate (light-sport aircraft) with an inspection rating or with a maintenance rating. For either rating, you would have to meet the general eligibility requirements described above. For an inspection rating, you would be required to complete a 16-hour training course acceptable to the FAA on the inspection requirements for the particular make and model of light-sport aircraft certificated under § 21.191(i) for which you seek an inspection rating. For a maintenance rating, you would be required to complete an 80-hour course applicable to the particular category of light-sport aircraft for which you intend to exercise privileges.

The proposal also would specify the privileges of the certificate and ratings. If you have an inspection rating, you would be permitted to perform a condition inspection on a light-sport aircraft with an experimental certificate that you own. If you have a maintenance rating, you would be permitted to perform maintenance on a light-sport aircraft that has a special airworthiness certificate issued under proposed § 21.186 or 21.191(i). Because the definition of maintenance includes inspections, your maintenance rating would allow you to perform any required inspection of a light-sport aircraft with a special airworthiness certificate issued under proposed § 21.186 or 21.191(i). You would be required to have completed training on the same category of light-sport aircraft on which you will perform maintenance. Additionally, to perform a major repair on a light-sport aircraft, you would be required to complete acceptable training appropriate to the repair performed.

The proposed paragraph would also note that the privileges and limitations in § 65.103 for a repairman certificate issued under § 65.101 would not apply to a repairman certificate (light-sport aircraft) while exercising the privileges of that certificate.

G. What Are the Proposed Changes to 14 CFR Part 91?

The majority of the proposed amendments to part 91 would facilitate the integration of powered parachutes and weight-shift-control aircraft into the general operating rules.

Proposed section 91.1 would be revised to include current section 91.325 and proposed § 91.327 in the list of rules that a person would be required to comply with while operating an aircraft in the airspace overlying the waters between 3 and 12 nm from the coast of the United States.

Proposed section 91.113 would be amended to address the addition of the two new categories of aircraft and the effect they would have on converging

aircraft. The proposal would give gliders and airships the right of way over weight-shift-control aircraft and powered parachutes. Balloons would continue to have right of way over any other category of aircraft.

Proposed section 91.126 would be amended to include powered parachutes, so that they also would have to avoid the flow of fixed-wing aircraft when approaching to land at an airport without an operating control tower in Class G airspace. The FAA is proposing this revision because powered parachute operating characteristics are similar to those of helicopters when operating in airport traffic patterns. The FAA would establish new procedures in the Aeronautical Information Manual to address traffic pattern procedures for powered parachutes.

Proposed section 91.131 would be amended to permit a sport pilot who has received the training and endorsement required by section 4 of SFAR 89 to operate within Class B airspace or takeoff or land at an airport within Class B airspace. The current rule would permit operations by student pilots operating light-sport aircraft provided the required training and endorsements were received.

Proposed section 91.155 would be amended by revising paragraph (b) to include the two new categories of aircraft that would be permitted to operate in Class G airspace. At night, powered parachutes and weight-shift-control aircraft could be operated when the visibility is between 1 and 3 statute miles. They would have to remain clear of clouds if operated in an airport traffic pattern within one-half mile of the runway. These provisions currently apply only to airplanes. Although they have different control characteristics, the FAA has determined that weight-shift-control aircraft and airplanes should be permitted to operate similarly in the NAS. Powered parachutes are similar in many ways to helicopters, but do not have the capability to hover or back up, which affords helicopters more maneuverability. Therefore, the FAA is proposing that powered parachutes may be operated in an airport traffic pattern; however, to remain in compliance with § 91.126, they must avoid the flow of fixed-wing aircraft similar to helicopter operations.

Proposed section 91.213 would be amended to allow for any light-sport aircraft to operate with inoperative equipment unless a master Minimum Equipment List has been developed for the aircraft. Currently, rotorcraft, non turbine-powered airplanes, gliders, and lighter-than-air aircraft are also afforded a similar privilege.

Proposed section 91.319 would establish procedures used by the FAA to permit operators of experimental aircraft to receive compensation while conducting flight training, which would include testing and evaluation. The current rule prohibits the operation of an aircraft with an experimental category airworthiness certificate for other than the purpose for which the aircraft was certificated or for the carriage of persons or property for compensation or hire.

To permit the operation of these experimental aircraft for compensation or hire while conducting initial flight training, the FAA would revise paragraph (a)(2) of this section. Proposed § 21.191(i)(1) would permit aircraft certificated under that paragraph to be operated for compensation or hire for flight training only for 36 months after the effective date of the rule. After that 36-month period, these aircraft would be allowed to continue to be used for flight training; however, the aircraft could not be operated for compensation or hire while training is being conducted.

To permit the operation of experimental aircraft (certificated under proposed § 21.191) for compensation or hire for the sole purpose of flight training, the FAA is proposing to allow owners of experimental aircraft to apply for a Letter of Deviation Authority issued by the FAA. A deviation authority request should be forwarded to the General Aviation and Commercial Division, AFS–800, for review and issuance. The request would contain a statement of the proposed operation and justification for the deviation.

If an operator is granted deviation authority, the operator may be authorized to provide flight training in experimental aircraft and receive compensation for the use of the aircraft. This provision would not be intended to allow commercial operators to establish training schools using experimental aircraft. In the interest of safety, and as a result of recommendations from the National Transportation Safety Board, the FAA has determined that allowing flight training in experimental aircraft when the aircraft is operated for compensation or hire under certain circumstances is in the public interest.

Proposed section 91.327 would establish operating limitations of an aircraft having a light-sport category airworthiness certificate issued under proposed § 21.186. Such aircraft could be used for sport and recreation, flight training, and rental as long as the owner adheres to all conditions and provisions for maintenance and alteration, as stipulated in the operating limitations. The aircraft must be purchased from a manufacturer that has completed a production and reliability test program to a consensus standard. These limitations would prohibit a person from operating these aircraft for other than the purpose for which it was certificated, or while carrying persons or property for compensation or hire, except while conducting flight training or renting the aircraft.

Special airworthiness certificates commonly include various additional operating limitations allowing or prohibiting specific operations. Operating limitations applicable to light-sport category aircraft also may restrict certain operations or prohibit aerobatic maneuvers. The proposal also would state that the FAA may prescribe additional limitations necessary for operation of the aircraft.

The aircraft must also be maintained in accordance with the manufacturer's maintenance and inspection procedures and have a condition inspection performed once every 12 calendar months, and its owner or operator must comply with a program for monitoring safety-of-flight issues for the aircraft. Additionally, the proposal would require an aircraft used for flight instruction to have a condition inspection performed within the preceding 100 hours of aircraft time in service. This provision is similar to that contained in § 91.409 for other aircraft. The maintenance and inspection procedures required by the operating limitations would meet the scope and detail of Appendix A to 14 CFR part 43. And consistent with part 43, a certificated pilot could perform preventive maintenance on these aircraft.

Proposed section 91.409 would be amended to extend to experimental light-sport aircraft the relief from inspection requirements that already apply to all other aircraft with a current experimental certificate. The FAA notes however, that these aircraft would still be required to meet the maintenance requirements of their operating limitations.

VII. Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Transportation has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft.

Summary: This proposal would establish requirements for the certification, operation, and maintenance of light-sport aircraft. For the operation of light-sport aircraft, the FAA is proposing to establish a sport pilot certificate and a flight instructor certificate with a sport pilot rating. The FAA also is proposing to establish requirements for student pilots and private pilots to operate these aircraft, and to revise the recreational pilot certificate to align it with privileges proposed for the new sport pilot certificate. The FAA proposes a new repairman certificate with ratings for individuals who would inspect and maintain light-sport aircraft.

In addition, the FAA is proposing a new category of special airworthiness certificate for light-sport aircraft that meet a consensus standard. This proposal also would revise the requirements for the issuance of experimental certificates to include light-sport aircraft.

This proposal would generate a need for new designated pilot examiners and designated airworthiness representatives to support the certification of these new aircraft, pilots, flight instructors, and ground instructors.

Respondents: The likely respondents to this proposed information requirement are designated pilot examiners; airman certification representatives; designated airworthiness representatives authorized by 14 CFR part 183; pilots, flight instructors, ground instructors authorized by 14 CFR part 61; operators, owners, and manufacturers of light-sport aircraft authorized by 14 CFR parts 21 and 45; and repairman authorized by 14 CFR part 65 who would be responsible for maintaining light-sport aircraft.

Frequency: The FAA estimates the number of respondents impacted by this proposal and the annual frequency of information requirements to be as established in the table below.

Respondents	Frequency (avg. yearly total)
14 CFR part 65—No. of Repairmen:	
Inspection Rating	1,725
Maintenance Rating	182
Total	1,907
14 CFR part 61—No. of Sport Pilots, Flight Instructors w/ sport pilot rating, and Ground Instructors:	
Pilots	1,714
Flight Instructors	192
Ground Instructors	50
Total	1,956
14 CFR part 183—No. of Designated Pilot Examiners (DPE) and Airman Certification Representatives (ACR):	
DPE's	300
ACR's	5
Total	305
14 CFR part 183—No. of Designated Airworthiness Rep's (DAR's):	
DAR from the FAA Aircraft Certification Office (AIR)	100
DAR from the FAA Flight Standards Office (AFS)	200
Total	300
14 CFR parts 45 and 21—No. of Aircraft:	
Existing Aircraft (§ 21.191(i))	1,725
New Aircraft (§ 21.186)	182
Total	1,907

Annual Burden Estimate: This proposal would result in an annual recordkeeping and reporting burden as follows:

14 CFR Part 21

Responses—1,907
Burden hours (Public)—2,725 hours
Burden hours (Government)—2,725 hours
Annual cost to respondents—$1,427, 500
Annual cost to government—$40, 875

14 CFR Part 47

Responses—4,580
Burden hours (Public)—2,530 hours
Burden hours (Government)—2,846 hours
Annual cost to respondents—$28, 463
Annual cost to government—$25, 656

14 CFR Part 61

Responses—2,150
Burden hours (Public)—3,476 hours
Burden hours (Government)—107 hours
Annual cost to respondents—$25, 800
Annual cost to government—$23, 650

14 CFR Part 183

Responses—605
Burden hours (Public)—1,007.5 hours
Burden hours (Government)—1,027
Annual cost to respondents—$26, 195
Annual cost to government—$29, 315

14 CFR Part 65

Responses—1,907
Burden hours (Public)—698 hours
Burden hours (Government)—630 hours
Annual cost to respondents—$10, 069
Annual cost to government—$19, 192

Total Impact of the Proposal

Responses—11,149
Burden hours (Public)—10,436.5 hours
Burden hours (Government)—7,335 hours
Annual cost to respondents—$1,518,027
Annual cost to government—$ 138,688

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by April 8, 2002, and should direct them to the address listed in the **ADDRESSES** section of this document.

According to the regulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

VIII. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. Under this proposal, the FAA would issue student pilot certificates for operating light-sport aircraft, sport pilot certificates, and airworthiness certificates, which would not be issued pursuant to the requirements of the Convention on International Civil Aviation, dated December 7, 1944.

IX. Regulatory Evaluation Summary—Executive Order 12866 and DOT Regulatory Policies and Procedures

A. Economic Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency proposing or adopting a regulation to first make a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory

Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this act requires agencies to consider international standards, and use them where appropriate as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs and benefits and other effects of proposed and final rules. An assessment must be prepared only for rules that impose a Federal mandate on State, local or tribal governments, or on the private sector, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation.)

In conducting these analyses, the FAA has determined that this proposed rule has benefits that justify its costs; is ''significant,'' as defined in regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979); and is a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866. This proposed rule is a significant action because of public interest rather than on the basis of economic impacts. It is subject to review by the Office of Management and Budget. This proposed rule is not expected to have a significant impact on a substantial number of small entities, nor to present a significant impediment to international trade. It would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Analysis of Costs

The proposal would impose an estimated compliance cost of $40.4 million ($34.0 million, discounted) in 1999 dollars over the next 10 years (2002–2011), as the result of the new certification standards. The cost estimate is based on three components. Each of these cost components is discussed below.

Light-Sport Aircraft Airworthiness Certification Costs

This section of the proposal would amend 14 CFR part 21 by providing for the issuance of special light-sport aircraft and experimental light-sport aircraft airworthiness certificates. Specifically, existing light-sport aircraft would obtain experimental light-sport airworthiness certificates and newly manufactured light-sport aircraft would obtain special light-sport airworthiness certificates. All newly manufactured light-sport kit-built aircraft would obtain experimental light-sport airworthiness certificates. The special and experimental light-sport aircraft certificates would be issued for the purposes of: (1) Enhancing aviation safety by ensuring that all light-sport aircraft operating in the future meet an acceptable standard, (2) facilitating sport and recreation operations, and (3) enhancing flight training and rental activities (excluding experimental light-sport aircraft). This section of the proposal would impose an estimated one-time compliance cost of $13.9 million ($11.8 million, discounted), in 1999 dollars over the next 10 years.

Annual Condition Inspection and Repairman Certification Costs

This section of the proposal would amend 14 CFR part 91 by requiring that operators of light-sport aircraft have their aircraft inspected for maintenance compliance annually (commonly referred to in this evaluation as ''annual condition inspections''). A new repairman certificate would be established with ratings for individuals who would inspect and maintain light-sport aircraft. The cost of compliance associated with meeting this annual condition inspection requirement and the cost to obtain a repairman certificate are estimated to be $16.7 million ($14.4 million, discounted), in 1999 dollars over the next 10 years.

Sport Pilot Certificate and Flight Instructor Certification (With a Sport Pilot Rating) Costs

This section of the proposal would amend 14 CFR part 61 by requiring that operators of light-sport aircraft obtain at least a sport pilot certificate and by requiring that operators who instruct sport pilots obtain a flight instructor certificate with a sport pilot rating. The proposed rule would impose an estimated compliance cost of $9.8 million ($7.8 million, discounted) over the next 10 years.

Analysis of Benefits

The estimated benefits of avoiding the accidents involving light-sport aircraft are $221.4 million ($153.3 million, discounted). The estimated benefits are based only on the avoidance of fatalities in these accidents. Injuries and property loss were not included in this analysis due to lack of information. The FAA believes that the benefits from avoided injuries and property are small in comparison to the benefits of avoided fatalities. According to FAA and Aviation Rulemaking Advisory Committee (ARAC) technical personnel, the benefits of avoiding the fatalities due to these accidents would be achieved, in part, by requiring airworthiness certificates for light-sport aircraft, and pilot certificates (sport pilot and flight instructor with a sport pilot rating) for those who wish to fly light-sport aircraft.

The monetary estimate of $221.4 million ($153.3 million, discounted) for potential safety benefits is based on accident information obtained from several sources. One major accident data source was the National Transportation Safety Board (NTSB) database on aviation accidents. However, the NTSB focuses primarily on aircraft and generally does not collect accident data or investigate accidents involving fat ultralight vehicles because they are non-registered aircraft. For this reason, accident data were obtained from additional sources. The additional accident data sources include the three organizations that conduct training in two-place fat ultralights under an exemption from part 103. The FAA sometimes requires exemption holders to collect specific data while operating under an exemption. The FAA may decide that it should initiate rulemaking to address provisions under an exemption. If so, this data may be used to justify and support such an action. The FAA began gathering data on part 103 training accidents and incidents in 1995 when it issued the first exemption from part 103 for training. The three training exemption holders are Aero Sport Connection (ASC), Experimental Aircraft Association (EAA), and the U.S. Ultralight Association (USUA). The part 103 training exemption requires the three exemption holders to report to the FAA accidents that involve vehicles operated under that exemption.

A review of the information from all these data sources revealed that there were 41 fatal accidents between 1995 and 2001 that involved fat ultralight vehicles and light aircraft. (The FAA verified that data from the three exemption holders were not counted more than once.) These accidents were determined to be relevant based on conversations with several industry representatives, and the relevancy determination focused on two essential factors. First, only those aircraft that fall within the proposed definition of light-sport aircraft were considered. Second, only those accidents that either could have been prevented or whose likelihood of occurrence could have been significantly reduced were considered. For example, in instances where enhanced training and/or required safety standards could have

reduced accidents, these types of accidents were considered relevant.

A review of the 1995–2001 data showed that there were 51 fatalities in accidents involving aircraft that would be defined by this rule as light-sport aircraft. During that 6-year period there were roughly 8 or 9 fatalities a year. At that rate, there would be 83 fatalities during the next 10 years.

In this analysis, the FAA estimates that a total of 82 fatalities could potentially be avoided by adopting the proposed rule. The FAA assumed that there could only be five fatalities potentially avoided during the first year because not all light-sport aircraft operators could comply with all of the proposed requirements during the first year after the proposed rule was issued. If the value of a fatality avoided is $2.7 million, then the 10-year potential benefit of the proposed rule would be $221.4 million ($153.3 million, discounted).

The assessment of potential safety benefits is subject to the following uncertainties:

• Accuracy as to the actual number light-sport aircraft accidents contained in the NTSB's historical record for primarily U.S.-registered aircraft. There is uncertainty as to what extent the NTSB's database has fully captured those accidents involving unregistered light-sport aircraft over the past 10 years.

• Accuracy as to the actual number of light-sport aircraft accidents contained in the historical records of the three organizations that hold a training exemption to train in two-place fat ultralights. There is uncertainty as to what extent these exemption holders' databases have fully captured those accidents for unregistered light-sport aircraft over the past 10 years.

Because the accident databases listed above may not capture all relevant accidents, the potential safety benefits estimate for light-sport aircraft may be understated. In view of the uncertainties, the FAA solicits comments from the general aviation community and the recreational light-sport aircraft industry in particular. All commenters are asked to provide documented information in support of their comments.

In addition to safety benefits, there would be a benefit gained from ''consumer surplus,'' which is derived from the recreational value gained from operating light-sport aircraft. If the derived (net) recreational value is $25 per recreational day and a sport pilot conducted 20 days of recreational flying annually, a sport pilot would obtain $500 in net annual recreational benefits. The FAA estimates that 9,000 pilots will seek a sport pilot certificate, providing an additional estimated benefit of recreational value gained of $4.5 million annually. The FAA solicits comments regarding the recreational values established from the general aviation community and the recreational light-sport aircraft industry in particular.

Benefit-Cost Comparison

The proposed rule costs much less than the estimated potential benefits. The estimated cost of the proposed rule is $40.4 million ($34.0 million, discounted). The estimated potential benefits of avoiding 82 fatalities are $221.4 million ($153.3 million, discounted). The estimated benefits are based only on the avoidance of fatalities in these accidents. The FAA believes that some of the identified benefits may not be achieved. However, if the proposed rule is 23 percent effective, or more, then the rule would be cost-beneficial.

Analysis of Alternatives

Status Quo Alternative

When analyzing alternatives to any proposed regulatory action, the status quo is typically analyzed with other alternatives. However, this is not the case for this evaluation. The status quo represents a situation in which the FAA would issue training exemptions from part 103 indefinitely. This would perpetuate ''rulemaking by exemption,'' which does not qualify as a viable alternative. The FAA issued exemptions for flight training in 1995 after the initiation of this rulemaking project. The FAA issued the exemptions under the assumption that they would soon be superceded by rulemaking.

Alternative One—Strictly Enforce Current Regulations

Under this option, the FAA would rescind the three existing exemptions from part 103 that allow training in two-place fat ultralight vehicles. Rescinding the existing exemption would be necessary because it is DOT and FAA policy to issue exemptions only to those with unique situations, usually for a limited time. The FAA does not intend to issue exemptions to address situations of a general nature. In that case, the FAA initiates rulemaking.

Anyone who wanted to learn to fly an ultralight could not receive any flight training in a two-place fat ultralight before soloing because those ultralights do not meet part 103. Future two-place fat ultralights would have to be certificated in the primary or standard category to be used for flight training. The design standards for these airworthiness certificates may not be appropriate for many of the fat ultralights in the ultralight community.

Some existing or new fat ultralights would be eligible for an experimental airworthiness certificate. In this case, the operator of the aircraft would be responsible for building a majority of the aircraft and these aircraft would not be eligible for flight training.

Costs

1. *Significant costs for private pilot certificates and flight instructor certificates for existing fat ultralights.* The FAA estimates the cost to operators of existing fat ultralights to obtain a private pilot certificate and flight instructor certificate to be $45.9 million ($40.9 million, discounted) over 10 years.

2. *Significant costs for private pilot certificates and flight instructor certificates for future fat ultralights.* Under this alternative, the costs of obtaining a pilot certificate or an instructor certificate would be much higher than under the proposed rule. The FAA believes that if this alternative is adopted, the number of new pilots would be much less than would be the case with the proposed rule. The FAA estimates the cost to operators of future fat ultralights to obtain private pilot certificates and flight instructor certificates to be $33.4 million ($27.0 million, discounted) over 10 years.

3. *Significant aircraft certification costs to manufacturers.* Aircraft manufacturers can expect to incur costs to obtain airworthiness certificates for the fat ultralights they manufacture. Based on information received from several industry sources, under strict enforcement of the current rules, the cost of aircraft certification would be higher than under the proposed rule. Only newly produced fat ultralights would be eligible to receive a primary or standard category airworthiness certificate (existing fat ultralights were not manufactured under a production certificate and, therefore, would not be eligible for these types of airworthiness certificate). Primary and standard category airworthiness certificates allow the operator to conduct flight training and rental activities. For those fat ultralights that would meet such standards, the potential cost of compliance is estimated to be as low as $4,800 per fat ultralight for a primary airworthiness certificate, or as high as $6,400 per fat ultralight for a standard airworthiness certificate. Those fat ultralights that do not meet the standards for primary or standard category airworthiness certificates could

be eligible for an experimental airworthiness certificate. The potential cost of compliance for experimental airworthiness certificate is estimated as $750 per fat ultralight. The FAA estimated the cost of aircraft certification under this alternative to be $6.9 million ($5.7 million, discounted) by assuming that each new pilot or flight instructor would purchase a new aircraft during the same year the pilot received his/her pilot certificate or his/her flight instructor certificate. The new aircraft would be certificated as either an experimental aircraft or a primary aircraft. In this analysis, the FAA assumed that 95 percent of the new pilots and flight instructors would purchase an experimental aircraft and only five percent of them would purchase a primary aircraft. In this case the weighted average certification cost would be $952.50 per new aircraft. Aircraft certification costs would be underestimated if a higher percentage of new aircraft are certificated as primary aircraft rather than experimental aircraft. Some new pilots may also choose to purchase new aircraft that received a standard airworthiness certificate. To the extent that this happens the aircraft certification costs would also be underestimated. This alternative does not provide a method for aircraft certification of powered parachutes. They can not be certificated under experimental amateur-built, primary, or standard category. Additionally, weight-shift-control aircraft can not be certificated under standard or primary category.

4. *Increased FAA Costs.* The FAA did not estimate the increased cost to the FAA of strictly enforcing current regulations. The FAA would either have to hire new inspectors or shift inspectors away from other enforcement activities (e.g., air carrier operations) to enforce the current regulations on ultralight activities.

Since the cost of this alternative is at least $86.2 million ($73.6 million, discounted) and is more expensive than the proposed rule, alternative 1 (strictly enforcing the current rules) must be much more effective (greater than 47 percent) than the proposed rule (23 percent) in order to be cost beneficial.

Alternative 2—Proposed Rule (Preferred)

Under this preferred alternative, the FAA would establish unique requirements for the certification, operation, and maintenance of light-sport aircraft, including powered parachutes and weight-shift-control aircraft. Anyone operating fat ultralights (single-place or 2-place types) would be required to obtain at least a sport pilot certificate. Flight instructors would obtain a sport pilot rating. This alternative would eliminate the need for training exemptions from part 103 and would also establish requirements for private pilots to operate powered parachutes and weight-shift-control aircraft. Under this alternative, the FAA would also establish a new repairman certificate with ratings for individuals who would inspect and maintain light-sport aircraft.

As discussed earlier, the potential benefits from this alternative are estimated to be $221.4 million ($153.3 million, discounted). The FAA believes that many of these benefits could be achieved by requiring:

1. All operators of fat ultralights to obtain sport pilot or flight instructor (with a sport pilot rating) certificates. Accidents would be reduced as a result of required training for all pilots operating light-sport aircraft. The FAA believes that training and testing, appropriate to the type of operation conducted, reduces aircraft accidents.

2. All sport pilots to receive training tailored to specific make/model light-sport aircraft and sport and recreational operations. Due to the unique characteristics of each make/model of light-sport aircraft within the same category, this training is necessary to gain the skills necessary to operate those aircraft.

In addition, a sport pilot could choose to add privileges, as needed, with appropriate training. This would reduce accidents or incidents by limiting the privileges and would allow a sport pilot to gain the skills necessary to operate in a simple operating environment and build experience. This building block approach would allow a sport pilot to gain additional skills through additional training, (e.g. operations in Class D, C, or B airspace) when the pilot wants to add more privileges.

3. All aircraft to meet the needed certification requirements. Accidents would be reduced because light-sport aircraft would be manufactured to a standard. In addition, these aircraft would be inspected by the FAA or a representative to ensure they are safe to fly before the issuance of an airworthiness certificate. Standard materials and processes would be used to build these aircraft.

4. All aircraft to meet the needed aircraft maintenance requirements. Accidents would be reduced because required maintenance done in regular intervals by certificated repairmen or mechanics would ensure that light-sport aircraft are maintained properly.

5. Training for repairmen. Establishing maintenance standards and repairman training standards means well-maintained, safer aircraft. The aircraft would be maintained and inspected by individuals who would be trained by manufacturers or industry organizations on these unique types of light-sport aircraft. Repairmen would be trained on specific make and model light-sport aircraft.

The benefits listed in items 2 and 5 above are unique to the proposed rule alternative (preferred). Those two benefits would not be achieved by strictly enforcing current regulations. Benefits in items 1, 3, and 4 above would be achieved under either alternative.

As stated earlier, these proposed requirements are estimated to cost $40.4 million ($34.0 million, discounted). If the proposed rule were only 23 percent effective, the proposed rule would be cost beneficial.

The FAA selected this alternative primarily because, not only is the proposed rule less costly than the current rule, it likely would provide a higher level of safety because of the additional two unique safety benefits. In addition, this alternative would fulfil the FAA's responsibility under 49 U.S.C. 44701, which requires the FAA to promote safe flight of civil aircraft and establish regulations covering aircraft operations.

B. Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities,

section 605(b) of the Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

There are two types of small commercial entities that would be potentially affected by the proposal: (1) Flight instructors with a sport pilot rating and (2) Certificated repairmen (maintenance). These entities are considered small. Since there is no established size criterion for these types of operators, all of them (flight instructors and maintenance repairmen) are considered to be small from a worst case standpoint. Each of these small entities is discussed below.

Flight Instructors With a Sport Pilot Rating

Of the 10,000 existing operators of fat ultralight vehicles that would be affected by the proposal between 2002 and 2003, an estimated 1,000 (or 10 percent) would become flight instructors with a sport pilot rating. An estimated 925 additional new flight instructors with a sport pilot rating are expected to enter the industry between 2002 and 2011, as part of those newly produced light-sport aircraft.

While a small number of new flight instructors with a sport pilot rating would teach part-time for the love of flying, the vast majority (about 75–90 percent) of them likely would be compensated beyond coverage of their operating expenses. These individuals would either be self-employed independent flight instructors for hire, who operate and own flight schools, or they would be employed as flight instructors at flight schools. In most cases, the FAA believes these individuals operate as self-employed independent flight instructors. All of these flight instructors are considered small commercial entities. The proposal would impose, at most, an annualized cost of compliance of $274 on each of the potentially affected flight instructors over the next 10 years. While no financial data is available for these entities, due to their small size and the nature of their general aviation operations (i.e., many of them have yet to start operating as small entities), the magnitude of the potential compliance cost impact is not considered to be significant.

Repairmen (Maintenance)

The proposal would potentially affect an estimated 19,065 light-sport aircraft operators seeking either a sport pilot certificate or a flight instructor certificate with a sport pilot rating over the next 10 years. For those reasons noted previously in the major assumptions section of this evaluation, an estimated 5 percent of these operators are expected to obtain repairman certificates to perform aircraft maintenance on training and rental aircraft. These light sport-aircraft repairmen (maintenance) would operate as independent small commercial entities or as employees for small fixed base operators.

The proposal would impose an annualized cost of compliance of about $513 on each of the potentially affected repairmen over the next 10 years. For the same reasons stated previously for flight instructors, no financial data are available for these entities. Nonetheless, the magnitude of the potential compliance cost impact is not considered significant.

In view of the above discussion, the FAA certifies that the proposal would not have a significant economic impact on a substantial number of small entities operating either as light-sport aircraft repairmen (maintenance) or flight instructors with a sport pilot rating.

C. International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This effort includes both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute, the FAA has assessed the potential effect of the proposal and has determined that it would not present a significant impediment to either U.S. firms doing business aboard or foreign firms doing business in the United States. The proposal, if adopted as a rule, is expected to stimulate a great deal of growth for the light-sport aircraft aviation industry in the United States and abroad. The belief that no significant trade disadvantage would take place is based on the premise that the number of the requirements contained in the proposal (namely, aircraft certification standards) essentially mirrors those that already exist internationally.

D. Initial Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

Since the highest annual cost of compliance would be about $15.5 million, the proposal does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

X. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, we determined that this notice of proposed rulemaking would not have federalism implications.

XI. Environmental Analysis

FAA order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion. Currently there are no noise certification regulations that apply to light-sport aircraft.

XII. Energy Impact

The energy impact of this proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. The FAA has determined that this proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

14 CFR Part 43

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 45

Aircraft, Exports, Signs and symbols.

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Teachers.

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Alcohol abuse, Drug abuse, Reporting and recordkeeping requirements.

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidate, Reporting and recordkeeping requirements, Yugoslavia.

The Proposed Amendment

In consideration of the above, the Federal Aviation Administration proposes to amend parts 1, 21, 43, 45, 61, 65, and 91 of title 14, Code of Federal Regulations (14 CFR parts 1, 21, 43, 45, 61, 65, and 91) as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

2. Amend § 1.1 by adding the following definitions in alphabetical order:

§ 1.1 General definitions.

* * * * *

Consensus standard means, for the purpose of certificating light-sport aircraft, an industry-developed consensus airworthiness standard that governs aircraft design and performance, quality assurance system requirements, production acceptance test specifications, and continued operational safety monitoring system characteristics.

* * * * *

Light-sport aircraft means an aircraft, other than a helicopter or powered-lift, that is limited to:

(1) A maximum takeoff weight of 1,232 pounds (560 kilograms) or, for lighter-than-air aircraft, a maximum gross weight of 660 pounds (300 kilograms);

(2) A maximum airspeed in level flight with maximum continuous power (V_H) of 115 knots CAS under standard atmospheric conditions;

(3) A maximum never-exceed speed (V_{NE}) of 115 knots CAS for a glider;

(4) A maximum stalling speed or minimum steady flight speed in the landing configuration (V_{S0}) of 39 knots CAS;

(5) A maximum stalling speed or minimum steady flight speed without the use of lift-enhancing devices (V_{S1}) of 44 knots CAS;

(6) A maximum seating capacity of two persons, including the pilot;

(7) A single, non-turbine engine, if powered;

(8) A fixed or ground-adjustable propeller, if powered;

(9) A fixed-pitch, semi-rigid, teetering, two-blade rotor system, if a gyroplane;

(10) A non-pressurized cabin, if equipped with a cabin; and

(11) Fixed landing gear, or for seaplanes, repositionable landing gear.

* * * * *

Powered parachute means a powered aircraft that derives its lift from a non-rigid wing that inflates into a lifting surface when exposed to a wind. A powered parachute is propelled by an engine that is an integral part of the aircraft and is controlled by a pilot within a fuselage suspended beneath the non-rigid wing.

* * * * *

Weight-shift-control aircraft means a powered aircraft with a framed pivoting wing and a fuselage that is controllable in pitch and roll only by the pilot's ability to change the aircraft's center of gravity.

* * * * *

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

4. Amend § 21.175 by revising paragraph (b) to read as follows:

§ 21.175 Airworthiness certificates: classification.

* * * * *

(b) Special airworthiness certificate categories are primary, restricted, limited, light-sport, provisional, and experimental airworthiness certificates; and special flight permits.

5. Amend § 21.181, by revising paragraphs (a)(1) and (a)(3) to read as follows:

§ 21.181 Duration.

(a) * * *

(1) Standard airworthiness certificates and special airworthiness certificates issued for primary, restricted, or limited category aircraft are effective as long as the maintenance, preventive maintenance, and alterations are performed in accordance with parts 43 and 91 of this chapter, and the aircraft is registered in the United States. A special airworthiness certificate in the light-sport category is effective as long as the aircraft is maintained in accordance with the operating limits limitations issued with the airworthiness certificate, and the aircraft is registered in the United States.

* * * * *

(3) An experimental certificate for research and development, showing compliance with regulations, crew training, or market surveys is effective for one year after the date of issue or renewal unless FAA prescribes a shorter period. The duration of amateur-built, exhibition, air-racing, primary kit-built, and light-sport experimental certificates is unlimited, unless FAA establishes a specific period for good cause.

* * * * *

6. Amend § 21.182 by revising paragraph (b)(2) to read as follows:

§ 21.182 Aircraft identification.

* * * * *

(b) * * *

(2) An experimental certificate for an aircraft not issued for the purpose of operating amateur-built aircraft, operating primary kit-built aircraft, or operating light-sport aircraft.

* * * * *

7. Add § 21.186 to read as follows:

§ 21.186 Issue of special airworthiness certificates for light-sport category aircraft.

(a) *Special, light-sport category aircraft airworthiness certificates.* The FAA issues a special airworthiness certificate in the light-sport category to operate a light-sport aircraft, other than a gyroplane, for sport and recreation, flight training, or rental.

(b) *Eligibility.* To be eligible for a special airworthiness certificate in the light-sport category—

(1) A registered owner must submit—

(i) The applicable pilot operating handbook;

(ii) The applicable maintenance and inspection procedures;

(iii) The manufacturer's Statement of Compliance as described in paragraph (c) of this section;

(iv) A written statement declaring that the aircraft has not been altered after its date of manufacture; or that any alteration performed on the aircraft meets the applicable consensus standard and has been authorized by the manufacturer or a person acceptable to FAA who has established a program to review alterations performed on the manufacturer's aircraft; and

(v) A written statement declaring that any future alterations performed on the aircraft will meet the applicable consensus standard and be authorized by the manufacturer or a person acceptable to FAA who has established a program to review alterations performed on the manufacturer's aircraft;

(2) The aircraft must not have been previously issued an airworthiness certificate in the standard or primary category; and

(3) The aircraft must be inspected by FAA and found to be in a condition for safe operation.

(c) *Manufacturer's Statement of Compliance for light-sport category aircraft.* A manufacturer of an aircraft intended for certification with a special airworthiness certificate in the light-sport category must issue a Statement of Compliance that:

(1) Identifies the aircraft make and model designation, aircraft serial number, class of light-sport aircraft, and the date of manufacture;

(2) Identifies the consensus standard used to manufacture the aircraft;

(3) States that the aircraft complies with the consensus standard specified in paragraph (c)(2) of this section;

(4) States that the manufacturer has determined the aircraft conforms to the manufacturer's design data, using a quality system that complies with the consensus standard;

(5) Identifies the applicable pilot operating handbook, maintenance and inspection procedures, pilot flight-training manual and states that this information will be made available to any interested person;

(6) Identifies a document describing the system the manufacturer will use for monitoring and correcting safety-of-flight issues;

(7) States that, upon request of the FAA, the manufacturer will provide unrestricted access to its facilities; and

(8) States that the aircraft was tested in accordance with a production acceptance test procedure that meets a consensus standard, that the manufacturer has found the aircraft performance acceptable, and that the aircraft is in a condition for safe operation.

(d) *Imported light-sport aircraft.* For an imported aircraft to be eligible for a special airworthiness certificate in the light-sport category, a registered owner must meet the requirements of paragraph (b) of this section and provide to the FAA evidence that:

(1) The aircraft was manufactured in a country with which the United States has an agreement for the import or export of that product;

(2) The make and model of the aircraft to be imported is eligible for an airworthiness certificate or flight authority in the country of manufacture; and

(3) The civil aviation authority of the country of export has determined that the aircraft is in a condition for safe operation.

8. Amend § 21.191 by revising the paragraph caption of paragraph (h) and adding paragraph (i) to read as follows:

§ 21.191 Experimental certificates.

* * * * *

(h) *Operating primary kit-built aircraft.* * * *

(i) *Operating light-sport aircraft.*

(1) Operating a light-sport aircraft for which a person applied for registration no later than [Date 24 months after the effective date of the final rule.] and for which FAA issued an experimental airworthiness certificate under this paragraph no later than [Date 36 months after the effective date of the final rule.]. Only aircraft that do not meet the provisions of § 103.1 of this chapter may receive this certificate. The FAA issues this certificate for the purpose of sport and recreation and flight training. A person may operate an aircraft for compensation or hire with this certificate while conducting initial flight training until [Date 36 months after the effective date of the final rule.].

(2) Operating a light-sport aircraft that was assembled from an eligible kit by a person without the supervision and quality system of the manufacturer for the purpose of sport and recreation and flight training.

(3)Operating a light-sport aircraft that was previously issued a special airworthiness certificate in the light-sport category under § 21.186 for the purpose of sport and recreation and flight training.

9. Amend § 21.193 by adding paragraph (e) to read as follows:

§ 21.193 Experimental certificates: general.

* * * * *

(e) In the case of a light-sport aircraft assembled from a kit to be certificated in accordance with § 21.191(i)(2), a registered owner must provide the following:

(1) Evidence that any aircraft of the same make and model previously has been issued a special airworthiness certificate in the light-sport aircraft category and has been manufactured and assembled by the aircraft kit manufacturer;

(2) The applicable pilot operating handbook;

(3) The applicable instructions for maintenance and inspection procedures;

(4) A Statement of Compliance issued by the manufacturer that meets the scope and detail of § 21.186(c) for that specific aircraft kit, except that in-lieu of § 21.186(c)(8), the statement should identify the applicable Assembly Instructions for that aircraft;

(5) The instructions that were used to assemble the aircraft; and

(6) For an imported aircraft kit, evidence that the aircraft kit was manufactured in a country with which the United States has an agreement for the import or export of the product to be made from the kit.

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

10. The authority citation for part 43 continues to read as follows:

Authority: 49 U. S. C. 106(g), 40113, 44701, 44703, 44705, 44707, 44711, 44713, 44717.

11. Amend § 43.1 by revising paragraph (b) to read as follows:

§ 43.1 Applicability.

* * * * *

(b) This part does not apply to any aircraft for which FAA issued a special airworthiness certificate in the light-sport aircraft category or an experimental certificate, unless FAA had previously issued a different kind of airworthiness certificate for that aircraft.

PART 45—IDENTIFICATION AND REGISTRATION MARKING

12. The authority citation for part 45 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40109, 40113–40114, 44101–44105, 44107–44108, 44110–44111, 44504, 44701, 44708–44709, 44711–44713, 45302–45303, 46104, 46304, 46306, 47122.

13. Amend § 45.27 by adding paragraph (e) to read as follows:

§ 45.27 Location of marks; nonfixed-wing aircraft.

* * * * *

(e) *Powered parachute and weight-shift-control aircraft.* Each operator of a powered parachute or a weight-shift-control aircraft must display the marks required by § 45.23. The marks must be displayed horizontally and in two diametrically opposite positions on any structural member or airfoil.

14. Amend § 45.29 by revising paragraphs (b)(1)(iii), and (b)(2) to read as follows:

§ 45.29 Size of marks.

* * * * *

(b) * * *

(1) * * *

(iii)Marks at least 3 inches high may be displayed on an aircraft for which FAA has issued an experimental certificate under § 21.191(d), § 21.191(g), or § 21.191(i) of this chapter to operate as an exhibition aircraft, an amateur-built aircraft, or a light-sport aircraft when the maximum cruising speed of the aircraft does not exceed 180 knots CAS; and

* * * * *

(2) Airships, spherical balloons, nonspherical balloons, powered parachutes, and weight-shift-control aircraft must be at least 3 inches high; and

* * * * *

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

15. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

16. Add SFAR No. 89 to part 61 to read as follows:

SFAR No. 89—Sport Pilot Certification

General

Section

1. What is the purpose of this SFAR?
3. When am I eligible for a certificate under this SFAR?
5. Does this SFAR expire?
7. Does a sport pilot certificate issued under this SFAR expire?
9. What is a light-sport aircraft?
11. Who is an authorized instructor?
13. Do regulations other than those contained in this SFAR apply to a sport pilot?
15. Must I hold an airman medical certificate?
17. Am I prohibited from operating a light-sport aircraft if I have a medical deficiency?

Student Pilot Certificate to Operate Light-Sport Aircraft

31. How do I apply for a student pilot certificate to operate light-sport aircraft?
33. What solo requirements must a student pilot operating light-sport aircraft meet?
35. Are there any limits on how a student pilot may operate a light-sport aircraft?
37. How do I obtain privileges to operate in Class B, C, or D airspace and at an airport located in Class B, C, or D airspace?

Sport Pilot Certificate

51. What aeronautical knowledge must I have to apply for a sport pilot certificate?
53. What flight proficiency requirements must I meet to apply for a sport pilot certificate?
55. What aeronautical experience must I have to apply for a sport pilot certificate?
57. What tests do I have to take to receive a sport pilot certificate?
59. Will my sport pilot certificate list light-sport aircraft category and class ratings?
61. May I operate all categories, classes, and makes and models of light-sport aircraft with my sport pilot certificate?
63. How do I obtain privileges to operate an additional category or class of light-sport aircraft?
65. How do I obtain privileges to operate an additional make and model of light-sport aircraft?
67. Must I carry my logbook with me in the aircraft?

Privileges and Limits of Holders of a Sport Pilot Certificate

71. What type of aircraft may I fly if I hold a sport pilot certificate?
73. What are my limits for the operation of light-sport aircraft?
75. May I demonstrate an aircraft in flight to a prospective buyer?
77. May I carry a passenger?
79. May I share operating expenses of a flight with a passenger?
81. How do I obtain privileges to operate in Class B, C, or D airspace?
83. How do I obtain privileges to operate a light-sport aircraft that has a V_H greater than 87 knots CAS?

Transitioning to a Sport Pilot Certificate

91. How do I obtain a sport pilot certificate if I already hold at least a private pilot certificate issued under 14 CFR part 61?
93. How do I obtain a sport pilot certificate if I do not hold a pilot certificate issued under 14 CFR part 61, but I have been flying ultralight vehicles under 14 CFR part 103?
95. How do I obtain a sport pilot certificate if I don't hold a pilot certificate and have never flown an ultralight vehicle?

Flight Instructor Certificate With a Sport Pilot Rating

111. Must I hold an airman medical certificate?
113. What aeronautical knowledge requirements must I meet to apply for a flight instructor certificate with a sport pilot rating?
115. What training must I have in areas of operation to apply for a flight instructor certificate with a sport pilot rating?
117. What aeronautical experience must I have to apply for a flight instructor certificate with a sport pilot rating?
119. What tests do I have to take to get a flight instructor certificate with a sport pilot rating?
121. What records do I have to keep and for how long?
123. Will my flight instructor certificate with a sport pilot rating list light-sport aircraft category and class ratings?
125. Am I authorized to provide training in all categories and classes of light-sport aircraft with my flight instructor certificate with a sport pilot rating?
127. How do I obtain privileges to provide flight training in an additional category or class of light-sport aircraft?
129. How do I obtain privileges authorizing me to provide flight training in an additional make and model of light-sport aircraft?
131. Do I need to carry my logbook with me in the aircraft?
133. What privileges do I have if I hold a flight instructor certificate with a sport pilot rating?
135. What are the limits of a flight instructor certificate with a sport pilot rating?
137. Are there any additional qualifications for training first-time flight instructor applicants?
139. May I give myself an endorsement?

Transitioning to a Flight Instructor Certificate With a Sport Pilot Rating

151. What if I already hold a flight instructor certificate issued under 14 CFR part 61 and want to exercise the privileges of a flight instructor certificate with a sport pilot rating?
153. What if I am only a registered ultralight instructor with an FAA recognized ultralight organization?
155. What if I've never provided flight or ground training in an aircraft or an ultralight vehicle?

Pilot Logbooks

171. How do I log training time and aeronautical experience?
173. How do I log pilot-in-command flight time?
175. May I use training time and aeronautical experience logged as a sport pilot toward a higher certificate or rating issued under 14 CFR part 61?
177. May I credit training time and aeronautical experience logged as an ultralight operator toward a sport pilot certificate?
179. May I use aeronautical experience I got as the operator of an ultralight vehicle to meet the requirements for a higher certificate or rating issued under 14 CFR part 61?

Recent Flight Experience Requirements for a Sport Pilot Certificate or a Flight Instructor Certificate With a Sport Pilot Rating

191. What recent flight experience requirements must I meet for a sport pilot certificate?
193. What are the flight review requirements for a sport pilot certificate?
195. How do I renew my flight instructor certificate?
197. What must I do if my flight instructor certificate with a sport pilot rating expires?

Ground Instructor Privileges

211. What are the eligibility requirements for a ground instructor certificate?

213. What additional privileges do I have if I hold a ground instructor certificate with a basic ground instructor rating?
215. What additional privileges do I have if I hold a ground instructor certificate with an advanced ground instructor rating?

General

Section 1. What is the purpose of this SFAR? This SFAR—

(a) Establishes requirements to apply for a student pilot certificate to operate light-sport aircraft, a sport pilot certificate, and a flight instructor certificate with a sport pilot rating;

(b) Expands the privileges of ground instructors to permit them to provide training for a sport pilot certificate and for a flight instructor certificate with a sport pilot rating; and

(c) Establishes the following for the certificates and ratings issued by FAA under the provisions of this SFAR:

(1) Eligibility requirements;
(2) Experience requirements;
(3) Testing requirements;
(4) Endorsements;
(5) Privileges and limitations;
(6) Logging of ground and flight time;
(7) Recent flight experience requirements; and
(8) Transition provisions.

Section 3. When am I eligible for a certificate under this SFAR? (a) See the following table for the eligibility requirements for the different kinds of airman certificates issued under this SFAR:

To be eligible for a . . .	You must be able to read, speak, write, and understand English and be . . .
(1) Student pilot certificate for operating light-sport aircraft,	At least 16 (or 14 if you are applying to operate a glider or balloon)
(2) Sport pilot certificate,	At least 17 (or 16 if you are applying to operate a glider or balloon
(3) Flight instructor certificate with a sport pilot rating,	(i) At least 18; and (ii) Hold a current and valid sport pilot certificate or a current and valid private pilot certificate issued under 14 CFR part 61.

(b) If you can't read, speak, write, and understand English due to medical requirements, the FAA may place limitations on your certificate as are necessary for the safe operation of light-sport aircraft.

Section 5. Does this SFAR expire? This SFAR will remain in effect until superceded, rescinded, or until it is incorporated into the permanent portion of Title 14, Code of Federal Regulations.

Section 7. Does a sport pilot certificate issued under this SFAR expire? No, a sport pilot certificate issued under this SFAR does not expire.

Section 9. What is a light-sport aircraft? A *light-sport aircraft* is defined in 14 CFR 1.1.

Section 11. Who is an authorized instructor? An authorized instructor is defined in 14 CFR 61.1.

Section 13. Do regulations other than those contained in this SFAR apply to a sport pilot? Yes. As a certificated pilot, you must comply with 14 CFR part 61 and with the general operating and flight rules under 14 CFR part 91 of this chapter. In addition, you must comply with all other applicable regulations under this chapter.

Section 15. Must I hold an airman medical certificate? In lieu of the provisions of 14 CFR 61.23(a)(3)(iii), which require a student pilot to hold an airman medical certificate, you must hold and possess while exercising the privileges of a student pilot certificate to operate a light-sport aircraft or a sport pilot certificate, when operating other than a glider or balloon:

(a) A current and valid U.S. driver's license; or

(b) A current and valid airman medical certificate issued under 14 CFR part 67.

Section 17. Am I prohibited from operating a light-sport aircraft if I have a medical deficiency? See the following table to determine when you are prohibited from operating a light-sport aircraft due to a medical deficiency:

If you hold a sport pilot certificate or a student pilot certificate to operate light-sport aircraft . . .	And . . .	Then . . .
(a) That is a glider or balloon,		You must not act as pilot in command of the aircraft if you know or have reason to know of any medical condition that would make you unable to operate the aircraft in a safe manner.
(b) Other than a glider or balloon,	You hold a U.S. driver's license (regardless of whether you hold an airman medical certificate issued under 14 CFR part 67),	You must not act as pilot in command of the aircraft if you know or have reason to know of any medical condition that would make you unable to operate the aircraft in a safe manner.
(c) Other than a glider or balloon,	(1) You hold an airman medical certificate issued under 14 CFR part 67, but don't hold a U.S. driver's license,	(i) You must not act as pilot in command of the aircraft if: (A) You know or have reason to know of any medical condition that would make you unable to meet the requirements of at least a third-class medical certificate; or (B) You are taking medication or receiving other treatment for a medical condition that results in you being unable to meet the requirements of at least a third-class medical certificate.

Student Pilot Certificate for Operating Light-Sport Aircraft

Section 31. How do I apply for a student pilot certificate to operate light-sport aircraft? Use the following table to determine how to apply for a student pilot certificate to operate light-sport aircraft:

If . . .	Then . . .
(a) You are operating a balloon or glider, or you have a current and valid airman medical certificate issued under 14 CFR part 67, or a current and valid U.S. driver's license,	You must apply for a student pilot certificate to operate light-sport aircraft with a Flight Standards District Office (FSDO) or an FAA designated pilot examiner.

If . . .	Then . . .
(b) You are not operating a balloon or a glider, you do not have a current and valid airman medical certificate issued under 14 CFR part 67, and you are not able to get a current and valid U.S. driver's license,	You must apply for a student pilot certificate to operate light-sport aircraft and an airman medical certificate issued under 14 CFR part 67 with an FAA aviation medical examiner.

Section 33. What solo requirements must a student pilot operating light-sport aircraft meet? (a) To operate a light-sport aircraft in solo flight, you must meet the requirements under 14 CFR 61.87(a) through (c).

(b) If you are receiving training for single-engine airplane, glider, gyroplane, airship, or balloon privileges, you must receive and log flight training for the maneuvers and procedures specified in 14 CFR 61.87(d), (g), and (i) through (k), as applicable.

(c) If you are receiving training for powered parachute or weight-shift-control aircraft privileges, you must receive and log flight training for the following maneuvers and procedures:

(1) Proper flight preparation procedures, including preflight planning and preparation, preflight assembly and rigging, aircraft systems, and powerplant operations;

(2) Taxiing or surface operations, including run-ups;

(3) Takeoffs and landings, including normal and crosswind;

(4) Straight and level flight, and turns in both directions;

(5) Climbs, and climbing turns in both directions;

(6) Airport traffic patterns, including entry and departure procedures;

(7) Collision avoidance, windshear avoidance, and wake turbulence avoidance;

(8) Descents and descending turns in both directions;

(9) Emergency procedures and equipment malfunctions;

(10) Ground reference maneuvers;

(11) Recovery from partial canopy collapse (powered parachute only);

(12) Meta-stable stalls and avoidance (powered parachute only);

(13) Flight at various airspeeds from maximum cruise to slow flight (weight-shift-control aircraft only);

(14) Stall entry, stall, and stall recovery (weight-shift-control aircraft only);

(15) Straight glides, and gliding turns in both directions;

(16) Go-arounds;

(17) Approaches to landing areas with a simulated engine malfunction;

(18) Procedures for canopy packing and aircraft disassembly (powered parachute only); and

(19) Procedures for disassembly (weight-shift-control aircraft only).

(d) Solo cross-country flight requirements. You may not operate a light-sport aircraft on a solo cross-country flight unless you have met the requirements specified in 14 CFR 61.93(a) through (c).

(e) Maneuvers and procedures for solo cross-country flight training in a single-engine airplane, glider, gyroplane, or airship. If you are receiving training for single-engine airplane, glider, gyroplane, or airship privileges you must receive and log flight training for the maneuvers and procedures specified in 14 CFR 61.93 (e), (h), (j), and (k), as applicable.

(f) If you are receiving training for powered parachute and weight-shift control privileges, you must receive and log flight training in the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) If equipped for flight using navigation radios, the procedures for the use of radios for VFR navigation; and

(10) Recognition of weather and upper air conditions favorable for the cross-country flight.

Section 35. Are there any limits on how a student pilot may operate a light-sport aircraft? As a student pilot you may not operate a light-sport aircraft:

(a) Unless you comply with 14 CFR 61.87(l) and 61.89 (a)(1) through (a)(4), (a)(7), (a) (8), and (b);

(b) With a flight or surface visibility of less than 3 statute miles;

(c) In flight at night;

(d) At an altitude of more than 10,000 feet MSL or 2,000 feet AGL, whichever is higher;

(e) That exceeds a V_H of 87 knots CAS;

(f) Outside of the United States;

(g) In Class B, C, or D airspace or at an airport located in Class B, C, or D airspace; unless you have received the ground and flight training from an instructor authorized to provide training and any logbook endorsement necessary for the solo flight;

(h) Contrary to any operating limitation placed on the airworthiness certificate of the aircraft being flown; or

(i) Contrary to any limitation or endorsement on your pilot certificate, airman medical certificate, U.S. driver's license, or any other limitation or endorsement from an authorized instructor.

Section 37. How do I obtain privileges to operate in Class B, C, or D airspace and at an airport located in Class B, C, or D airspace? If you hold a student pilot certificate to operate light-sport aircraft and seek to obtain privileges to operate in Class B, C, or D airspace or at an airport located in Class B, C, or D airspace, you must receive and log ground and flight training from an authorized instructor. The instructor must provide a logbook endorsement that certifies you are proficient in the following aeronautical knowledge areas and areas of operation:

(a) The use of radios, communications, navigation systems and facilities, and radar services;

(b) Operations at airports with an operating control tower, to include 3 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower;

(c) Applicable flight rules of 14 CFR part 91 for operations in Class B, C, or D airspace and ATC clearances;

(d) Ground training for the specific airspace for which the solo flight is authorized, and flight training in the specific airspace for which the solo flight is authorized within the 90-day period preceding the date of the flight into that airspace; and

(e) Ground and flight training for the specific airport for which the solo flight is authorized, if applicable, within the 90-day period preceding the date of the flight at that airport.

Sport Pilot Certificate

Section 51. What aeronautical knowledge must I have to apply for a sport pilot certificate? To apply for a sport pilot certificate, you must receive and log ground training from an authorized instructor or complete a home-study course on the following aeronautical knowledge areas:

(a) Applicable regulations of this chapter that relate to sport pilot privileges, limits, and flight operations;

(b) Accident reporting requirements of the National Transportation Safety Board;

(c) Use of the applicable portions of the ''Aeronautical Information Manual'' and FAA advisory circulars;

(d) Use of aeronautical charts for VFR navigation using pilotage, dead reckoning, and navigation systems;

(e) Recognition of critical weather situations from the ground and in flight, windshear avoidance, and the procurement and use of aeronautical weather reports and forecasts;

(f) Safe and efficient operation of aircraft, including collision avoidance, and recognition and avoidance of wake turbulence;

(g) Effects of density altitude on takeoff and climb performance;

(h) Weight and balance computations;

(i) Principles of aerodynamics, powerplants, and aircraft systems;

(j) Stall awareness, spin entry, spins, and spin recovery techniques, if applicable;

(k) Tumble entry, tumble avoidance techniques for weight-shift-control aircraft category privileges;

(l) Aeronautical decision making and judgment; and

(m) Preflight action that includes—

(1) How to get information on runway lengths at airports of intended use, data on takeoff and landing distances, weather reports and forecasts, and fuel requirements; and

(2) How to plan for alternatives if the planned flight cannot be completed or delays are encountered.

Section 53. What flight proficiency requirements must I meet to apply for a sport pilot certificate? To apply for a sport pilot certificate, you must receive and log ground and flight training from an authorized instructor on the following areas of operation for airplane single-engine, glider, gyroplane, airship, balloon, powered parachute, and weight shift control privileges:

(a) Preflight preparation;

(b) Preflight procedures;

(c) Airport, seaplane base, and gliderport operations, as applicable;

(d) Takeoffs (or launches), landings, and go-arounds:

(e) Performance maneuvers, and for gliders, performance speeds;

(f) Ground reference maneuvers (not applicable to gliders and balloons);

(g) Soaring techniques (applicable to gliders only);

(h) Navigation;

(i) Slow flight and stalls (stalls not applicable to lighter-than-air aircraft and gyroplanes);

(j) Emergency operations; and

(k) Post-flight procedures.

Section 55. What aeronautical experience must I have to apply for a sport pilot certificate? Use the following table to determine the experience you must have to apply for a sport pilot certificate depending on aircraft category and class:

If you are applying for a sport pilot certificate with . . .	Then you must log	Which must include
	at least . . .	at least . . .
(a) Airplane category and single-engine class privileges,	20 hours flight time, including at least 15 hours of flight training in a single-engine airplane from an authorized instructor and at least 5 hours solo flight training in areas of operation established in section 53 of this SFAR,	(1) 2 hours cross-country flight training; (2) 10 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; (3) One solo cross-country flight of at least 75 nautical miles total distance, with a full stop landing, and one segment of the flight consisting of a straight-line distance of at least 25 nautical miles between the takeoff and landing locations; and (4) 3 hours flight training on those areas of operation specified in section 53 of this SFAR preparing for the practical test within 60 days before the date of the test.
(b) Glider category privileges, and you haven't logged 20 hours flight time in a heavier-than-air aircraft,	10 hours flight time in a glider, including 10 flights in a glider receiving flight training from an authorized instructor and at least 2 hours of solo flight time in the areas of operation listed in section 53 of this SFAR,	(1) 5 solo launches and landings; and (2) 3 hours flight training on those areas of operation specified in section 53 of this SFAR preparing for the practical test within 60 days before the date of the test.
(c) Glider category privileges, and you have logged 20 hours flight time in a heavier-than-air aircraft,	3 hours flight time in a glider, including 5 flights in a glider receiving flight training from an authorized instructor and at least 1 hour solo flight training in the areas of operation listed in section 53 of this SFAR,	(1) 3 solo launches and landings; and (2) 3 hours flight training on those areas of operation specified in section 53 of this SFAR preparing for the practical test within 60 days before the date of the test.
(d) Rotocraft category and gyroplane class privileges,	20 hours flight time, including 15 hours flight training in a gyroplane from an authorized instructor and at least 5 hours solo flight training in the areas of operation listed in section 53 of this SFAR,	(1) 2 hours cross-country flight training; (2) 10 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; (3) One solo cross-country flight of at least 50 nautical miles total distance, with a full stop landing, and one segment of the flight consisting of a straight-line distance of at least 25 nautical miles between the takeoff and landing locations; and (4) 3 hours flight training on those areas of operation specified in section 53 of this SFAR preparing for the practical test within 60 days before the date of the test.
(e) Lighter-than-air category and airship class privileges,	20 hours flight time, including 15 hours flight training in an airship from an authorized instructor at least 3 hours performing the duties of pilot in command in an airship with an instructor in the areas of operation listed in section 53 of this SFAR,	(1) 2 hours cross-country flight training; (2) 3 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; (3) One cross-country flight of at least 25 nautical miles between the takeoff and landing locations; and (4) 3 hours flight training on those areas of operation specified in section 53 of this SFAR preparing for the practical test within 60 days before the date of the test.

If you are applying for a sport pilot certificate with . . .	Then you must log at least . . .	Which must include at least . . .
(f) Lighter-than-air category and balloon class privileges,	7 hours flight time in a balloon, including 3 training flights with an authorized instructor and one flight performing the duties of pilot in command in a balloon with an authorized instructor in the areas of operation listed in section 53 of this SFAR,	(1) 2 hours cross-country flight training; (2) One solo cross-country flight of at least 25 nautical miles total distance between take-off and landing locations; and (3) 3 hours flight training on those areas of operation specified in section 53 of this SFAR preparing for the practical test within 60 days before the date of the test.
(g) Powered parachute category privileges,	20 hours flight time, including 15 hours flight training in a powered parachute from an authorized instructor and at least 5 hours solo flight training in the areas of operation listed in section 53 of this SFAR,	(1) 2 hours cross-country flight training; (2) 10 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; (3) One solo cross-country flight of at least 25 nautical miles total distance and one segment of the flight consisting of a straight-line distance of at least 15 nautical miles between takeoff and landing locations; and (4) 3 hours flight training on those areas of operation specified in section 53 of this SFAR preparing for the practical test within 60 days before the date of the test.
(h) Weight-shift-control aircraft category privileges,	20 hours flight time, including 15 hours flight training in a weight-shift-control aircraft from an authorized instructor and at least 5 hours solo flight training in the areas of operation listed in section 53 of this SFAR,	(1) 2 hours cross-country flight training; (2) 10 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; (3) One solo cross-country flight of at least 75 nautical miles total distance, with a full stop landing, and one segment of the flight consisting of a straight-line distance of at least 25 nautical miles between takeoff and landing locations; and (4) 3 hours flight training on those areas of operation specified in section 53 of this SFAR preparing for the practical test within 60 days before the date of the test.

Section 57. What tests do I have to take to receive a sport pilot certificate? To receive a sport pilot certificate you must pass the following tests:

(a) Knowledge test. You must pass the required knowledge test on the applicable aeronautical knowledge areas listed in section 51 of this SFAR. Before you can take the knowledge test for a sport pilot certificate you must receive a logbook endorsement certifying you are prepared for the test from the authorized instructor who trained you or reviewed and evaluated your home-study course on the aeronautical knowledge areas listed in section 51 of this SFAR.

(b) Practical test. You must pass the required practical test on the applicable areas of operation listed in sections 51 and 53 of this SFAR that apply to the light-sport aircraft privilege you seek. Before you can take the practical test for a sport pilot certificate, you must receive a logbook endorsement from the authorized instructor who provided you with flight training on the areas of operation specified in sections 51 and 53 of this SFAR in preparation for the practical test. This endorsement certifies you meet the applicable aeronautical knowledge and experience requirements and are prepared for the required practical test.

Section 59. Will my sport pilot certificate list light-sport aircraft category and class ratings? No. Sport pilot certificates do not list light-sport aircraft category and class ratings. When you successfully pass the practical test for a sport pilot certificate, regardless of the light-sport aircraft privilege you seek, FAA will issue you a sport pilot certificate without any category and class ratings. You will receive a logbook endorsement of the category, class, and make and model aircraft you are authorized to operate.

Section 61. May I operate all categories, classes, and makes and models of light-sport aircraft with my sport pilot certificate? No. If you hold a sport pilot certificate, you must have a logbook endorsement from an authorized instructor for each category, class, or make and model of light-sport aircraft you operate.

Section 63. How do I obtain privileges to operate an additional category or class of light-sport aircraft? To operate an additional category or class of light-sport aircraft you must:

(a) Receive a logbook endorsement from the authorized instructor who trained you on the areas of operation specified in sections 51 and 53 of this SFAR certifying that you have met the aeronautical and knowledge experience requirements for the additional light-sport aircraft privilege you seek;

(b) Successfully complete a proficiency check from an authorized instructor other than the instructor who conducted your training on the areas of operation specified in sections 51 and 89 of this SFAR for the additional light-sport aircraft privilege you seek; and

(c) Receive a logbook endorsement certifying you are proficient in the areas of operation and authorized for the additional light-sport aircraft privilege.

Section 65. How do I obtain privileges to operate an additional make and model of light-sport aircraft? To operate an additional make and model of light-sport aircraft, you must receive a logbook endorsement from the authorized instructor who provided you aircraft-specific training for the additional light-sport aircraft make and model privileges you seek, certifying you are proficient in that make and model of light-sport aircraft.

Section 67. Must I carry my logbook with me in the aircraft? If you hold a sport pilot certificate, you must carry your logbook or documented proof of all required endorsements with you on all flights. Documented proof includes a photocopy of the logbook endorsements or a pre-printed form that includes the endorsements.

Privileges and Limits of Holders of a Sport Pilot Certificate

Section 71. What type of aircraft may I fly if I hold a sport pilot certificate? If you hold a sport pilot certificate, you may operate any light-sport aircraft, as defined in 14 CFR 1.1, for which you have received the proper logbook endorsements.

Section 73. What are my limits for the operation of light-sport aircraft? (a) If you

hold a sport pilot certificate, you must operate a light-sport aircraft in accordance with 14 CFR part 91. You are limited to sport and recreational flying only.

(b) You may not operate a light-sport aircraft:

(1) At night;

(2) In Class A airspace;

(3) In Class B, C, or D airspace, unless you have received ground and flight training and a logbook endorsement from an authorized instructor certifying you are authorized to exercise this privilege;

(4) Outside the United States, unless you have prior authorization from the country in which you seek to operate. Your sport pilot certificate carries the limitation ''Holder does not meet ICAO requirements;''

(5) That is used in a passenger-carrying airlift sponsored by a charitable organization;

(6) At an altitude of more than 10,000 feet MSL or 2,000 feet AGL, whichever is higher;

(7) When the flight or surface visibility is less than 3 statute miles;

(8) Without visual reference to the surface;

(9) That exceeds a V_H of 87 knots CAS, unless you have received ground and flight training and a logbook endorsement from an instructor authorized to provide this training;

(10) Contrary to any operating limitation placed on the airworthiness certificate of the aircraft being flown;

(11) Contrary to any limitation or endorsement on your pilot certificate, airman medical certificate, U.S. driver's license, or any other limitation or logbook endorsement from an authorized instructor;

(12) While towing any object; or

(13) While carrying a passenger or property for compensation or hire.

Section 75. May I demonstrate an aircraft in flight to a prospective buyer? If you are a sport pilot and you are not an aircraft salesperson, you may demonstrate an aircraft in flight to a prospective buyer. However, if you are an aircraft salesperson; you must hold a private pilot certificate and meet the requirements of 14 CFR 61.113(f).

Section 77. May I carry a passenger? Yes. As the holder of a sport pilot certificate, you may carry one passenger.

Section 79. May I share operating expenses of a flight with a passenger? Yes. You may share with a passenger the operating expenses of a flight, including fuel, oil, airport expenditures, and rental fees. However, you must pay at least half the operating expenses of a flight.

Section 81. How do I obtain privileges to operate in Class B, C, or D airspace? If you hold a sport pilot certificate and seek privileges to operate in Class B, C, or D airspace, you must receive and log ground and flight training from an authorized instructor who provides a logbook endorsement. That endorsement must certify you are proficient in the following aeronautical knowledge areas and areas of operation:

(1) The use of radios, communications, navigation system/facilities, and radar services;

(2) Operations at airports with an operating control tower to include 3 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower; and

(3) Applicable flight rules of part 91 for operations in Class B, C, or D airspace and ATC clearances.

Section 83. How do I obtain privileges to operate a light-sport aircraft that has a V_H greater than 87 knots CAS? If you hold a sport pilot certificate and seek privileges to operate a light-sport aircraft that has a V_H greater than 87 knots CAS you must—

(a) Receive and log ground and flight training from an authorized instructor in an aircraft that has a V_H greater than 87 knots CAS; and

(b) Receive a logbook endorsement from an authorized instructor certifying that you are proficient in the operation of this light-sport aircraft.

Transitioning to a Sport Pilot Certificate

Section 91. How do I obtain a sport pilot certificate if I already hold at least a private pilot certificate issued under 14 CFR part 61? (a) If you already hold at least a current and valid private pilot certificate issued under 14 CFR part 61, and you seek to exercise the privileges of a sport pilot certificate, you may do so without any further showing of proficiency, subject to the following limits:

(1) You are limited to the aircraft category and class ratings listed on your existing pilot certificate when exercising your sport pilot privileges;

(2) You must receive specific training for any make and model of light-sport aircraft in which you have not acted as pilot-in-command; and

(3) You must receive a logbook endorsement from the authorized instructor who trained you and certified you are proficient in that make and model of light-sport aircraft.

(b) If you want to exercise the privileges of a sport pilot for a category or class for which you are not currently rated, you must meet the applicable category and class requirements contained in sections 51 through 57 of this SFAR.

Section 93. How do I obtain a sport pilot certificate if I do not hold a pilot certificate issued under 14 CFR part 61, but I have been flying ultralight vehicles under 14 CFR part 103? Use the following table to determine how to obtain a sport pilot certificate if you don't hold a pilot certificate issued under 14 CFR part 61, but you have been flying ultralight vehicles under 14 CFR part 103:

If you are . . .	Then you must . . .	And those records must . . .
(a) A registered ultralight pilot with an FAA-recognized ultralight organization not later than 24 months after the effective date of the final rule, and you want to apply for a sport pilot certificate.	(1) Meet the eligibility requirements in sections 3 and 15 of this SFAR, but not the experience requirements in sections 51, 53, and 55 of this SFAR; (2) Pass the knowledge test and practical test for a sport pilot certificate; and (3) Obtain a notarized copy of your ultralight pilot records from the FAA-recognized ultralight organization,	(i) Document that you are a registered ultralight pilot with that FAA-recognized ultralight organization; (ii) List each category and class of ultralight vehicle that the organization recognizes that you are qualified to operate; and (iii) Be presented when applying for a sport pilot certificate.
(b) A registered ultralight pilot with an FAA-recognized ultralight organization after 24 months after the effective date of the final rule, and you want to apply for a sport pilot certificate,	(1) Meet the eligibility requirements in sections 3 and 15 of this SFAR; (2) Meet the experience requirements in sections 51, 53, and 55, of this SFAR, however you may credit your ultralight flight and ground time in accordance with section 177 of this SFAR toward the experience requirements in sections 51, 53, and 55 of this SFAR; (3) Pass the knowledge test and practical test for a sport pilot certificate; and	

If you are . . .	Then you must . . .	And those records must . . .
	(4) Obtain a notarized copy of your ultralight pilot records from the FAA-recognized ultralight organization,	(i) Document that you are a registered ultralight pilot with that FAA-recognized ultralight organization; (ii) List each category and class of ultralight vehicle that the organization recognizes that you are qualified to operate; and (iii) Be presented when applying for a sport pilot certificate.
(c) Not a registered ultralight pilot with an FAA-recognized ultralight organization, and you want to apply for a sport pilot certificate.	(1) Meet the eligibility requirements in sections 3 and 15 of this SFAR; (2) Meet the experience requirements in sections 51, 53, and 55 of this SFAR; and (3) Pass the knowledge test and the practical test for a sport pilot certificate.	

Section 95. How do I obtain a sport pilot certificate if I don't hold a pilot certificate and have never flown an ultralight vehicle? If you don't hold a pilot certificate and haven't flown an ultralight vehicle, you must meet the applicable requirements of sections 3, 15 and 51 through 57 of this SFAR to obtain a sport pilot certificate.

Flight Instructor Certificate With a Sport Pilot Rating

Section 111. Must I hold an airman medical certificate? While exercising the privileges of a flight instructor certificate with a sport pilot rating and while acting as pilot in command of a light-sport aircraft other than a glider or balloon, you must hold and possess;

(a) A current and valid U.S. driver's license; or

(b) A current and valid airman medical certificate issued under 14 CFR part 67.

Section 113. What aeronautical knowledge requirements must I meet to apply for a flight instructor certificate with a sport pilot rating? (a) To apply for a flight instructor certificate with a sport pilot rating, you must receive and log ground training on the fundamentals of instruction from an authorized instructor on all of the following:

(1) The learning process;

(2) Elements of effective teaching;

(3) Student evaluation and testing;

(4) Course development;

(5) Lesson planning; and

(6) Classroom training techniques.

(b) You do not have to comply with paragraph (a) of this section if:

(1) You hold a flight instructor certificate or ground instructor certificate issued under 14 CFR part 61;

(2) You hold a current teacher's certificate issued by a State, county, city, or municipality; or

(3) You are employed as a teacher at an accredited college or university.

(c) You must receive and log ground training from an authorized instructor on the aeronautical knowledge areas applicable to a sport pilot certificate.

Section 115. What training to meet flight proficiency requirements must I have to apply for a flight instructor certificate with a sport pilot rating? (a) To apply for a flight instructor certificate with a sport pilot rating for all sport pilot aircraft categories, you must receive and log flight and ground training from an authorized instructor in the following areas of operation:

(1) Technical subject areas;

(2) Pre-flight preparation;

(3) Pre-flight lesson on a maneuver to be performed in flight;

(4) Pre-flight procedures;

(5) Airport, seaplane base, and gliderport operations, as applicable;

(6) Takeoffs (or launches), landings, and go-arounds;

(7) Fundamentals of flight;

(8) Performance maneuvers and for gliders performance speeds;

(9) Ground reference maneuvers (except for gliders and lighter-than-air);

(10) Soaring techniques;

(11) Slow flight and stalls (stalls not applicable to lighter-than-air and gyroplanes);

(12) Spins (applicable to airplanes, gliders, and weight-shift-control aircraft);

(13) Emergency operations; and

(14) Post-flight procedures.

(b) [Reserved]

Section 117. What aeronautical experience must I have to apply for a flight instructor certificate with a sport pilot rating? Use the following table to determine the experience you must have for each aircraft category and class:

If you are applying for a flight instructor certificate with a sport pilot rating for . . .	Then you must log at least . . .	Which must include at least . . .
(a) Airplane category and single-engine class privileges,	(1) 150 hours flight time as a pilot,	(i) 100 hours flight time as pilot in command in powered aircraft; (ii) 50 hours flight time in a single-engine airplane; (iii) 25 hours cross-country flight time; (iv) 10 hours cross-country flight time in a single-engine airplane; and (v) 15 hours flight time as pilot in command in a single-engine airplane that is a light-sport aircraft.
(b) Glider category privileges,	(1) 25 hours flight time as pilot in command in a glider, 100 flights in a glider, and 15 flights as pilot in command in a glider that is a light-sport aircraft; or (2) 100 hours in heavier-than-air aircraft, 20 flights in a glider, and 15 flights as pilot in command in a glider that is a light-sport aircraft.	
(c) Rotocraft category and gyroplane class privileges.	(1) 125 hours flight time as a pilot,	(i) 100 hours flight time as pilot in command in powered aircraft; (ii) 50 hours flight time in a gyroplane; (iii) 10 hours cross-country flight time;

If you are applying for a flight instructor certificate with a sport pilot rating for . . .	Then you must log at least . . .	Which must include at least . . .
		(iv) 3 hours cross-country flight time in a gyroplane; and (v) 15 hours flight time as pilot in command in a gyroplane airplane that is a light-sport aircraft.
(d) Lighter-than-air category and airship class privileges,	(1) 100 flight time as a pilot,	(i) 40 hours flight time in an airship; (ii) 20 hours pilot in command time in an airship; (iii) 10 hours cross-country flight time; (iv) 5 hours cross-country flight time in an airship; and (v) 15 hours flight time as pilot in command in an airship that is a light-sport aircraft.
(e) Lighter-than-air category and balloon class privileges,	(1) 35 hours flight time as pilot in-command,	(i) 20 hours flight time in a balloon; (ii) 10 flights in a balloon; and (iii) 5 flights as pilot in command in a balloon that is a light-sport aircraft.
(f) Weight-shift-control aircraft category privileges,	(1) 150 hours flight time as a pilot,	(i) 100 hours flight time as pilot in command in powered aircraft; (ii) 50 hours flight time in a weight-shift-control aircraft; (iii) 25 hours cross-country flight time; (iv) 10 hours cross-country flight time in a weight-shift-control aircraft; and (v) 15 hours flight time as pilot in command in a weight-shift-cotnrol aircraft that is a light-sport aircraft.
(g) Powered-parachute category privileges,	(1) 100 hours flight time as a pilot,	(i) 75 hours flight time as pilot in command in powered aircraft; (ii) 50 hours flight time in a powered parachute; (iii) 15 hours cross-country flight time; (iv) 5 hours cross-country flight time in a powered parachute; and (v) 15 hours flight time as pilot in command in a powered parachute that is a light-sport aircraft.

Section 119. What tests do I have to take to get a flight instructor certificate with a sport pilot rating? To obtain a flight instructor certificate with a sport pilot rating, you must pass the following tests:

(a) *Knowledge test.* Before you can take a knowledge test you must receive a logbook endorsement from an authorized instructor certifying that you are prepared for that knowledge test. You must pass knowledge tests on:

(1) The fundamentals of instructing listed in section 113(a) of this SFAR, unless you met the requirements of section 113(b) of this SFAR; and

(2) The aeronautical knowledge areas required by section 113(c) of this SFAR.

(b) *Practical test.* Before you can take the practical test for a flight instructor certificate with a sport pilot rating, you must receive a logbook endorsement certifying that you meet the applicable aeronautical knowledge and experience requirements and you are prepared for the practical test. You must receive this endorsement from the authorized instructor who provided you the flight training on the areas of operation specified in section 115 of this SFAR that apply to the light-sport aircraft privilege you seek. You must also:

(1) Pass a practical test on the areas of operation listed in section 115 of this SFAR that are appropriate to the flight instructor privilege you seek;

(2) Pass a practical test in a light-sport aircraft that is representative of the category and class of aircraft for the privilege you seek;

(3) Receive a logbook endorsement from an authorized instructor indicating that you are competent and possess instructional proficiency in stall awareness, spin entry, spins, and spin recovery procedures after you have received flight training in those training areas in an airplane, glider, or weight-shift-control aircraft, as appropriate, that is certificated for spins;

(4) Demonstrate you are able to teach stall awareness, spin entry, spins, and spin recovery procedures in an airplane, glider, or weight-shift-control aircraft, as appropriate. If you haven't previously failed a test based on this requirement, and you provide the endorsement required by paragraph (b)(3) of this section, an examiner may accept it instead of the demonstration required by this paragraph; and

(5) If you are taking a retest because you previously failed a test based on the requirement of paragraph (b)(4) of this section, you must pass a test on stall awareness, spin entry, spins, and spin recovery instructional procedures in the applicable light-sport aircraft that is certificated for spins.

Section 121. What records must I keep and for how long? (a) You must keep records that include the name of:

(1) Each person whose logbook or student pilot certificate you have endorsed for solo flight privileges, and the date of the endorsement;

(2) Each person for whom you have provided an endorsement for a knowledge test, practical test, or proficiency check and the record must indicate the kind of test or check, the date, and the results;

(3) Each person whose logbook you have endorsed as proficient to operate:

(i) An additional category or class of light-sport aircraft;

(ii) An additional make and model of light-sport aircraft;

(iii) In Class B, C, or D airspace; and

(iv) A light-sport aircraft with a V_H greater than 87 knots CAS; and

(4) Each person whose logbook you have endorsed as proficient to provide flight training in an additional:

(i) Category or class of light-sport aircraft; and

(ii) Make and model of light-sport aircraft.

(b) You must keep the records listed in paragraph (a) of this section for 3 years. You

may keep these records in a logbook or a separate document.

Section 123. Will my flight instructor certificate with a sport pilot rating list light-sport aircraft category and class ratings? No. A flight instructor certificate with a sport pilot rating does not list light-sport aircraft category and class ratings. When you successfully pass the practical test for a flight instructor certificate with a sport pilot rating, regardless of the light-sport aircraft privilege you seek, FAA will issue you a flight instructor certificate with a sport pilot rating without any category and class ratings. You will receive logbook endorsements for the category, class, and make and model aircraft in which you are authorized to provide training.

Section 125. Am I authorized to provide training in all categories and classes of light-sport aircraft with my flight instructor certificate with a sport pilot rating? No, you may provide training only in a category and class of light-sport aircraft for which you have received the proper endorsements. If you hold a flight instructor certificate with a sport pilot rating, you must have a logbook endorsement from an authorized instructor for each additional category and class and for each additional make and model of light-sport aircraft in which you provide training.

Section 127. How do I obtain privileges to provide flight training in an additional category or class of light-sport aircraft? To obtain privileges to provide flight training for an additional category or class of light-sport aircraft, you must:

(a) Receive a logbook endorsement from the authorized instructor who trained you as specified in section 115 of this SFAR for the additional light-sport aircraft privilege you seek. This endorsement certifies you have met the aeronautical and knowledge experience requirements for the additional light-sport aircraft privilege you seek; and

(b) Successfully complete a proficiency check from an authorized instructor other than the instructor who trained you on the areas specified in section 115 of this SFAR for the additional light-sport aircraft privilege you seek. The authorized instructor will certify in your logbook that you are proficient in the areas of operation and authorized for the additional light-sport aircraft privilege.

Section 129. How do I obtain privileges authorizing me to provide flight training in an additional make and model of light-sport aircraft? To obtain privileges to provide flight training in an additional make and model of light-sport aircraft, you must receive a logbook endorsement from the authorized instructor who provided you aircraft-specific training for the additional light-sport aircraft make and model you seek. The endorsement certifies you are proficient to provide flight training in that make and model of light-sport aircraft.

Section 131. Do I need to carry my logbook with me in the aircraft? Yes. You must carry your logbook or documented proof of required endorsements with you while exercising the privileges of your flight instructor certificate with a sport pilot rating.

Section 133. What privileges do I have if I hold a flight instructor certificate with a sport pilot rating? You are authorized, within the limitations of your flight instructor certificate with a sport pilot rating, to provide training and logbook endorsements for:

(a) A student pilot certificate to operate light-sport aircraft;

(b) A sport pilot certificate;

(c) A sport pilot privilege;

(d) A flight review for a sport pilot;

(e) A practical test for a sport pilot;

(f) A knowledge test for a sport pilot; and

(g) A proficiency check for an additional category or class and make and model privilege for a sport pilot certificate or flight instructor certificate with a sport pilot rating.

Section 135. What are the limits of a flight instructor certificate with a sport pilot rating? If you hold a flight instructor certificate with a sport pilot rating, you are subject to the following limits:

(a) You may provide ground and flight training only in the category, class, and make and model of light-sport aircraft for which you have received the proper logbook endorsements for both your pilot certificate and your flight instructor certificate;

(b) You must comply with the limitations established in §§ 61.87(n), 61.93(d), 61.195 (a), (d)(1)–(d)(3), and (d)(5);

(c) You must not provide flight training required for a sport pilot certificate or privilege or a flight instructor certificate with a sport pilot rating or privilege unless you have at least 5 hours of pilot-in-command time or aeronautical experience, or any combination thereof, in the make and model of light-sport aircraft. You must get the aeronautical experience as a registered pilot with an FAA-recognized ultralight organization.

(d) You must not provide training for operations in Class B, C, or D airspace, unless you have the endorsement specified in section 81 of this SFAR, or are otherwise authorized to conduct operations in this airspace; and

(e) You must not provide training in a light-sport aircraft with a V_H greater that 87 knots CAS, unless you have the endorsement specified in section 83 of this SFAR or are otherwise authorized to operate that aircraft.

Section 137. Are there any additional qualifications for training first-time flight instructor applicants? No. You do not have to comply with the requirements for training first-time flight instructor applicants specified in 14 CFR 61.195(h).

Section 139. May I give myself an endorsement? No. If you hold a flight instructor certificate with a sport pilot rating, you may give yourself an endorsement for any certificate, privilege, flight review, authorization, practical test, knowledge test, or proficiency check required by 14 CFR part 61.

Transitioning to a Flight Instructor Certificate With a Sport Pilot Rating

Section 151. What if I already hold a flight instructor certificate issued under 14 CFR part 61 and want to exercise the privileges of a flight instructor certificate with a sport pilot rating? (a) If you already hold at least a current and valid flight instructor certificate issued under 14 CFR part 61, and you seek to exercise the privileges of a flight instructor certificate with a sport pilot rating, you may do so without any further showing of proficiency, subject to the following limits:

(1) You are limited to the aircraft category and class ratings listed on your existing pilot certificate and flight instructor certificate when exercising your flight instructor privileges;

(2) You must receive specific training for any make and model of light-sport aircraft in which you have not acted as pilot in command, and the instructor who conducted your training must endorse your logbook certifying that you are proficient in that make and model of light-sport aircraft; and

(3) You must comply with the requirement in section 135 of this SFAR to have at least 5 hours of pilot in command time in the specific make and model light-sport aircraft.

(b) If you want to exercise the privileges of your flight instructor certificate in a category, class, or make and model of light-sport aircraft for which you are not currently rated you must meet the requirements contained in sections 127 and 129 of this SFAR.

Section 153. What if I am only a registered ultralight instructor with an FAA recognized ultralight organization? If you are a registered ultralight instructor with an FAA-recognized ultralight organization not later than [Date 36 months after the effective date of the final rule.], and you want to apply for a flight instructor certificate with a sport pilot rating:

(a) You must hold either a current and valid sport pilot certificate or at least a current and valid private pilot certificate issued under 14 CFR part 61;

(b) You must meet the eligibility requirements in sections 3 and 111 of this SFAR. You do not have to meet the experience requirements in sections 113 through 117 of this SFAR, except as specified in section 153(c) of this SFAR;

(c) You must have at least the minimum total pilot flight time in the category and class of light-sport aircraft specified in section 117 of this SFAR. You need not meet the pilot-in-command, time in aircraft category and class, and cross-country pilot flight time requirements specified in section 117 of this SFAR. You may credit flight time as the operator of an ultralight vehicle in accordance with the logging of flight and ground time requirements under section 177 of this SFAR;

(d) You need not meet the aeronautical knowledge requirement specified in section 113(a) of this SFAR or meet the exception specified in section 113(b) of this SFAR if you have passed the FAA's or an FAA-recognized ultralight organization's Fundamentals of Instruction knowledge test;

(e) You must obtain and present upon application a notarized copy of your ultralight pilot records from the FAA-recognized ultralight organization. Those records must:

(1) Document that you are a registered ultralight flight instructor with that FAA-recognized ultralight organization; and

(2) List each category and class of ultralight vehicle that the organization recognizes that you are qualified to operate and authorized to provide training in; and

(f) You must pass the knowledge test and practical test for a sport pilot certificate.

Section 155. What if I've never provided flight or ground training in an aircraft or an

ultralight vehicle? You must meet all of the applicable requirements under sections 3 and 11 through 119 of this SFAR to apply for a flight instructor certificate with a sport pilot rating.

Pilot Logbooks

Section 171. How do I log training time and aeronautical experience? If you hold a sport pilot certificate or flight instructor certificate with a sport pilot rating, you must document and record training time and aeronautical experience according to 14 CFR 61.51 and the pilot logbook requirements of this SFAR.

Section 173. How do I log pilot-in-command flight time? If you hold a sport pilot certificate you may log flight time as pilot in command only when—

(a) You are the sole manipulator of the controls of an aircraft for which you have privileges; or

(b) You are the sole occupant of the aircraft.

Section 175. May I use training time and aeronautical experience logged as a sport pilot toward a higher certificate or rating issued under 14 CFR part 61? Yes, you may use training time and aeronautical experience documented as a sport pilot to meet the requirements for a higher certificate or rating in accordance with 14 CFR 61.51 and sections 173, 177 and 179 of this SFAR.

Section 177. May I credit training time and aeronautical experience logged as an ultralight operator toward a sport pilot certificate? (a) You may credit training time and aeronautical experience as the operator of an ultralight vehicle toward the experience requirements of a sport pilot certificate if—

(1) You are a registered ultralight pilot with an FAA-recognized ultralight organization; and

(2) Your ultralight training time and aeronautical experience is documented in accordance with the provisions for logging training and aeronautical experience specified by that organization.

(b) If you want to credit the training time and aeronautical experience you have logged in an ultralight vehicle toward a sport pilot certificate or flight instructor certificate with a sport pilot rating, you can only do so in the same category and class of light-sport aircraft. That is, if you have been flying a powered parachute ultralight, you can apply your experience to the requirements for a powered parachute light-sport aircraft, but not to the requirements for a weight-shift-control light-sport aircraft.

Section 179. May I use aeronautical experience I obtained as the operator of an ultralight vehicle to meet the requirements for a higher certificate or rating issued under 14 CFR part 61? You may not use aeronautical experience you obtained as the operator of an ultralight vehicle to meet the requirements for a certificate or rating specified in 14 CFR 61.5, except for that time credited to meet the requirements for the issuance of a sport pilot certificate under this SFAR.

Recent Flight Experience Requirements for a Sport Pilot Certificate or a Flight Instructor Certificate With a Sport Pilot Rating

Section 191. What recent flight experience requirements must I meet for a sport pilot certificate? If you hold a sport pilot certificate, you must comply with the appropriate recent flight experience requirements specified in 14 CFR 61.57.

Section 193. What are the flight review requirements for a sport pilot certificate? If you hold a sport pilot certificate, you must comply with the appropriate flight review requirements specified in 14 CFR 61.56.

Section 195. How do I renew my flight instructor certificate? To renew your flight instructor certificate, you must comply with the requirements specified in 14 CFR 61.197.

Section 197. What must I do if my flight instructor certificate with a sport pilot rating expires? If your flight instructor certificate with a sport pilot rating expires, you may exchange that certificate for a new certificate by passing a practical test as prescribed in section 119 of this SFAR. The FAA will reinstate any privilege authorized by the expired certificate.

Ground Instructors

Section 211. What are the eligibility requirements for a ground instructor certificate? You must meet the eligibility requirements in 14 CFR 61.213 to be eligible for a ground instructor certificate or rating.

Section 213. What additional privileges do I have if I hold a ground instructor certificate with a basic ground instructor rating? If you hold a ground instructor certificate with a basic ground instructor rating, specified in 14 CFR 61.215(a), you are authorized the following additional privileges:

(a) Ground training in the aeronautical knowledge areas required for a sport pilot certificate or privileges under 14 CFR part 61;

(b) Ground training required for a sport pilot flight review; and

(c) A recommendation for a knowledge test required for a sport pilot certificate.

Section 215. What additional privileges do I have if I hold a ground instructor certificate with an advanced ground instructor rating? If you hold an advanced ground instructor rating, specified in 14 CFR 61.215(b), you are authorized the following additional privileges:

(a) Ground training in the aeronautical knowledge areas required for any certificate or privileges under this SFAR;

(b) Ground training required for a sport pilot flight review; and

(c) A recommendation for a knowledge test required for the issuance of any certificate under this SFAR.

17. Amend § 61.1 as follows:

a. Revise paragraphs (b)(2)(iii) and (b)(3)(i) introductory text;

b. Redesignate paragraphs (b)(3)(iii), (b)(3)(iv), and (b)(3)(v) as paragraphs (b)(3)(v), (b)(3)(vi), and (b)(3)(vii); and

c. Add new paragraphs (b)(3)(iii) and (b)(3)(iv). The revisions and additions read as follows:

§ 61.1 Applicability and definitions.

* * * * *

(b) * * *

(2) * * *

(iii) A person authorized by the FAA to provide ground training or flight training under SFAR No. 89, SFAR No. 58, or parts 61, 121, 135, or 142 of this chapter when conducting ground training or flight training in accordance with that authority.

(3) * * *

(i) Except as provided in paragraphs (b)(3)(ii) through (b)(3)(vi) of this section, time acquired during flight—

* * * * *

(iii) For the purpose of meeting the aeronautical experience requirements (except for powered parachute category privileges) for a sport pilot certificate time acquired during a flight—

(A) Conducted in an appropriate aircraft;

(B) That includes a point of landing that was at least a straight line distance of more than 25 nautical miles from the original point of departure; and

(C) That involves the use of dead reckoning, pilotage, electronic navigation aids; radio aids, or other navigation systems to navigate to the landing point.

(iv) For the purpose of meeting the aeronautical experience requirements for a sport pilot certificate with powered parachute privileges, or private pilot certificate with a powered parachute category rating, time acquired during a flight—

(A) Conducted in an appropriate aircraft;

(B) That includes a point of landing that was at least a straight line distance of more than 15 nautical miles from the original point of departure; and

(C) That involves the use of dead reckoning, pilotage, electronic navigation aids; radio aids, or other navigation systems to navigate to the landing point.

* * * * *

18. Amend § 61.5 by:

a. Redesignating paragraphs (a)(1)(ii) through (a)(1)(v) as paragraphs (a)(1)(iii) through (a)(1)(vi);

b. Adding new paragraphs (a)(1)(ii), (b)(1)(vi) and (b)(1)(vii);

c. Redesignating paragraphs (b)(5) and (b)(6) as paragraphs (b)(6) and (b)(7); and

d. Adding new paragraphs (b)(5) and (c)(5). The additions read as follows:

§ 61.5 Certificates and ratings issued under this part.

(a) * * *

(1) * * *

(ii) Sport pilot.

* * * * *

(b) * * *

(1) * * *

(vi) Powered parachute.

(vii) Weight-shift-control aircraft.

* * * * *

(5) Weight-shift-control aircraft class ratings—

(i) Weight-shift-control aircraft land.

(ii) Weight-shift-control aircraft sea.

* * * * *

(i) * * *

(5) Sport pilot rating.

* * * * *

19. Amend § 61.31 by revising paragraph (k)(2)(iii) to read as follows:

§ 61.31 Type rating requirements, additional training, and authorization requirements.

* * * * *

(k) * * *

(2) * * *

(iii) The holder of a pilot certificate when operating an aircraft under the authority of an experimental or provisional aircraft type certificate unless the operation involves carrying passengers;

* * * * *

20. Amend § 61.99 by revising the introductory language to read as follows:

§ 61.99 Aeronautical experience.

A person who applies for a recreational pilot certificate must receive and log at least 30 hours of flight time that includes at least:

* * * * *

21. Amend § 61.101 by revising paragraphs (b) introductory text and (c) introductory text, redesignating paragraphs (d) through (i) as paragraphs (e) through (j), adding a new paragraph (d), and revising newly designated paragraphs (e) introductory text, (e)(1), (e)(7) and (e)(11) to read as follows:

§ 61.101 Recreational pilot privileges and limits.

* * * * *

(b) A person who holds a current and valid recreational pilot certificate may act as pilot in command of an aircraft on a flight that is within 50 nautical miles from the departure airport, provided that person has:

* * * * *

(c) A person who holds a current and valid recreational pilot certificate may act as pilot in command of an aircraft on a flight that exceeds 50 nautical miles from the departure airport, provided that person has:

* * * * *

(d) A person who holds a current and valid recreational pilot certificate may act as pilot in command of an aircraft in Class B, C, or D airspace, provided that person has:

(1) Received and logged ground and flight training from an authorized instructor on the following aeronautical knowledge areas and areas of operation, as appropriate to the aircraft rating held:

(i) The use of radios, communications, navigation system/facilities, and radar services;

(ii) Operations at airports with an operating control tower to include 3 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower; and

(iii) Applicable flight rules of part 91 of this chapter for operations in Class B, C, or D airspace and air traffic control clearances.

(2) Been found proficient on ground and flight training requirements in paragraph (d)(1) of this section; and

(3) Received from an authorized instructor a logbook endorsement, which is carried on the person's possession in the aircraft, that certifies the person has received and been found proficient on the required ground and flight training in paragraph (d)(1) of this section.

(e) Except as provided in paragraphs (d) and (i) of this section, a recreational pilot may not act as pilot in command of an aircraft:

(1) That is certificated—

(i) For more than four occupants;

(ii) With more than one powerplant;

(iii) With a powerplant of more than 180 hp; or

(iv) With retractable landing gear.

* * * * *

(7) In Class A, B, C, or D airspace;

* * * * *

(11) On a flight outside the United States, unless authorized by the country in which the flight is conducted;

* * * * *

22. Amend § 61.107 by adding paragraphs (b)(9) and (b)(10) to read as follows:

§ 61.107 Flight proficiency.

* * * * *

(b) * * *

(9) For a powered parachute category rating:

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Ground reference maneuvers;

(vii) Navigation;

(viii) Slow flight and stalls;

(ix) Night operations, except as provided in § 61.110;

(x) Emergency operations; and

(xi) Post-flight procedures.

(10) For a weight-shift-control aircraft category rating:

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and seaplane base operations, as applicable;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Ground reference maneuvers;

(vii) Navigation;

(viii) Slow flight and stalls;

(ix) Night operations, except as provided in § 61.110;

(x) Emergency operations; and

(xi) Post-flight procedures.

23. Amend § 61.109 by:

a. Revising the reference ''paragraph (i)'' to read ''paragraph (j)'' the introductory text of paragraphs (a), (b), (c), (d), and (e);

b. Revising the reference ''paragraphs (i)(2)'' to read ''paragraph (j)(2)'' in paragraph (i)(1);

c. Redesignating paragraph (i) as paragraph (j); and

d. Adding a new paragraph (i).

The addition reads as follows:

§ 61.109 Aeronautical experience.

* * * * *

(i) Use the following table to determine the aeronautical experience requirements for a powered parachute rating and a weight-shift-control aircraft rating:

Except as provided in paragraph (k) of this section, a person who applies for a private pilot certificate with. . .	Must log at least 40 hours flight time that includes at least. . .	And the training must include at least. . .
(1) A powered parachute category rating,	20 hours flight training from an authorized instructor and 10 hours solo flight training in the areas listed in § 61.107(b)(9),	(i) Three hours cross-country flight training in a powered parachute; (ii) Except as provided in § 61.110, 3 hours night flight training in a powered parachute that includes: (A) One cross-country flight over 25 nautical miles total distance; and (B) Ten takeoffs and landings (with each landing involving a flight in the traffic pattern) at an airfield;

Except as provided in paragraph (k) of this section, a person who applies for a private pilot certificate with. . .	Must log at least 40 hours flight time that includes at least. . .	And the training must include at least. . .
		(iii) Three hours flight training in preparation for the practical test in a powered parachute, which must have been performed within the 60-day period preceding the date of the test; and (iv) Ten hours solo flight time in a powered parachute, consisting of at least— (A) Three hours solo cross-country time; (B) One solo cross-country flight over 50 nautical miles total distance, with one segment of the flight being a straight line distance of at least 25 nautical miles between takeoff and landing locations; and (C) Three takeoffs and 3 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.
(2) A weight-shift-control rating,	20 hours flight training from an authorized instructor and 10 hours solo flight training in the areas listed in § 61.107(b)(10),	(i) Three hours cross-country flight training in a weight-shift-control aircraft; (ii) Except as provided in § 61.110, 3 hours night flight training in a weight-shift-control aircraft that includes: (A) One cross-country flight over 100 nautical miles total distance; and (B) Ten takeoffs and landings (with each landing involving a flight in the traffic pattern) at an airport; (iii) Three hours flight training in preparation for the practical test in a weight-shift-control aircraft, which must have been performed within the 60-day period preceding the date of the test; and (iv) Ten hours solo flight time in a weight-shift-control aircraft, consisting of at least— (A) Five hours solo cross-country time; (B) One solo cross-country flight over 150 nautical miles total distance, with landings at a minimum of three points, and one segment of the flight being a straight line distance of at least 50 nautical miles between takeoff and landing locations; and (v) Three takeoffs and landings (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

* * * * *

24. Amend § 61.195 by revising paragraph (b) introductory text, and adding a new paragraph (k) to read as follows:

§ 61.195 Flight instructor limitations and qualifications.

(b) *Aircraft ratings.* Except as provided in paragraph (k) of this section, a flight instructor may not conduct flight training in any aircraft for which the flight instructor does not hold:

* * * * *

(k) *Weight-shift-control aircraft and powered parachute ratings.* A flight instructor who provides training for a private pilot certificate with a weight-shift-control aircraft rating or powered parachute rating must hold at least a flight instructor certificate with a sport pilot rating and a private pilot certificate with a category and class rating appropriate to the aircraft in which the training is provided.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

25. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

26. Amend § 65.101 by revising paragraph (b) to read as follows:

§ 65.101 Eligibility requirements: General.

* * * * *

(b) This section does not apply to a repairman certificate (experimental aircraft builder) under § 65.104 or to a repairman certificate (light-sport aircraft) under § 65.107.

27. Add § 65.107 to subpart E to read as follows:

§ 65.107 Repairman certificate (light-sport aircraft): Eligibility, privileges and limits.

(a) Use the following table to determine the eligibility requirements for a repairman certificate (light-sport aircraft):

To be eligible for . . .	You must . . .
(1) A repairman certificate (light-sport aircraft):	(i) Be at least 18 years of age; (ii) Be able to read, speak, write, and understand English. If for medical reasons you can't meet one of these requirements, the FAA may place limitations on your repairman certificate necessary to safely perform the actions authorized by the certificate and rating; (iii) Demonstrate the requisite skill to determine whether a light-sport aircraft is in a condition for safe operation; and (iv) Be a citizen of the United States, or a citizen of a foreign country who has lawfully been admitted for permanent residence in the United States.

To be eligible for . . .	You must . . .
(2) A repairman certificate (light-sport aircraft) with an inspection rating:	(i) Meet the requirements of paragraph (a)(1) of this section; and (ii) Complete a 16-hour training course acceptable to the FAA on the inspection requirements of the particular make and model of light-sport aircraft for which you intend to exercise the privileges of this rating.
(3) A repairman certificate (light-sport aircraft) with a maintenance rating:	(i) Meet the requirements of paragraph (a)(1) of this section; and (ii) Complete an 80-hour training course acceptable to the FAA on the maintenance requirements of the particular category of light-sport aircraft for which you intend to exercise the privileges of this rating.

(b) The holder of a repairman certificate (light-sport aircraft) with a inspection rating may perform a condition inspection on an aircraft owned by the holder with an experimental certificate issued under § 21.191(i) of this chapter, provided that person has completed the training specified in paragraph (a)(2)(ii) of this section on the same make and model of light-sport aircraft to be inspected; and

(c) The holder of a repairman certificate (light-sport aircraft) with a maintenance rating may perform maintenance on a light-sport aircraft that has a special airworthiness certificate issued under § 21.186 or § 21.191(i) of this chapter, provided that person has completed the training specified in paragraph (a)(3)(ii) of this section on the same category of light-sport aircraft on which maintenance is to be performed. To perform a major repair the holder must complete training acceptable to the Administrator appropriate to the repair performed.

(d) Section 65.103 does not apply to the holder of a repairman certificate (light-sport aircraft) while performing under that certificate.

PART 91—GENERAL OPERATING AND FLIGHT RULES

28. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–56507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

29. Amend § 91.1 by revising paragraph (b) to read as follows:

§ 91.1 Applicability.

* * * * *

(b) Each person operating an aircraft in the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States must comply with §§ 91.1 through 91.21; §§ 91.101 through 91.143; §§ 91.151 through 91.159; §§ 91.167 through 91.193; § 91.203; § 91.205; §§ 91.209 through 91.217; § 91.221; §§ 91.303 through 91.319; §§ 91.323 through 91.327; § 91.605; § 91.609; §§ 91.703 through 91.715; and § 91.903.

* * * * *

30. Amend § 91.113 by revising paragraphs (d)(2) and (d)(3) to read as follows:

§ 91.113 Right-of-way rules: Except water operations.

* * * * *

(d) * * *

(2) A glider has the right of way over an airship, powered parachute, weight-shift-control aircraft, airplane, or rotorcraft.

(3) An airship has the right of way over a powered parachute, weight-shift-control aircraft, airplane, or rotorcraft.

* * * * *

31. Amend § 91.126 by revising paragraph (b)(2) to read as follows:

§ 91.126 Operating on or in the vicinity of an airport in Class G airspace.

(b) * * *

(2) Each pilot of a helicopter or a powered parachute must avoid the flow of fixed wing aircraft.

* * * * *

32. Amend § 91.131 by redesignating paragraph (b)(1)(ii) as (b)(1)(iii), adding new paragraph (b)(1)(ii), and revising paragraph (b)(2) to read as follows:

§ 91.131 Operations in Class B airspace.

* * * * *

(b) * * *

(1) * * *

(ii) The pilot in command holds a sport pilot certificate and has met the requirements of section 81 of SFAR 89; or

* * * * *

(2) Notwithstanding the provisions of paragraph (b)(1)(iii) of this section, no person may take off or land a civil aircraft at those airports listed in section 4 of Appendix D of this part unless the pilot in command holds at least a private pilot certificate; or a sport pilot certificate and has met the requirements of section 81 of SFAR 89.

* * * * *

33. Amend § 91.155 by revising paragraph (b)(2) to read as follows:

§ 91.155 Basic VFR weather minimums.

(b) * * *

(2) *Airplane, powered parachute, or weight-shift-control aircraft.* If visibility is between 1 and 3 statute miles during night hours, and you are operating in an airport traffic pattern within one-half mile of the runway, you may operate an airplane, powered parachute, or weight-shift-control aircraft clear of clouds.

* * * * *

34. Amend § 91.213 by revising paragraph (d)(1)(i) to read as follows:

§ 91.213 Inoperative instruments and equipment.

* * * * *

(d) * * *

(1) * * *

(i) Rotorcraft, non-turbine powered airplane, glider, lighter-than-air aircraft, or light-sport aircraft, for which a Master Minimum Equipment List has not been developed; or

* * * * *

35. Amend § 91.319 by revising paragraph (a)(2) and adding paragraph (f) to read as follows:

§ 91.319 Aircraft having experimental certificates: Operating limitations.

(a) * * *

(2) Carrying persons or property for compensation or hire except while conducting flight training in an aircraft issued an airworthiness certificate under § 21.191(i)(1) of this chapter.

* * * * *

(f) The FAA may issue deviation authority providing relief from the compensation provisions of this section for the purpose of flight training. The FAA will issue this deviation authority as a Letter of Deviation Authority.

(1) The FAA may cancel or amend a Letter of Deviation Authority at any time.

(2) Submit a request for deviation authority to the FAA at least 60 days before the date of intended operations. A request for deviation authority must contain a complete description of the proposed operation and justification for the deviation requested.

36. Add § 91.327 to read as follows:

§ 91.327 Aircraft having special light-sport category airworthiness certificates: Operating limitations.

(a) No person may operate an aircraft that has a special airworthiness certificate in the light-sport category—

(1) For other than the purpose for which the certificate was issued;

(2) Carrying persons or property for compensation or hire, except while operating the aircraft for the purpose of conducting flight training or for rental;

(3) Unless the aircraft is maintained in accordance with the aircraft manufacturer's maintenance and inspection procedures by a certificated repairman with a light-sport aircraft-maintenance rating, an appropriately rated mechanic, or an appropriately rated repair station;

(4) Unless a condition inspection is performed once every 12 calendar months in accordance with the aircraft manufacturer's maintenance and inspection procedures by a certificated repairman with a light-sport aircraft-maintenance rating, an appropriately rated mechanic, or an appropriately rated repair station; and

(5) Unless the owner or operator complies with the provisions of a program for monitoring and correcting the safety of flight issues specified by—

(i) The manufacturer in the statement of compliance for the aircraft; or

(ii) A person acceptable to the FAA, provided the program meets a consensus standard.

(b) No person may operate an aircraft that has a special airworthiness certificate in the light-sport aircraft category for flight instruction unless—

(1) The person complies with the provisions of paragraph (a) of this section; and

(2) A certificated repairman with a light-sport aircraft-inspection rating or light-sport aircraft-maintenance rating, a certificated mechanic with airframe and powerplant ratings, or an appropriately rated repair station performs a condition inspection within the preceding 100 hours of aircraft time in service, as specified in the aircraft manufacturer's maintenance inspection procedures.

(c) The FAA may prescribe additional limitations necessary for operation of the aircraft.

37. Amend § 91.409 by revising paragraph (c)(1) to read as follows:

§ 91.409 Inspections.

* * * * *

(c) * * *

(1) An aircraft that carries the following special airworthiness certificates: special flight permit, light-sport aircraft, current experimental, or provisional;

* * * * *

Issued in Washington, DC, on January 25, 2002.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 02–2302 Filed 1–30–02; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
February 5, 2002

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 1 et al.

Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 43, 45, 61, 65 and 91

[Docket No. FAA–2001–11133; Notice No. 02–03]

RIN 2120–AH19

Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing requirements for the certification, operation, maintenance, and manufacture of light-sport aircraft. Light-sport aircraft are often heavier and faster than ultralights and include airplanes, gliders, balloons, powered parachutes, weight-shift-control aircraft, and gyroplanes. This action is necessary to address advances in sport and recreational aviation technology, gaps in the existing regulations, and several petitions for rulemaking and for exemptions from existing regulations. The intended effect of this action is to provide for the manufacture of safe and economical aircraft and to allow operation of these aircraft by the public in a safe manner.

DATES: Send your comments on or before May 6, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh St., SW., Washington, DC 20590–0001. You must identify the docket number at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to http://dms/dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level at the Department of Transportation building at the address above. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Susan Gardner at 202/267–5008 for questions regarding airman certification and operational issues (14 CFR parts 1, 43, 45, 61, 65, and 91). For questions regarding aircraft certification (14 CFR part 21), call Steve Flanagan at 202/267–5008. Due to the large volume of questions we expect from this proposal, please leave a message and we will answer your questions within 3 days. Please use this phone number for questions only. If you wish to submit a public comment, please review the procedures below to ensure that your comments are included in the docket.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Overview of the Proposal
III. Effects of the Proposal on the Public and Industry
IV. Background
A. Current rules
B. The FAA's reasons for this propsal
V. The Aviation Rulemaking Advisory Committee (ARAC)
VI. Section-by-Section Analysis of the Proposal
A. What are the proposed changes to 14 CFR part 1?
B. What are the proposed changes to 14 CFR part 21?
C. What are the proposed changes to 14 CFR part 43?
D. What are the proposed changes to 14 CFR part 45?
E. What are the proposed changes to 14 CFR part 61?
F. What are the proposed changes to 14 CFR part 65?
G. What are the proposed changes to 14 CFR part 91?
VII. Paperwork Reduction Act
VIII. International Compatibility
IX. Regulatory Evaluation Summary'Executive Order 12866 and DOT Regulatory Policies and Procedures
A. Economic evaluation
B. Initial regulatory flexibility determination
C. International trade impact statement
D. Initial unfunded mandates assessment
X. Executive Order 13132, Federalism
XI. Environmental Analysis
XII. Energy Impact

I. Public Comment Procedures

The FAA invites you to participate in this rulemaking action by submitting written data, views, or arguments. We also invite comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document. Substantive comments should contain cost estimates. In your comments, identify the regulatory docket or notice number you are commenting on. Submit them in duplicate to the DOT Rules Docket address specified above.

We will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date.

We will consider all comments received on or before the closing date before taking action on this proposed rulemaking. We will consider comments filed late as far as possible without incurring expense or delay. We may change the proposals in this document in response to comments.

If you want FAA to acknowledge receipt of your comments include a pre-addressed, stamped postcard. In the message area, identify the document you are commenting on by notice or docket number. We will date stamp the postcard and mail it to you.

We also anticipate holding an electronic public meeting during the comment period. You will be able respond on-line via the Internet to questions that we will ask you regarding this proposal. We will publish a notice in the **Federal Register** shortly announcing more details about this virtual public meeting.

Availability of Rulemaking Documents

You can get an electronic copy of this document from the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page, type in the last four digits of the docket number shown at the beginning of this document. Click on ''search.''

(3) On the next page, which contains the docket summary information, click on the item you want to see.

You can also get an electronic copy using the Internet through the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

II. Overview of the Proposal

This proposal addresses three major issues:

- Certification of light-sport aircraft;
- Certification of pilots and flight instructors to operate light-sport aircraft; and
- Certification of repairmen to maintain light-sport aircraft.

We discuss these issues in more detail below.

Certification of Light-Sport Aircraft

Light-sport aircraft are small, simple-to-operate, low-performance aircraft. The FAA is proposing to limit these aircraft to a maximum of 2 occupants, a 1,232-lb. (560 kg.) takeoff weight, a 39-knot stall speed, a 115-knot maximum operating speed, a single engine, and fixed landing gear. Refer to the definition of light-sport aircraft in the proposed rule for a complete list of limits for those aircraft. Helicopters and powered lift would not be light-sport aircraft due to their complexity.

The FAA currently issues two major types of airworthiness certificates—standard and special. The special airworthiness certificate includes six categories—primary, restricted, limited, provisional, special flight permits, and experimental. We propose to add a seventh category of special airworthiness certificate—light-sport. You could use aircraft issued a special light-sport airworthiness certificate for sport and recreation, flight training, or rental. The special airworthiness certificate would ensure that aircraft used for these purposes are designed and manufactured to an identified standard. The FAA would exclude gyroplanes for this certificate.

The FAA currently issues special experimental certificates for eight purposes. We propose to add a new purpose—to operate light-sport aircraft—for issuing an experimental certificate. There would be three ways to get an experimental certificate for the purpose of operating light-sport aircraft. First, if you operate a light-sport aircraft that does not meet the existing definition of ultralight vehicle in 14 CFR 103.1, you would have to apply for an experimental airworthiness certificate for your aircraft under this provision. You would have to apply to register your aircraft not later than 24 months after the effective date of the final rule. You would then have your aircraft inspected and an airworthiness certificate issued not later than 36 months after the effective date of the final rule. You could use aircraft with an airworthiness certificate issued for this experimental purpose for sport and recreation, and flight training. For a period of 3 years after the effective date if the final rule, you could operate these aircraft for compensation or hire, while conducting flight training.

Second, you could get an experimental airworthiness certificate for an aircraft you assembled from an eligible kit. You could use these aircraft only for sport and recreation, and flight training.

And finally, you could get an experimental airworthiness certificate to operate a light-sport aircraft if it previously had been issued a special, light-sport aircraft airworthiness certificate and you do not want to comply with the operating limitations associated with a special light-sport certificate. For example, you could do this if you wanted to alter the aircraft without the manufacturer's authorization, or you choose not to comply with the mandatory safety-of-flight actions. You could use these aircraft only for sport and recreation, and flight training.

Table 1.—Proposed New or Expanded Airworthiness Certificate Categories and Purposes

AIRCRAFT AIRWORTHINESS CERTIFICATE

Airworthiness certificate	Categories/Other	Purposes
I. Standard	A. Normal.	
	B. Utility.	
	C. Acrobatic.	
	D. Commuter.	
	E. Transport.	
	F. Manned free balloons.	
	G. Special classes of aircraft.	
II. Special	A. Primary.	
	B. Restricted.	
	C. Limited.	
	D. Light-Sport (§ 21.186).[1]	
	E. Provisional.	
	F. Special Flight Permits.	
	G. Experimental (§ 21.191)	1. Research and development.
		2. Showing compliance with regulations.
		3. Crew training.
		4. Exhibition.
		5. Air racing.
		6. Market surveys.
		7. Operating amateur-built aircraft.
		8. Operating primary category kit-built aircraft.
		9. Operating light-sport aircraft (§ 21.191(i)).[1]
		a. existing aircraft that do not meet part 103.
		b. kit-built, light-sport aircraft.
		c. aircraft previously certificated under § 21.186.

[1] New airworthiness certificate categories and/or purposes.

Certification of Pilots and Flight Instructors to Operate Light-Sport Aircraft

The FAA is also proposing two new pilot certificates and two new aircraft category ratings to allow operations of light-sport aircraft. Currently, we issue student, recreational, private, commercial, and airline transport pilot certificates. This proposal would add a student pilot certificate for operating light-sport aircraft and a sport pilot certificate. We would issue the sport pilot certificate and flight instructor certificate with a sport pilot rating without any category and class ratings. However, the applicable aircraft category, class, and make and model privileges would be established through logbook endorsements.

The FAA currently issues airplane, helicopter, gyroplane, glider, balloon, airship, and powered-lift aircraft category ratings. We propose to add powered parachute and weight-shift-control aircraft category ratings for the

private pilot certificate. The weight-shift-control aircraft category rating would include land and sea class ratings.

Table 2.—Proposed New or Expanded Pilot/Flight Instructor Categories and Class Ratings

PILOT/FLIGHT INSTRUCTOR CERTIFICATION

Proposed new or expanded pilot/flight instructor certificates	Proposed new aircraft category/class ratings	Proposed new aircraft category/class privileges
Student—operating light-sport aircraft	N/A	Airplane (Land/Sea), Gyroplane, Airship, Balloon, Weight-shift-control (Land/Sea), and aircraft Powered Parachute.
Sport	N/A	Airplane (Land/Sea), Gyroplane, Glider, Airship, Balloon, Weight- shift-control (Land/Sea), and Powered Parachute.
Private	Powered Parachute Weight-Shift-Control (Land/Sea).	
Flight Instructor	Sport Pilot.	

A student pilot operating light sport aircraft, a sport pilot, and a flight instructor with a sport pilot rating could operate or provide training only in a light sport aircraft that meets the definition under 14 CFR part 1. These light sport aircraft could be issued any one of the standard or special airworthiness certificates shown in Table 1.

The FAA proposes to revise recreational pilot certificate privileges to align them with the proposed privileges for sport pilots, primarily to permit operation in Class B, C, and D airspace. To operate in that airspace, you would have to get appropriate training and logbook endorsements. We also propose to revise the training requirements for the private pilot certificate to permit private pilots to operate powered parachutes and weight-shift-control aircraft.

This proposal also addresses flight instructor certification and ground instructor privileges. The FAA would add a new rating for flight instructors—the sport pilot rating—and would revise privileges for ground instructors to train sport pilots and flight instructors with a sport pilot rating.

Certification of Repairmen To Maintain Light-Sport Aircraft

We also would add a new repairman certificate, which we would issue with a maintenance or inspection rating. If we issue you an inspection rating, you could perform the annual condition inspection on your own aircraft that has an experimental, light-sport airworthiness certificate. If we issue you a maintenance rating, you could perform all of the inspections required for an aircraft with an experimental, light-sport airworthiness certificate, and the inspections and other maintenance required on an aircraft with a special, light-sport airworthiness certificate. A maintenance rating would allow you to work on category—specific aircraft that you may not own.

III. Effects of the Proposal on the Public and Industry

This section of the preamble describes in general terms how the proposal would affect certain categories of people. A reader who is interested in a quick overview of the proposal may find this part useful. In preparing this overview, we condensed the material and focused on the major concepts of this proposed rule. If you are looking for a detailed description, you should read the section-by-section analysis portion of the preamble.

I Own or Plan To Purchase a Light-Sport Aircraft Within 24 Months After the Rule Is Effective. How Would This Proposal Affect Me?

If you own or plan to purchase an ultralight that meets the definition of ultralight vehicle in part 103 of our regulations (14 CFR part 103), this proposal doesn't affect you.

If your aircraft or the aircraft you plan to purchase doesn't meet the definition of ultralight vehicle in 14 CFR part 103, you would have to apply to register your aircraft with the FAA not later than 24 months after the effective date of the final rule. You would then have your aircraft inspected by the FAA (or representative of the FAA) and an experimental, light-sport airworthiness certificate must be issued not later than 36 months after the effective date of the final rule.

If you currently operate an ultralight vehicle under a training exemption and you also have applied to the FAA for aircraft registration, you would be allowed to continue to operate under the training exemption until you are issued an experimental, light-sport airworthiness certificate. If your aircraft does not meet 14 CFR part 103 and you are not authorized to operate under a training exemption, you would not be allowed to operate under 14 CFR part 91 until you register your aircraft with the FAA and receive an airworthiness certificate for your aircraft.

I'd Like To Buy a Ready-to-Fly Light-Sport Aircraft and Use It for Training and Rental. How Would This Proposal Affect Me?

If you buy a U.S.-manufactured, ready-to-fly light-sport aircraft after the effective date of the final rule and intend to use it for training or rental, you could apply for a special airworthiness certificate in the light-sport category. To get the certificate, you would have to present the following information to the FAA:

- The manufacturer's statement of compliance;
- The applicable maintenance and inspection procedures;
- The pilot flight training manual;
- The pilot operating handbook; and
- Statements concerning any prior or future alterations.

You'd also have to get the aircraft registered and inspected by the FAA.

If you buy an imported light-sport aircraft, you would have to provide the same information as required for a U.S.-manufactured aircraft, and you would also have to provide the additional information under 14 CFR 21.186(d).

I'd Like To Buy a Light-Sport Aircraft Kit. How Would This Proposal Affect Me?

If you buy a light-sport aircraft kit after the effective date of the final rule, you would have to assemble the kit according to the manufacturer's instructions and could apply for an experimental airworthiness certificate for the purpose of operating light-sport aircraft. To get the certificate you would provide evidence that the kit is an eligible kit. You would also have to present the following information to the FAA:

• The kit manufacturer's statement of compliance;
• The applicable maintenance and inspection procedures;
• The pilot flight training manual; and
• The pilot operating handbook.

In addition, you'd have to get the aircraft registered and inspected by the FAA.

I Would Like To Fly a Light-Sport Aircraft and I Don't Hold a Pilot Certificate. How Would This Proposal Affect Me?

For most types of light-sport aircraft, including powered parachutes and weight-shift-control aircraft, you would have to obtain at least a sport pilot certificate. First, you would have to get a student pilot certificate for operating light-sport aircraft (called a ''student certificate'' in this preamble).

To get a student certificate, you would have to—
• Meet certain eligibility requirements related to language and age (at least 16 years old, or 14 years old to operate a glider or balloon);
• Have a U.S. driver's license or an airman medical certificate;
• Receive and log ground and flight training in specific aeronautical areas; and
• Meet specific requirements for solo and solo cross-country.

As a student certificate holder, you'd be subject to most of the existing limits on student certificate holders. You also couldn't fly when visibility is less than 3 miles, at night, above certain altitudes and speeds, in certain airspace, contrary to any operating limitation for the aircraft or the pilot, and outside the United States.

To get a sport pilot certificate, you would have to—
• Obtain a student certificate for operating light-sport aircraft;
• Meet certain eligibility requirements related to language and age (at least 17 years old, or 16 years old to operate a glider or balloon);
• Have a U.S. driver's license or an airman medical certificate;
• Receive and log ground and flight training in specific aeronautical areas;
• Meet aeronautical experience requirements; and
• Pass a knowledge test and a practical test.

The FAA would issue you a sport pilot certificate and your logbook would be endorsed authorizing you privileges in that specific category, class, and make and model of aircraft.

As a sport pilot certificate holder, you couldn't fly—
• When visibility is less than 3 miles;
• At night;
• Above certain altitudes and speeds;
• In certain airspace;
• For other than sport and recreational purposes;
• Contrary to any operating limitation for the aircraft or the pilot;
• While towing an object;
• While carrying a passenger for compensation or hire; or
• Outside the United States without authorization.

You also couldn't demonstrate an aircraft in flight if you're an aircraft salesperson. You could share operating expenses with another pilot.

Once I Hold a Sport Pilot Certificate, What Must I Do To Fly a Different Category, Class, or Make and Model of Light-Sport Aircraft?

To fly an additional make and model of light-sport aircraft, you'd have to receive and log aircraft-specific ground and flight training for the additional make and model from an authorized instructor.

To fly another category or class of light-sport aircraft, you'd have to receive and log ground and flight training in certain operational areas from an authorized instructor, and successfully complete a proficiency check from a different authorized instructor. The authorized instructor who certifies your proficiency for the additional make and model or category and class privileges would endorse your logbook establishing those specific privileges.

I Would Like To Become a Light-Sport Aircraft Instructor. How Would This Proposal Affect Me?

If you don't hold a flight instructor certificate issued under 14 CFR part 61, you would have to obtain a flight instructor certificate with a sport pilot rating. To get it, you would have to—
• Meet certain eligibility requirements related to language and age (at least 18 years old);
• Have a sport pilot certificate or a private pilot certificate;
• Receive and log ground training in the fundamentals of instruction;
• Receive and log ground and flight training in specific aeronautical areas;
• Meet aeronautical experience requirements; and
• Pass a knowledge test and a practical test.

The FAA would issue you a flight instructor certificate with a sport pilot rating and your logbook would be endorsed authorizing you privileges to provide training in that specific category, class, and make and model of aircraft.

If you already hold a current and valid flight instructor certificate issued under 14 CFR part 61, you could provide flight training toward a sport pilot certificate without further showing of proficiency. You would be subject to certain limitations.

Once I Hold a Flight Instructor Certificate With a Sport Pilot Rating, What Must I Do To Provide Training In a Different Category, Class, Or Make And Model Of Light-Sport Aircraft?

To provide training in an additional make and model of light-sport aircraft, you'd have to receive and log aircraft-specific ground and flight training for the additional make and model from an authorized instructor.

To provide flight training in another category or class of light-sport aircraft, you'd have to receive and log ground and flight training in certain operational areas from an authorized instructor, and successfully complete a proficiency check from a different authorized instructor.

The authorized instructor who certifies your proficiency authorizing you to provide training for the additional make and model or category and class privileges would endorse your logbook establishing those specific privileges.

I'm an Ultralight Pilot and an Ultralight Flight Instructor With an FAA-Recognized Organization. How Will This Rule Affect Me?

The training programs of FAA-recognized ultralight organizations already cover many of the proposed requirements. This proposal would establish how you would credit your experience toward the aeronautical experience requirements for a sport pilot certificate and a flight instructor certificate with a sport pilot rating.

I Already Have An FAA Pilot Certificate and Want To Fly Light-Sport Aircraft. How Would The Proposal Affect Me?

If you already have at least a private pilot certificate, you would have to—
• Receive and log specific training for any make and model of light-sport aircraft for which you hold a category and class rating and that you haven't piloted; and
• Get a logbook endorsement from the authorized instructor who trained you certifying your proficiency.

If you want to add category and class privileges for which you do not have an aircraft category or class rating on your private pilot certificate, you would have to meet the requirements for the addition of those privileges established in this proposal.

Who Can Perform Maintenance, Which Includes Inspections, On a Ready-To-Fly Aircraft With a Special, Light-Sport Airworthiness Certificate?

The following persons could perform maintenance and preventive maintenance on an aircraft with a special light-sport airworthiness certificate: (1) An appropriately rated mechanic, (2) an appropriately rated repair station, and (3) a repairman (light-sport aircraft) with a maintenance rating. Certificated pilots could also perform preventive maintenance.

Who Can Perform Inspections On an Aircraft With an Experimental, Light-Sport Airworthiness Certificate?

The following persons could perform inspections on an aircraft with an experimental, light-sport airworthiness certificate: (1) An appropriately rated mechanic, (2) an appropriately rated repair station, and (3) a repairman (light-sport aircraft) with a maintenance rating. Additionally, if you want to perform inspections on your own experimental aircraft, you would have to obtain a repairman certificate (light-sport aircraft) with an inspection rating.

How Do I Get a Repairman Certificate (Light-Sport Aircraft) With a Maintenance or Inspection Rating?

To get a repairman certificate (light-sport aircraft), you would have to—

- Meet certain eligibility requirements relating to age, language, and citizenship or residency;
- Demonstrate the requisite skill to determine whether a light-sport aircraft is in a condition for safe operation; and
- Meet the requirements for one of the following ratings:

For an inspection rating, you would have to—

- Complete a 16-hour training course on the inspection requirements of the particular make and model of light-sport aircraft.

For a maintenance rating, you would have to—

- Complete an 80-hour training course on the maintenance requirements of the particular category of light-sport aircraft.

I Manufacture Light-Sport Aircraft. How Does This Proposal Affect Me?

If you manufacture aircraft intended for certification as a special, light-sport aircraft, you would have to—

- Manufacture those aircraft in accordance with airworthiness standards developed by a consensus of industry and FAA (consensus standards);
- Attest on a Statement of Compliance for each aircraft that it conforms to the consensus standards;
- Test each aircraft in accordance with a production acceptance test specifications described in the consensus standard;
- Develop and identify the system you would use for monitoring and correcting safety-of-flight issues in accordance with the consensus standards;
- Develop and make available a Pilot Operating Handbook for safe operation applicable to the aircraft;
- Develop and make available a manufacturer's pilot flight training manual for the aircraft; and
- State that you will provide FAA unrestricted access to your facilities.

I Manufacture Light-Sport Aircraft Kits. How Does This Proposal Affect Me?

If you manufacture aircraft kits, intended to be assembled by the purchaser into aircraft eligible for certification as an experimental aircraft for the purpose of operating light-sport aircraft, you would have to—

- Manufacture at least one ready-to-fly aircraft. For the purposes of this certificate, an aircraft make and model is eligible for a kit if the aircraft make and model has been issued a special, light-sport airworthiness certificate;
- Manufacture the aircraft kit in accordance with standards developed by a consensus of industry and the FAA (consensus standard);
- Attest on a statement of compliance that the kit conforms to the consensus standard.
- Provide complete assembly instructions; and
- Develop and make available the applicable supporting documentation.

Does This Proposal Impose Any Requirements on the Light-Sport Aircraft Industry?

Yes, industry would have to work with the FAA to develop consensus standards governing the following:

- Design and performance criteria;
- Quality assurance system requirements;
- Completed aircraft production acceptance or ''pass-through'' test specifications; and
- A system for continued operational safety monitoring.

Although aircraft issued special airworthiness certificates in the light-sport category would not need a type certificate or have to be produced under a production certificate, the FAA proposes that these aircraft meet consensus standards. By consensus standards, we mean standards developed by the industry through a consensus process with FAA participation. Industry would present those standards to the FAA for review and publication in the **Federal Register** for public comment. After the FAA accepts the consensus standards, we would publish them in the **Federal Register**.

There would be separate standards for each aircraft class to which FAA could issue a certificate in the light-sport aircraft category. We have determined it is appropriate to use consensus standards, consistent with Office of Management and Budget (OMB) Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' February 10, 1998.

I. Background

A. Current Rules

Several FAA regulatory initiatives have addressed sport and recreational general aviation needs:

- We issued regulations regarding ultralight vehicles under 14 CFR part 103 (47 FR 38776; September 2, 1982),
- We created the recreational pilot certificate under 14 CFR part 61 (54 FR 13028; March 29, 1989), and
- We established a new category of aircraft, primary category, under 14 CFR part 21 (57 FR 41367; September 9, 1992).

We discuss these regulatory initiatives below.

Ultralight Vehicle Regulations

The FAA adopted part 103 in 1982 (47 FR 38776; September 2, 1982) in response to existing and rapidly growing hang glider activity. This activity made our earlier guidance inadequate.

Part 103 defines an ultralight as either an unpowered or powered vehicle with certain weight, speed, and other limitations. An ultralight can carry only one occupant and be used for sport and recreational purposes. It does not have a U.S. or foreign airworthiness certificate. Ultralight vehicle operators must comply with certain operating restrictions. Generally, you can operate these vehicles only between sunrise and sunset; you must yield the right-of-way to all aircraft; you may not operate over congested areas or over any open air assembly of people, and you may not operate for compensation or hire. See part 103 for more information on limits on ultralight vehicles.

Ultralight vehicles are not subject to the aircraft certification requirements of 14 CFR part 21, the maintenance

requirements of 14 CFR part 43, the identification and marking requirements of 14 CFR part 45, or the registration requirements of 14 CFR part 47. In addition, to operate one of these vehicles, you do not need to comply with the airman certification requirements in 14 CFR part 61, medical certification requirements in 14 CFR part 67, or the operating rules in 14 CFR part 91.

Recreational Pilot Certificate Regulations

The FAA established the recreational pilot certificate under part 61 in 1989 (54 FR 13028; March 29, 1989). We intended this certificate to be a lower cost alternative to the private pilot certificate. We believed this new certificate would be attractive for persons interested in flying basic, experimental, or homebuilt aircraft.

As a recreational pilot, you may operate a single-engine airplane or rotorcraft certificated for no more than four occupants with a powerplant of no more than 180 horsepower (hp). You are not only subject to the limits of a private pilot, but also have additional limits. These additional limits include not being permitted to carry more than one passenger; tow an object; fly between sunset and sunrise; fly above 10,000 feet MSL or 2,000 feet AGL, whichever is higher; fly without visual reference to the surface; or operate in airspace in which you need to communicate with air traffic control (ATC). See part 61 for information on other limits placed on recreational pilots.

However, in this current rulemaking we are proposing to allow a recreational pilot to operate in airspace in which communication with ATC is required, as long as the pilot receives training on that operation and a logbook endorsement authorizing it. This would parallel a similar privilege we are proposing for sport pilots.

Primary Category Aircraft Regulations

In 1992, the FAA established a new category of aircraft, primary category aircraft, under §§ 21.24 and 21.184 (57 FR 41367, September 9, 1992), because of concerns that the decline in general aviation in the United States was in part due to higher certification costs for aircraft. The new category had simplified procedures for type, production, and airworthiness certification.

Primary category aircraft must be unpowered or have only a single, naturally aspirated engine. They are also subject to speed, weight, and load limits. They may not be used to carry persons or property for hire, although under certain conditions they may be rented or used for flight instruction. See part 21 at the sections listed above for more information about the limits placed on this category of aircraft.

The Status of Current Rules

Despite the efforts discussed above to address sport and recreation general aviation needs, those rules, for various reasons, have not achieved the regulatory goals we set out to achieve. Since we issued the regulations, the state of the art in ultralight vehicles has advanced considerably and our rules are out-of-date. New advancements in technology have improved safety, including light-engine technology and reliability, more effective application of low-speed aerodynamic principles, and new materials. Although part 103 covers ultralight activities, an increasing number of ultralight vehicles are operating outside the current regulations. This is because the vehicles either exceed the part 103 ultralight weight limit (254 pounds) or they have two seats. For many operators, installing any new equipment or using new materials (some of which increase the level of safety) causes the vehicle to exceed the weight requirements of part 103.

Seeing the need for training to reduce accidents, manufacturers have built two-place training vehicles and organizations have established programs to qualify ultralight flight instructors. However, these vehicles do not meet the current definition of ultralight vehicle, and are not manufactured, certificated, or maintained to a standard. So, while the FAA currently does not require certification for ultralight vehicle operators, flight instructors, or vehicles, we issued exemptions to allow these larger ultralights to be used for training, but not for other sport or recreational flight. You can find a detailed discussion of exemptions for two-place ultralight training vehicles in the following documents: Aero Sports Connection (ASC) Exemption No. 6080, docket No. 27953; Experimental Aircraft Association (EAA) Exemption No. 3784, docket No. 23477; United States Hang Glider Association (USHGA) Exemption No. 4721, docket No. 23492; and United States Ultralight Association (USUA) Exemption No. 4274, docket No. 24427.

Neither the recreational pilot certificate nor the primary category airworthiness certificate regulations have accommodated the sport and recreational flying community. Only about half of the recreational pilot certificates we have issued are active. Specifically, as of January 10, 2001, the FAA has issued 638 recreational pilot certificates, but only 336 of those were active. Most initial pilot applicants have chosen to pursue a private pilot certificate, rather than a recreational pilot certificate, because the former provides more benefits for little extra cost. Since the primary category aircraft certification option covers only single-engine airplanes and rotorcraft, it excludes increasingly popular aircraft such as powered parachutes and weight-shift-control aircraft. And, although we intended the certification process for these aircraft to be abbreviated and economical compared to standard category certification, we have not achieved that goal. As of March 14, 2001, we have certificated only two aircraft in the primary category.

Finally, we have received numerous requests for exemptions from part 103, a petition for rulemaking from the United States Ultralight Association (docket No. 25591), and two petitions for exemption relating to powered parachutes, one from North American Powered Parachute Federation (NAPPF) and one from Aero Sports Connection (ASC) (docket No. 29674). The last petition also dealt with weight-shift-control aircraft.

The FAA currently does not have aircraft category ratings or training and certification requirements for powered parachutes and weight-shift-control aircraft in part 61. Before you fly one of these aircraft, you don't have to receive any training specific to them, but you must get a pilot certificate with a rating in another aircraft category and class. This requires pilots to get training in aircraft that do not have the same operating characteristics as the aircraft they will be flying. Although current regulations do not require any additional training in the powered parachute or weight-shift-control aircraft, many pilots exercise reasonable judgement and get that additional training. This significantly increases the cost of getting a pilot certificate to operate powered parachutes and weight-shift-control aircraft without any added benefit to the pilot or to public safety.

B. The FAA's Reason for This Proposal

The FAA is proposing this rule to increase safety in the light-sport aircraft community by closing the gaps in existing regulations and accommodating new advances in technology. Although we issued exemptions to temporarily resolve the training issues, to extend them on a long-term basis would be an inappropriate use of the exemption process. The FAA believes that a permanent and appropriate level of regulation is necessary.

The FAA analyzed the existing accident data of ultralights that do not meet part 103 to determine deficiencies in safety. Accident data from the NTSB and part 103 exemption holders show that 36 accidents occurred between 1995–2001 involving aircraft that would meet the proposed definition of light-sport aircraft. Those accidents resulted in 51 fatalities. (The organizations that hold part 103 training exemptions are required to report to the FAA accidents involving two-place training vehicles.) The data indicate that some of these accidents also involve vehicles that are not covered under part 103 and were not used for training under an exemption. Because light-sport flying is becoming more and more popular, there is concern that more accidents could occur without regulatory intervention.

We believe that many of these accidents could have been avoided with this proposed rule. There are many safety benefits of certificating sport pilots, light-sport aircraft, and repairmen who would maintain these aircraft. The FAA has identified a number of factors related to training and certification that contribute to the prevention of accidents. For example, certificated sport pilots would—

(1) Meet minimum requirements to be eligible to operate aircraft,

(2) Be trained and tested to a standard,

(3) Routinely receive notices of FAA safety programs and are eligible to participate in that supplemental training (current operators of ultralight vehicles do not received these notices),

(4) Be required to be aware of safety- and security-related information contained in Notices to Airmen (NOTAMs), which could impact a flight and potentially reduce accidents (current operators of ultralight vehicles are not required to receive these NOTAMs),

(5) Be required to receive weather briefings and therefore are better prepared to avoid bad weather (current operators of ultralight vehicles are not required to receive weather briefings),

(6) Have access to DUAT (direct user access terminal) automated weather service, and

(7) Be required to complete recurrent training, which would maintain pilot skills.

Under this proposal, certificated sport pilots could credit ultralight flight time toward higher-level certificates, which would increase the experience level and qualification of sport pilots. In addition, sport pilots would receive make and model training, which is not required for any other pilot certificate.

Certificated light-sport aircraft would—

(1) Be designed, manufactured, tested, and supported according to the latest standard,

(2) Be manufactured under a quality assurance system that meets a standard,

(3) Receive safety-of-flight bulletins, similar to airworthiness directives and service bulletins (there are no safety-of-flight bulletins currently being issued to operators of ultralight vehicles),

(4) Be required to have make- and model-specific training and maintenance instructions,

(5) Have a make- and model-specific pilot operating handbook for safe operation of the aircraft,

(6) Have a make- and model-specific maintenance and inspection procedures manual, and

(7) Be eligible to use airports, which provide more access to maintenance facilities and emergency services. Vehicles without airworthiness certificates typically are not allowed to use airports.

Certificated repairmen (light-sport aircraft) would—

(1) Meet minimum training and testing requirements, which would ensure that repairmen have the necessary skills to inspect (or maintain) light-sport aircraft and certify that they are safe to fly (currently no certificated repairman or mechanic receives any safety and training information targeted to light-sport aircraft),

(2) Meet minimum requirements ensuring that the persons working on the aircraft are mature individuals who can read and understand maintenance manuals and instructions. These proposed requirements are similar to requirements for part 145 repair stations and repairmen for amateur-built aircraft,

(3) Receive FAA's aircraft-specific safety and training information targeted to repairmen needs,

(4) Be trained on how to report faults or failures to the FAA and light-sport aircraft manufacturers. This would greatly improve how light-sport aircraft manufacturers correct faults and make a safer product.

Also, certificating sport pilots, light-sport aircraft, and repairmen would allow the FAA to identify and take certificate action against them. The threat of certificate action could improve compliance with the regulations, and therefore, improve safety.

Certificated sport pilots and operators of light-sport aircraft would have better access to insurance. They would be more widely recognized by existing industry and trade organizations because the pilots and aircraft would meet the same operating rules as all other pilots and aircraft. These organizations would likely publish more safety-related material addressing sport flying.

Finally, the NTSB would investigate any accidents or incidents involving certificated sport pilots or light-sport aircraft, which could help identify ways to improve safety and reduce future accidents. (The NTSB generally does not investigate accidents involving ultralight vehicles.) The FAA bases many of its policy and rule changes on NTSB recommendations following accidents and incidents. Industry also uses NTSB data to develop safety initiatives and new training materials.

The ultralight aircraft industry has urged us to initiate rulemaking to address light-sport aircraft and has received strong support among its members. According to most of these supporters, regulating this industry would significantly increase the popularity of sport flying and would consequently have a positive impact on their businesses. Thriving businesses typically have more resources to improve their products, and, in this case, could produce safer aircraft. We agree with these statements and also believe that regulating this industry would offer other safety enhancements.

Although there would be some costs involved with this proposal, we believe it to be the least costly of the viable alternatives. (Refer to section IX ''Regulatory Evaluation Summary'' for more details on the costs and benefits of the proposal.) Industry leaders have indicated that regulations ultimately would lower the cost to participate in light-sport aircraft activities, while ensuring appropriate public safety. In a letter sent to the Director of the Office of Management and Budget on August 10, 2001, EAA stated that they see this proposal as an opportunity to decrease the cost of aircraft ownership and operation. The General Aviation Coalition indicated its support of sport pilot and light-sport aircraft regulations to the Administrator at its July 18, 2001, meeting with the FAA Administrator. According to one manufacturer of sport aircraft kits, rules covering these aircraft would benefit public safety in several ways, including: (1) Providing appropriate rules for students to learn to fly light-sport aircraft, (2) improving flight instructor training on light-sport aircraft, and (3) providing rules for the continued airworthiness of the aircraft. Another manufacturer states that new regulations would improve pilot skills to fly these aircraft, encourage new flying skills, and would ensure that the aircraft are safe and high quality.

Finally, one manufacturer of kit planes believes that regulating the light-sport aircraft certification process would increase safety by eliminating aircraft that do not meet a certain standard.

Several letters were received while the Department of Transportation and the Office of Management and Budget were reviewing this proposal. Buckeye Industries, Inc., Flightstar Sportplanes, and EAA all expressed their support of this proposal and requested expedited review of this proposal. You may find copies of all of the above letters in the docket.

The FAA is especially interested in receiving specific comments regarding the various costs of the proposal and the extent to which the affected public is willing to bear these costs as an acceptable part of business or recreation. These costs can be broken down into the following three components: aircraft certification; annual condition inspection and repairman certification; and sport pilot certificate and flight instructor certification (with a sport pilot rating). Each of these costs is discussed further in section IX ''Regulatory Evaluation Summary''. The FAA seeks information and data regarding each of these cost areas and if these costs are considered reasonable.

In summary, the FAA believes that these proposed regulations would improve safety and would:

- Provide an economical means for manufacturers to obtain FAA certification for light-sport aircraft;
- Provide an economical means for pilots to obtain a certificate to fly those aircraft;
- Provide a reasonable and appropriate means to overcome the limits of the ultralight regulations, the recreational pilot certificate, and the primary category airworthiness certificate;
- Eliminate the need for exemptions from part 103 to conduct flight training in aircraft that do not meet the requirements of that part;
- Provide the public safe access to general aviation without creating a significant financial barrier; and
- Create more eligible pilots to meet the needs of future airline and military demand.

V. The Aviation Rulemaking Advisory Committee (ARAC)

ARAC's Role in This Rulemaking

The FAA established the Aviation Rulemaking Advisory Committee (ARAC) in 1991 to help us by providing input from outside the Federal government on major regulatory issues affecting aviation safety. The ARAC includes representatives of air carriers, manufacturers, general aviation, labor groups, universities, associations, airline passenger groups, and the general public. In 1993, we formed an ARAC working group to review part 103 and recommend whether we needed new or revised standards for sport aircraft (58 FR 47172, September 7, 1993). In 1995, we revised our charge to ARAC (60 FR 33247, June 27, 1995).

The ARAC considered a variety of alternatives to deal with light-sport aircraft issues. In their final recommendation, they focused on three areas. You can read ARAC's entire report in the docket for this proposed rule.

ARAC's Recommended Sport Pilot Certificate

The ARAC recommended FAA include detailed privileges and limits in part 61, tailored to diverse aircraft types, and appropriate to the low weight and speed of those aircraft. They wanted to enhance safety by providing a pilot certificate for those who wish to exercise pilot privileges that exceed the current limits of part 103. They wanted to achieve this goal without making the certificate requirements so stringent they were economically impractical.

In addition, ARAC recommended FAA allow the training and flight time used to obtain a sport pilot certificate to be applicable to higher-level airmen certificates. They believed this would encourage individuals to obtain a higher-level airman certificate.

ARAC's Airman Medical Certification Recommendations

The ARAC recommended a self-evaluation medical requirement that would allow sport pilot applicants to certify at the time of application that they have no known medical defect. They considered but did not recommend requiring that an applicant hold a current and valid U.S. driver's license; requiring a letter from an aviation medical examiner (AME) or a personal physician addressing that physician's knowledge of the applicant's health; and allowing a Flight Standards Review Board (FSRB) to define medical requirements unique to each specific type of aircraft. They rejected these options because, in their opinion, a driver's license requirement would involve unnecessary paperwork and recordkeeping, a letter from an AME or other physician would create yet another class of airman medical certificate, and involving a medical examiner through the FSRB would be unnecessary because the activities allowed under the proposed sport pilot certificate would be of a limited nature and the medical requirements for each rating would always be the same.

ARAC's Recommended Flight Standards Review Board (FSRB)

Under this recommendation, a person interested in a sport pilot class or ''type'' rating not previously established by FAA could request that we establish an appropriate class or ''type'' rating using an FSRB. The requester would suggest to FAA requirements and limits for the specific category, class, and ''type'' rating. Typically, an aircraft manufacturer or a national organization whose members are interested in the sport pilot class would make these requests. If you wanted to be certificated for these aircraft, you would apply under the appropriate generic requirements of the proposed sport pilot certificate and the specific requirements for your aircraft as established by the FSRB.

FAA's Response to the ARAC Recommendations

The ARAC working group submitted its recommendations to FAA for review in July, 1998. Much of FAA's proposal is based on ARAC's sport pilot certification recommendation, but it also addresses many issues not considered by the ARAC. We decided we needed to cover aircraft and airman certification as well as operational and maintenance issues. Therefore, we have expanded on ARAC's recommendation and are proposing a complete regulatory solution that would address these issues. Our proposal expands pilot certification and training requirements; addresses the airworthiness certification of light-sport aircraft, to include powered parachutes and weight-shift-control aircraft; establishes a new repairman certificate to ensure continuing airworthiness requirements are met; and revises operational requirements to address these aircraft.

There are several specific points on which FAA does not agree with ARAC. We do not agree we should allow sport pilots to tow objects. We believe pilots who tow objects should have a higher level of experience and training than the sport pilot certificate will allow. Existing regulations allow private pilots to do this. We did not agree with permitting an aircraft salesperson to demonstrate an eligible aircraft in flight to a potential buyer. We believe sales demonstration flights are not consistent with the nature of sport and recreational flying.

While the FAA agrees a sport pilot certificate would not warrant a separate

class of airman medical certification, we do not agree that a U.S. driver's license requirement is unreasonable or a paperwork burden. The FAA would amend Form 8710–1, ''Application for an Airman Certificate and/or Rating,'' to add an item for applicants to verify at the time of application that they hold a current and valid U.S. driver's license or a current and valid airman medical certificate. The FAA's proposal does not include ARAC's recommendation for an FSRB because of the potential administrative burden a board could create. We discuss specific ARAC recommendations more fully in the section-by-section analysis of this notice.

VI. Section-by-Section Analysis of the Proposal

A. What Are the Proposed Changes to 14 CFR Part 1?

Proposed section 1.1 would be revised to add the terms ''light-sport aircraft,'' ''consensus standard,'' ''powered parachute,'' and ''weight-shift-control aircraft'' to the list of definitions.

Definition of ''Light-Sport Aircraft''

This proposal would establish a new category of aircraft—light-sport aircraft that would include airplanes, gliders, gyroplanes, powered parachutes, lighter-than-air, and weight-shift-control aircraft. These aircraft fall between ''small aircraft'' as defined in current § 1.1 and ''ultralight vehicles'' as defined in current § 103.1. Helicopters and powered-lift aircraft would be excluded from the definition of light-sport aircraft due to their complex operation, maintenance, design, and manufacture.

A light-sport aircraft would have a maximum takeoff weight of 1,232 lbs (560 kilograms), or a maximum gross weight of 660 lbs (300 kilograms) for lighter-than-air aircraft. These weight limits should accommodate a significant number of aircraft that are simple, low performance, and have no more than two occupants. These aircraft may be manufactured in the United States or another country.

A light-sport aircraft would have a maximum speed in level flight with maximum continuous power (V_H) of 115 knots. This limits the commanded kinetic energy of an aircraft flown by a pilot holding a sport pilot certificate. The FAA chose to use V_H as the limiting speed for powered, light-sport aircraft as it is simple to verify during testing. The FAA believes that aircraft with a V_H greater that 115 knots would be inappropriate for operation by persons with the minimum training and experience of a sport pilot, which prepares them for flying simple, low performance aircraft for sport and recreation. This value is consistent with light-sport aircraft airworthiness design standards adopted by other airworthiness authorities.

An unpowered light-sport aircraft (*e.g.* glider) would have a maximum never-exceed speed (V_{NE}) of 115 knots, as V_H is not applicable. This speed limitation also limits the commanded kinetic energy of an aircraft flown by a pilot holding a sport pilot certificate. For a V_{NE} equal to 80% of the aircraft's structural design limit speed, a 115-knot V_{NE} limit for aircraft would mean that structural design limits would preclude gliders with a speed capability in excess of 144 knots from being approved as light-sport aircraft ($144 \times .80=115$).

A light-sport aircraft would have a maximum stall speed in the landing configuration (V_{S0}) of 39 knots. This value for a maximum stall speed is a characteristic of low-performance aircraft and would assist in ensuring that light-sport aircraft possess handling characteristics commensurate with the training and experience of sport pilots. It is also consistent with foreign airworthiness standards for similar performance aircraft.

A light-sport aircraft would have a maximum stall speed in the landing configuration without the use of lift-enhancement devices (V_{S1}) of 44 knots. The FAA selected this value to allow for the use of simple lift-enhancing systems that can result in a 5-knot stall speed decrease. With this limit, if more effective lift-enhancement systems are used on the aircraft, the resulting V_{S0} would be lowered further. The FAA recognizes that this limitation, combined with the V_{S0} limit, also would limit the maximum speed of the aircraft.

A light-sport aircraft would carry no more than two occupants, including the pilot. This limitation is consistent with the size of the aircraft and the limitations of a sport pilot certificate.

A light-sport aircraft would be limited to a single, non-turbine engine, if powered. The FAA believes that the requirement for no more than one engine keeps the aircraft simple and limits speed. The requirement for a non-turbine engine is intended to limit the engine to a simple-to-operate design, such as a conventional reciprocating engine (including a rotary or diesel engine) and would also permit simple alternatives, such as electric engines.

A light sport aircraft, if powered, would be limited to a fixed or ground-adjustable propeller. The FAA determined that a propeller that could not be adjusted in pitch in flight was necessary to limit the operational complexity of the aircraft and would be consistent with the skills necessary to hold a sport pilot certificate.

The cabin of a light-sport aircraft would be unpressurized. Cabin pressurization systems and the associated pressure vessel are complex to design and manufacture and the systems can be difficult to operate. The FAA determined that the requirement for an unpressurized cabin is consistent with the skills necessary to hold a sport pilot certificate and with the philosophy of light-sport aircraft design and manufacture.

A light-sport aircraft would have fixed landing gear, except that for seaplanes, repositionable landing gear that would allow the wheels to be rotated for amphibious operations would be acceptable. Retractable gear systems are complex to design, manufacture, and maintain, and may be complex to operate in flight. The FAA determined that the requirement for fixed landing gear is consistent with the philosophy of keeping light-sport aircraft design, manufacture, and operation simple. Repositionable gear on a seaplane is of simple design and operation. Accordingly, the FAA has determined that repositionable gear would be consistent with the skills necessary to hold a sport pilot certificate as it is analogous to a ground adjustable pitch propeller.

Definition of ''Consensus Standard''

The FAA is proposing that the light-sport aircraft industry develop and reach a consensus on an airworthiness standard that would govern light-sport aircraft—(1) design and performance, (2) quality assurance system requirements, (3) production acceptance test specifications, and (4) continued operational safety monitoring system characteristics. This standard would be used by the manufacturer of an aircraft intended to be issued a special light-sport airworthiness certificate or of a kit intended for certification as a light-sport aircraft. Consensus standard means, for the purpose of certificating light-sport aircraft, an industry-developed consensus airworthiness standard that addresses these four topics, as described below.

(1) Design and performance. The consensus standard would govern light-sport aircraft design and performance. A suitable standard would identify minimum aircraft flight and ground performance standards, in addition to design practices to prohibit, that would ensure a safe aircraft for the operator. It would also establish flight proficiency training requirements that would be

applicable to the particular class of light-sport aircraft. Design and performance standards maintained or recognized by other civil aviation authorities (CAA's) could be selected or otherwise form the basis for a light-sport aircraft airworthiness standard. Examples of commonly used design and performance standards for conventional fixed-wing airplanes are BCAR section S (Britain), TP10141 (Canada), and JAR–VLA (JAA). The light-sport aircraft industry also may choose to utilize other nationally recognized airworthiness design standards for the consensus standards.

(2) Quality assurance. The consensus standard would govern the necessary quality assurance system requirements used in the manufacture of light-sport aircraft. The standard would establish quality assurance procedures so a manufacturer could attest that individual aircraft produced all meet the same minimum safety standards and are built as intended.

(3) Production acceptance. The consensus standard would govern the necessary characteristics of the production acceptance test specifications used in the manufacture of light-sport aircraft. A suitable standard would identify the required final product acceptance test procedures that ensure a completed product is safe and performs as intended.

(4) Safety monitoring. The consensus standard would govern the characteristics of the manufacturer's continued operational safety monitoring system. The consensus standard would establish reference system requirements for monitoring and correcting safety-of-flight issues. A suitable standard would include a process by which aircraft owners and operators would be notified of occurrences that are hazards to safety of flight and the appropriate corrective action. A suitable standard would ensure that the manufacturer reviews the operational experience of the fleet and corrects any deficiencies. In addition, it would identify processes that would ensure manufacturers learn about problems experienced on aircraft in service. Safety monitoring also would include processes by which manufacturers evaluate the reported problems for their safety of flight. It would also define the processes by which manufacturers develop repairs and communicate them to operators for problems that are determined to be hazards to flight safety.

A suitable consensus standard would also establish the procedures by which the industry reviews and updates the consensus standards. It would establish procedures to periodically review the standard every two years, and to update the standard when if necessary. Industry may chose to initiate a shorter review period.

Definitions of ''Powered Parachute'' and ''Weight-Shift-Control Aircraft''

This proposal would establish two new kinds of light-sport aircraft-powered parachutes and weight-shift-control aircraft. The aircraft would be controlled by a pilot within a suspended fuselage. The inclusion of a fuselage permits the designer of the aircraft to standardize a design based on structural geometry and engineering principles of flight rather than the individual characteristics of the pilot. The definitions describe the characteristics of powered parachutes and weight-shift-control aircraft as they exist today. While the proposed definitions are not intended to hinder future developments of these aircraft designs, they specifically intend to exclude configurations in which the engine and/or wing is mounted on the person operating the aircraft.

A powered parachute would be defined as powered aircraft that derive their lift from a non-rigid wing that inflates into a lifting surface when exposed to a wind. A powered parachute consists of a non-rigid wing, a suspended fuselage, and an engine that is an integral part of the aircraft.

Weight-shift-control aircraft would be defined as powered aircraft with a framed pivoting wing and a fuselage. The aircraft is controllable only in pitch and roll by the pilot's ability to change the aircraft's center of gravity. For these two-axis-control aircraft, the line of action of the thrust and the suspended mass of the fuselage would ensure that a laterally applied control force would result in motion about the roll axis. An aircraft with these characteristics, but with three-axis control (i.e. also controllable about the yaw axis) would not meet the definition of a weight-shift control aircraft.

B. What Are the Proposed Changes to 14 CFR Part 21?

Proposed section 21.175 would add light-sport aircraft to the list of special airworthiness certificates in current § 21.175(b).

Proposed section 21.181 would be revised to indicate that a light-sport aircraft airworthiness certificate is effective as long as the aircraft is maintained in accordance with its operating limitations and the aircraft is registered in the United States. The FAA notes that the proposal would not require the maintenance requirements of part 43 to apply to these aircraft.

This section also would be revised to indicate that certificates for experimental and primary category kit-built aircraft would be of unlimited duration, unless the FAA finds good cause to establish a specific period.

Proposed section 21.182 would be revised to require all aircraft issued experimental certificates for the purpose of operating light-sport aircraft to be identified under § 45.11.

Proposed section 21.186 would establish the eligibility requirements for the issuance of a special airworthiness certificate in the light-sport category [''special light-sport aircraft''] and the purposes for which the FAA would issue such a certificate. It would set forth the required contents of a manufacturer's Statement of Compliance for a light-sport aircraft. It also would set forth requirements for importing light-sport aircraft. Special light-sport aircraft are designed and manufactured without an FAA type or production certificate and are accordingly limited to operating for sport and recreation, flight training, or rental.

Only complete, ''ready-to-fly'' aircraft would be eligible for special light-sport airworthiness certificates. If there is a change to the consensus standard, all newly manufactured aircraft would have to comply with the changed standard. This would ensure that a new aircraft always meets the latest standard. Changes to a consensus standard would not apply retroactively to previously manufactured aircraft, unless required by the changed standard. Industry may agree to apply a change to the consensus standards retroactively. If a change addresses an unsafe condition, it would need to be handled as a mandatory safety-of-flight action.

Aircraft that would be eligible for this certificate would not need a type or production certificate. However, the proposal would require the aircraft manufacturer to attest that the aircraft design and manufacture complies with a consensus standard. The manufacturer would indicate this on a Statement of Compliance, which would be provided to the original purchaser of the aircraft. The person who will be the registered owner of the aircraft will identify and register these aircraft in accordance with 14 CFR parts 45 and 47.

To maintain eligibility for the special light-sport aircraft airworthiness certificate, the operator would be required to comply with operating limitations under the proposed § 91.327 as part of the aircraft's airworthiness certificate. The operating limitations would also address the maintenance and inspection requirements, preventive

maintenance, as well as flight test programs, operations in various airspace classes, and pilot qualification. This is because these aircraft would not have a type certificate and, therefore, would not be required to be maintained in accordance with 14 CFR part 43. Maintenance and inspection procedures required by the operating limitations would meet the scope and detail of Appendix A to 14 CFR part 43. Similar to part 43, a certificated pilot could perform preventive maintenance.

The operating limitations would also require the operator to accomplish any safety-of-flight actions (maintenance or alterations) that the manufacturer deems necessary for continued operational safety. This is proposed because the aircraft would not be manufactured in accordance with a type design and hence the FAA would not issue Airworthiness Directives. If an operator chooses not to perform this maintenance, the special airworthiness certificate in the light-sport category would no longer be valid; however, the operator may still apply for an experimental certificate for the aircraft. These restrictions on the special light-sport aircraft would provide the higher level of safety required for an aircraft to be used for flight training or rental.

The special airworthiness certification option would be in addition to existing methods of obtaining airworthiness certification. No existing airworthiness certification option would be eliminated or restricted for aircraft that meet the definition of light-sport aircraft. An aircraft that meets the proposed definition of light-sport aircraft is not required to have a special light-sport certificate and may be eligible to hold other airworthiness certificates, provided that it meets the applicable requirements of subpart H of part 21.

Aircraft that otherwise meet the light-sport aircraft criteria that are shown via test to have a higher V_H would not be issued a special airworthiness certificate under the terms of this rule. Such higher performance aircraft currently could be type-certificated in other categories such as normal, primary, or special class (e.g., JAR–VLA); and could be operated by the holder of at least a recreational pilot certificate.

An aircraft would no longer be eligible for the special light-sport certificate if it is altered such that it no longer meets the definition of light-sport aircraft. For example, an alteration to a powered aircraft that results in a V_H greater than 115 kts (e.g., installation of a cruise propeller on an aircraft initially certificated with a climb propeller) would render the aircraft ineligible.

The definition of light-sport aircraft includes gyroplanes; however, gyroplanes would not be issued special airworthiness certificates in the light-sport category under proposed § 21.186. The FAA would issue an experimental, operating light-sport aircraft airworthiness certificate under § 21.191(i)(1) to existing gyroplanes that do not meet part 103 but meet the proposed definition of light-sport aircraft. Because gyroplanes could not be certificated under § 21.186, they would not be eligible for airworthiness certificates under § 21.191(i)(2) and (3). The FAA recognizes that this may limit the number and types of gyroplanes that a sport pilot may fly; however, the FAA notes that a sport pilot may fly a gyroplane that has a standard or special category airworthiness certificate provided the aircraft meets the definition of light-sport aircraft.

The FAA may issue special, light-sport aircraft airworthiness certificates to aircraft manufactured before the effective date of the rule. These aircraft would be required to meet the consensus standard in effect at the time of manufacture. To get the certificate you would have to make application for registration not later than 24 months after the effective date of the rule. You would also have to present the required information (as above) to the FAA and make the statements concerning any prior or future modifications. This would require the manufacturer of your aircraft to be in a position to issue a retroactive Statement of Compliance for your specific aircraft serial number. If it is an imported aircraft, you would also have to provide the additional import information on a retroactive basis.

Because of these requirements, not all aircraft models will be eligible for a special airworthiness certificate. While the FAA does not expect many manufacturers would retroactively issue Statements of Compliance for aircraft manufactured before the effective date of the rule, the FAA does not want to rule out this possibility.

Proposed § 21.186(b) would define the requirements for getting a special light-sport aircraft airworthiness certificate.

Proposed § 21.186(b)(1) describes the items that the registered owner would be required to present to be eligible for a special airworthiness certificate in the light-sport category. The registered owner would submit a copy of the manufacturer-issued Pilot Operating Handbook for the aircraft and the manufacturer-issued maintenance and inspection procedures. These items would be required to provide the registered owner with access to the information on how to operate aircraft safely and the technical data to inspect and properly maintain the aircraft. The registered owner would also present a manufacturer's Statement of Compliance to ensure that the aircraft presented is in a condition for safe operation.

Proposed § 21.186(b)(2) would exclude aircraft that have been previously issued an airworthiness certificate in the standard or primary category from being eligible for a special light-sport certificate. The intent of this proposal is to enable aircraft that can meet a consensus standard to obtain an airworthiness certificate without demonstrating to the FAA that the aircraft complies with the standards for the issuance of a standard or primary category airworthiness certificate. The FAA believes that to allow aircraft with existing certificates in the standard or primary category to attain a special light-sport certificate would be an unnecessary burden on the manufacturers, the operators, and the FAA. This is because the proposal would require the manufacturers of light-sport aircraft to implement a system specific to their aircraft models to monitor the continued airworthiness. Additionally, the FAA believes there would be little interest in ''downgrading'' from a standard or primary category certificate to a special light-sport, as the airworthiness certificate would have more restrictive operating limitations.

Proposed § 21.186(b)(3) would require that the aircraft be inspected by the FAA (or an FAA-designated representative) and be in a condition for safe operation. The person conducting the inspection would rely upon Manufacturer's Statement of Compliance to assist in determining that the aircraft complies with consensus standards unless FAA experience with the manufacturer dictates otherwise.

Proposed § 21.186(b)(4) would address authorized modifications to light-sport aircraft. The registered owner would provide a statement indicating that either the aircraft has not been altered after the date of manufacture, or that the aircraft was altered with the authorization of the manufacturer. Absent a responsible manufacturer, other persons acceptable to the FAA who have established a program to review the alterations to the manufacturer's aircraft may also authorize an alteration. That person would review the alteration for compliance with the applicable standard. In order to authorize an alteration the person must accept continued airworthiness responsibility for the altered aircraft. This requirement

would assist in ensuring that the aircraft meets the applicable consensus standard throughout its useful life.

Proposed § 21.186(b)(5) would address authorized modification to the aircraft. The registered owner would provide a statement indicating that any future alterations to the aircraft will be performed with the authorization of the manufacturer. Other persons acceptable to the FAA who have established a program to review the alterations to the manufacturer's aircraft may also authorize an alteration. That person would review the alteration for compliance with the applicable standard. In order to authorize an alteration the person must accept continued airworthiness responsibility for the altered aircraft. This requirement would assist in ensuring that the aircraft meets the applicable consensus standard throughout its useful life.

Proposed § 21.186(c) would require manufacturers of aircraft intended for certification as a special, light-sport aircraft, or of kits intended for certification as experimental aircraft for the purpose of operating light-sport aircraft (under proposed § 21.191(i)(2)), to produce those aircraft or aircraft kits in accordance with consensus standards. The FAA believes that light-sport aircraft can be designed and manufactured with less FAA oversight than that required for an aircraft with a type or production certificate. Accordingly, light-sport aircraft would conform to an industry-developed consensus airworthiness standard, which the FAA would define as a ''consensus standard.''

The manufacturer would have to perform specific tasks and attest to their satisfactory completion on a manufacturer's Statement of Compliance. A Statement of Compliance would be required for each specific aircraft to be issued a special, light-sport aircraft airworthiness certificate; or for each kit issued an experimental certificate for the purpose of operating light-sport aircraft.

Furthermore, proposed § 21.186(c) would define the items that must be contained in the manufacturer's Statement of Compliance. The manufacturer's quality assurance system would identify a company official who would be authorized to make the certifications on the Statement of Compliance. The official who makes the certifications would need to have control and direct supervisory participation in the activities that the statement addresses.

Proposed § 21.186(c)(1) would require the Statement of Compliance to contain the aircraft make and model designation, aircraft serial number, class of light-sport aircraft, and date of manufacture for each aircraft or kit intended for certification under proposed § 21.186 or 21.191(i)(2). This provision is intended to specify the minimum basic identification on the Statement of Compliance for each aircraft (or kit, when applicable) produced. A manufacturer could include in its Statement of Compliance additional information to help describe or otherwise identify the aircraft.

Proposed § 21.186(c)(2) would require the Statement of Compliance to fully identify the consensus standard used to manufacture the aircraft. The identification would include the effective date of the consensus standard. This requirement would provide a permanent record of compliance by aircraft and by serial number with a particular consensus standard.

Although aircraft issued special airworthiness certificates in the light-sport category would not have a type certificate or be produced under a production certificate, the FAA proposes that these aircraft would meet consensus standards, which would mean an industry-developed consensus airworthiness standard. The light-sport aircraft industry, with FAA participation, would develop an acceptable minimum airworthiness standard for each aircraft class that could be issued a special airworthiness certificate in the light-sport category. The airworthiness standards would govern light-sport aircraft design and performance, quality assurance system requirements, production acceptance test specifications, and continued operational safety monitoring system characteristics. These standards would provide a level of safety that is higher than that provided by the standards permitted for an experimental certificate issued for the purpose of operating amateur-built aircraft under current § 21.191(g).

For aircraft that would be eligible for the special, light-sport aircraft airworthiness certificate, the FAA believes that the use of consensus standards is appropriate. The FAA has made this determination in accordance with Office of Management and Budget (OMB) Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' dated February 10, 1998. Specifically, the FAA believes that this determination is consistent with a primary goal of the government in using voluntary consensus standards'reduced regulatory development costs to the government and reduced regulatory compliance costs to the industry.

Proposed § 21.186(c)(3) would require the Statement of Compliance to include a statement that the aircraft complies with the current consensus standard identified in proposed § 21.186(c)(2). This would attest to the satisfactory completion of all analyses, tests, and inspections necessary to demonstrate that the aircraft complies with that standard.

Proposed § 21.186(c)(4) would require the Statement of Compliance to include a statement that the manufacturer has found that the specific aircraft conforms to the manufacturer's design data. This determination would be made using a quality system that conforms to the consensus standard. This determination would apply to the aircraft (or kit, when applicable) and its components, including purchased components. Thus, this statement would attest to the existence of a quality assurance system that complies with the consensus standard.

Proposed § 21.186(c)(5) would require the Statement of Compliance to include full identification of the following:

(1) The Pilot Operating Handbook describing the proper methods and procedures for safely operating the aircraft.

(2) The manufacturer's inspection and maintenance program for the continued airworthiness of the aircraft. This would require the manufacturer to establish and make available the technical information necessary to inspect and maintain the aircraft.

(3) The pilot flight training providing information on the model-specific features and characteristics of the aircraft, because the sport pilot certificate would require specific training by make and model. (Without such a manual, a sport pilot would not be able to receive a make and model logbook endorsement and thus could not operate the aircraft.)

Under the proposal, this paragraph would also require the Statement of Compliance to include a statement that the manufacturer would make this information available to any interested party.

Proposed § 21.186(c)(6) would require the Statement of Compliance to fully identify the document describing the system the manufacturer agrees to use for monitoring and correcting safety-of-flight issues. The FAA believes this is an important requirement because light-sport aircraft would not have a type certificate, and therefore, the manufacturer may not have the service difficulty reporting and correcting responsibilities required of a type

certificate holder. The intent of this requirement is to require a system to monitor and correct safety-of-flight issues for these aircraft. By making this statement, the manufacturer would also attest that the manufacturer's continued operational safety monitoring system complies with the consensus standard.

This proposal would establish a requirement for manufacturers to have a system to monitor and correct safety-of-flight issues, because aircraft holding a special, light-sport aircraft airworthiness certificate would not have a type certificate. The manufacturer would be responsible for monitoring and notifying operators to correct unsafe conditions in aircraft that have been issued special airworthiness certificates in the light-sport category for as long as these aircraft are U.S.-registered. The manufacturer also would be responsible for issuing corrective actions in accordance with its program to monitor and correct safety-of-flight issues and would notify the owner of the affected aircraft of the corrective action to resolve problems. The FAA does not normally issue airworthiness directives (AD's) against products without a type certificate. Therefore, to ensure the success of this proposal, the FAA expects manufacturers to implement a vigorous system to monitor and correct safety-of-flight issues. The FAA specifically requests comments on the manner in which the continued airworthiness of light-sport aircraft should be addressed.

To ensure continued airworthiness of the aircraft, the FAA proposes that when an aircraft is certificated, the FAA would assign appropriate operating limitations requiring certain inspections. The operating limitations associated with the airworthiness certificate would specify that the manufacturer's safety-of-flight actions must be complied with. This proposal also addresses how the continued airworthiness would be handled for these aircraft and who would perform the maintenance and inspections to ensure continued airworthiness.

Under this proposal, the owner would ensure that the corrective action is addressed in accordance with the operating limitations proposed for the special, light-sport aircraft airworthiness certificate. Failure to comply with mandatory safety-of-flight actions from the manufacturer would mean that the aircraft is no longer in compliance with the conditions of its airworthiness certificate. However, an operator who chooses not to comply with the manufacturer's program may seek an experimental certificate for the aircraft.

If public safety requires issuance of an AD, the FAA has the ability to issue one; however, the FAA expects that such action would be needed only as a consequence of a serious breakdown in the manufacturer's fulfillment of its responsibilities for maintaining continued airworthiness.

If a manufacturer ceases to exist (or ceases to provide continued airworthiness support), the lack of a responsible party for the continued airworthiness support of in-service aircraft would be a potential safety hazard for the aircraft operator and the public. Thus, the proposal would permit the manufacturer to transfer responsibility for monitoring and correcting safety-of-flight issues to a suitable third party capable of supporting the fleet. The consensus standard would include procedures to ensure that a person acceptable to the FAA can be identified to assume the continuing airworthiness responsibilities of the manufacturers of light-sport aircraft. If an airworthiness issue arises and there is no known responsible person, the FAA could take certificate action against the individual aircraft.

Proposed § 21.186(c)(7) would require the Statement of Compliance to include a statement that the manufacturer would provide the FAA unrestricted access to its facilities, upon request. Access to facilities would include access to design, manufacturing, and quality system data. Because the light-sport aircraft manufacturer would not be required to hold an FAA design or production approval, this requirement would be needed to facilitate the FAA's ability to make any inspections and tests necessary to determine compliance with the provisions of this section. The FAA may also need to preserve this access under its bilateral obligations.

Proposed § 21.186(c)(8) would require a manufacturer's statement that completed (non-kit) aircraft were tested in accordance with a production acceptance test procedure that meets the consensus standard. Furthermore, the manufacturer would be required to make a determination that a completed aircraft is in a condition for safe operation before the FAA could issue an airworthiness certificate. This statement would also attest that the manufacturer has determined that the aircraft's performance is acceptable and that the aircraft is in a condition for safe operation.

Proposed § 21.186(d) would specify the additional requirements that the registered owner must meet to obtain a special airworthiness certificate in the light-sport category when importing a light-sport aircraft. These requirements are in addition to those in proposed § 21.186(b).

Proposed § 21.186(d)(1) would require the applicant for the special airworthiness certificate to provide evidence that an imported light-sport aircraft was manufactured in a country with which the United States has an agreement for the import/export of that product. This is because the FAA would rely on the CAA's of other countries to assess the airworthiness of these aircraft. The agreement must address aircraft with special airworthiness certificates and the appropriate class of light-sport aircraft for these aircraft to be imported or exported. Typically, these agreements are in the form of Bilateral Airworthiness Agreements or Bilateral Aviation Safety Agreements with Implementation Procedures for Airworthiness, but other types of agreements would be suitable. The FAA would consider agreements that address ''all aeronautical products'' as being applicable to all classes of light-sport aircraft, including those new classes such as powered parachutes and weight-shift-control aircraft.

Proposed § 21.186(d)(2) would require the applicant for the special airworthiness certificate to provide evidence that the make and model of the aircraft to be imported is eligible for an airworthiness certificate or flight authority in the country of manufacture. This would constitute evidence that the civil aviation authority (CAA) of the country of manufacture has established a proper level of oversight for this type of product and would perform its export bilateral obligations with regard to the continued airworthiness of the product.

Proposed § 21.186(d)(3) would require the applicant for the special airworthiness certificate to provide evidence that the CAA of the country of export has found that the aircraft is in a condition for safe operation. This requirement would be the same for used or new aircraft. However, if a used aircraft is imported from a country that is not the country of manufacture, additional inspection and documentation may be required to demonstrate the airworthiness of the aircraft.

Proposed section 21.191(i) would establish a new purpose for which the FAA may issue an experimental airworthiness certificate for the purpose of operating light-sport aircraft. Under the proposal, there would be three methods for obtaining an experimental airworthiness certificate for this purpose. Experimental certificates could be issued for: (1) Existing aircraft that exceed the weight, occupant, or

performance limitations of the current part 103; (2) kit-built light-sport aircraft; and (3) aircraft previously certificated under the proposed § 21.186.

The FAA created this new purpose for the experimental certificate in lieu of combining this purpose with the current purpose of operating amateur-built aircraft. The FAA did not want to have aircraft that could not demonstrate compliance with § 21.191(g) (the 51-percent rule) to be certificated under that paragraph.

The experimental airworthiness certification option set forth in this proposal would be in addition to existing methods of obtaining airworthiness certification. No existing airworthiness certification option would be eliminated or restricted for aircraft that meet the definition of light-sport aircraft. Additionally, this proposal wouldn't affect vehicles eligible to operate under part 103.

Aircraft that otherwise meet the light-sport aircraft definition that are shown via test to have a higher V_H would not be issued an airworthiness certificate under the terms of this rule. An aircraft would no longer be eligible for the experimental light-sport certificate if it is altered such that it no longer meets the definition of light-sport aircraft. For example, an alteration to a powered aircraft that results in a V_H greater than 115 kts (e.g., installation of a cruise propeller on an aircraft initially certificated with a climb propeller) would render the aircraft ineligible.

An aircraft issued an experimental, operating light-sport aircraft airworthiness certificate under proposed § 21.191(i) would be issued operating limitations under current § 91.319(b) as part of the certificate. The limitations would address maintenance, flight test programs, operations in various airspace classes, and pilot qualification. Operating limitations would prohibit the operation of experimental light-sport aircraft for compensation or hire, except when operated while conducting flight training in aircraft certificated under proposed § 21.191(i)(1), and also would prohibit rental of these aircraft.

Operating limitations also would address the different purposes for which an experimental certificate would be issued. Operating limitations for existing aircraft that exceed the weight, occupant, or performance limitations of part 103 would be similar to those that currently exist for vehicles operating under part 103, although flight training, under certain circumstances described previously, would be an allowable use. Operating limitations for new aircraft, either assembled from an eligible kit or previously issued a special certificate under § 21.186, would be similar to those for aircraft issued experimental, operating amateur-built aircraft.

When an experimental, operating light-sport aircraft airworthiness certificate is issued for an aircraft that has not previously completed flight testing, operating limitations would require the owner to complete phase I flight testing to demonstrate that the aircraft is safe for flight. Operating limitations issued for these aircraft would be similar to those currently issued for experimental, amateur-built aircraft. Upon completion of phase I flight test, the pilot should record in the aircraft records that the aircraft meets § 91.319(b). The aircraft would be considered to have completed phase I flight testing if the aircraft has met the phase I flight test requirement at the time of application, and the owner can attest that the aircraft meets the requirements for safe flight and has made the appropriate entry in the aircraft's maintenance record.

The continued airworthiness of light-sport aircraft issued experimental certificates would follow the experience and precedent that has been established for the continued airworthiness of experimental amateur-built aircraft. The aircraft owner would be responsible for ensuring the continued airworthiness of the aircraft. The FAA has not generally issued AD's for aircraft with experimental certificates in the past and expects this policy to continue. Similar to aircraft with special, light-sport aircraft airworthiness certificates, the FAA would issue an AD if public safety requires; however, the FAA expects that such action would be required only as a consequence of a serious breakdown in the manufacturer's fulfillment of its responsibilities for maintaining continued airworthiness.

Under the proposal, there would be three ways a person could obtain an experimental airworthiness certificate for the operation of light-sport aircraft [''experimental light-sport'']. Proposed 21.191(i)(1) would establish the eligibility requirements and time frame for the first method of issuing an experimental airworthiness certificate for the operation of light-sport aircraft [''experimental light-sport'']. This method would allow a person to obtain an experimental certificate for the operation of light-sport aircraft if that person applies to register the aircraft not later than 24 months after the effective date of the rule. The FAA would have to issue an experimental airworthiness certificate for the aircraft not later than 36 months after the effective date of the rule. This provision would not apply to aircraft that meet the definition of ultralight vehicle in § 103.1. Light-sport aircraft could be used only for sport and recreation and flight training. However, for 36 months after the effective date of the rule, a person could operate these aircraft for compensation or hire while conducting flight training.

The owner of an aircraft that does not meet the current definition of ultralight vehicle in § 103.1 would be able to obtain an experimental certificate for their aircraft. To get the certificate, the owner would have to apply to the FAA to register the aircraft not later than 24 months after the effective date of the rule. Then, the registered owner would be required to have the aircraft inspected and an airworthiness certificate issued by a qualified representative of the FAA not later than 36 months after the effective date of the rule. The FAA wouldn't issue experimental, operating light-sport aircraft airworthiness certificates under § 21.191(i)(1) after 36 months after the effective date of the final rule.

Once the FAA has inspected the aircraft and determined it is safe to operate, the FAA would issue an experimental, operating light-sport aircraft airworthiness certificate with the appropriate operating limitations. Identification of the aircraft with a data plate per current § 45.11 would be required.

The process for getting an experimental, operating light-sport aircraft airworthiness certificate would be the same for an imported aircraft as for an aircraft manufactured in the United States.

Aircraft certified under this method could be used only for sport and recreation and flight training; however, until 36 months after the effective date of the rule, flight training would be permitted in existing light-sport aircraft that do not meet part 103 (those certificated under proposed § 21.191(i)(1)) and are operated for compensation or hire. Permitting these aircraft to be used for flight training while the aircraft is being used for compensation or hire for a 36–month period would ensure that flight training currently permitted under exemptions could continue while light-sport aircraft manufacturers begin production of aircraft that could be certificated under proposed § 21.186. This 36–month period also would provide industry with time to develop and reach a consensus on the airworthiness standards appropriate for light-sport aircraft. The owner of an aircraft certificated under proposed § 21.191(i) would be authorized to receive flight

training in the aircraft regardless of this 36-month provision.

Persons who currently operate vehicles under a training exemption and who have applied for an aircraft registration would be allowed to continue to operate under the training exemption until the FAA issues an experimental, operating light-sport aircraft airworthiness certificate. Persons operating aircraft under a training exemption would still have to apply for registration and for an airworthiness certificate, as proposed. Persons with vehicles that exceed the weight/occupant limitations of part 103 and who do not hold a training exemption would not be permitted to operate under part 91 until the aircraft is registered and is issued an experimental, operating light-sport aircraft airworthiness certificate. The FAA intends for the experimental, operating light-sport aircraft airworthiness certificate to be for aircraft meeting the criteria for light-sport aircraft that do not currently hold a valid airworthiness certificate and that cannot be operated under the provisions of part 103.

Proposed 21.191(i)(2) would establish the eligibility requirements and time frame for the second method of issuing an experimental airworthiness certificate for the operation of light-sport aircraft [''experimental light-sport'']. A person could obtain an experimental certificate for the operation of light-sport aircraft, if the aircraft was assembled from an eligible kit without the supervision and quality system of the manufacturer. The aircraft could be used only for the purpose of sport and recreation and for receiving flight training.

An aircraft assembled from a kit could alternatively be eligible for an experimental amateur-built certificate, provided the assembler can meet the requirements of § 21.191(g).

A gyroplane kit could not be an eligible kit, because a gyroplane would not be issued an airworthiness certificate in the light-sport category under proposed § 21.186

Experimental, kit-built aircraft may also benefit from manufacturer support provided to aircraft with special, light-sport aircraft airworthiness certificates.

Proposed 21.191(i)(3) would establish the eligibility requirements and time frame for the third method of issuing an experimental airworthiness certificate for the operation of light-sport aircraft [''experimental light-sport'']. In this method a person could obtain an experimental certificate for the operation of light-sport aircraft if the aircraft previously was issued a special airworthiness certificate in the light-sport category under § 21.186. These aircraft also could be used only for sport and recreation and flight training, even if they were previously operated for compensation or hire while conducting flight training or used as rental aircraft.

This method is intended to permit aircraft previously issued a special, light-sport aircraft airworthiness certificate under proposed § 21.186 that no longer meet the operating limitations of proposed § 91.327 to be certificated for this purpose. The operating limitations would then be to those of current § 91.319(b).

An aircraft that did not comply with a manufacturer's mandatory safety of flight bulletin or had unauthorized alterations would be eligible for the experimental certificate using this method.

Proposed section 21.193(e) would include general requirements for registered owners who seek to obtain an experimental certificate for a light-sport aircraft under proposed § 21.191(i)(2) assembled from a kit. This section has similar requirements to those of § 21.186(b) for aircraft eligible for special light-sport airworthiness certificates.

Proposed § 21.193(e)(1) would define the requirements that an eligible kit must meet. A kit would be considered eligible if the aircraft make and model previously has been issued a special airworthiness certificate in the light-sport category and that aircraft was manufactured and assembled by the aircraft kit manufacturer. This requires that the manufacturer has completed the process of designing, manufacturing, assembling, and testing the same make and model aircraft.

Under the proposal, the owner would have to provide evidence that the aircraft was assembled per the kit manufacturer's instructions, and would have the aircraft inspected by the FAA. The applicant also would need to provide the Statement of Compliance issued by the manufacturer. Once the aircraft has been inspected and determined to be safe to operate, the FAA would issue an experimental, operating light-sport airworthiness certificate with the appropriate operating limitations. Aircraft assembled from a kit and imported complete into the United States would not be eligible for an experimental certificate under proposed § 21.191(i)(2). This person could obtain only an experimental airworthiness certificate if the aircraft is eligible under § 21.191(g).

Proposed § 21.193(e)(2) would require registered owner to have a copy of the Pilot Operating Handbook. This would provide the registered owner access to information on how to safely operate the aircraft.

Proposed § 21.193(e)(3) would require the registered owner to have a copy of the maintenance and inspection procedures for the aircraft. This would provide the registered owner access to information on how to safely maintain the aircraft.

Proposed § 21.193(e)(4) would require the registered owner to provide a Statement of Compliance for the design and manufacture of the kit aircraft. This Statement would include all the items required on a Statement of Compliance for a special light-sport aircraft, except for a statement that it has been tested in accordance with a production acceptance procedure. This statement would not be required because the Statement of Compliance for a kit would address only the work performed by or under the control of the kit manufacturer. In lieu of a statement that the aircraft has been tested in accordance with a production acceptance procedure, this proposal would require the kit manufacturer to provide assembly instructions for the aircraft kit. The instructions should provide enough detail so that if the kit were assembled by a qualified person, the completed aircraft would perform acceptably and be in a condition for safe operation.

Proposed § 21.193(e)(5) would require the registered owner to present the completed assembly instructions used to assemble the aircraft to the FAA.

Proposed § 21.193(e)(6) would require that an imported kit be manufactured in a country that has an agreement with the United States for the import and export of the aircraft to be made from the kit. This would preclude the manufacture of kits in countries that the United States has not assessed with respect to the manufacture of these kits.

C. What Are the Proposed Changes to 14 CFR Part 43?

Proposed section 43.1 would be revised to reflect that part 43 would not apply to an aircraft for which a special airworthiness certificate in the light-sport category was issued. The FAA has made this determination because these aircraft would not be issued a type certificate.

D. What Are the Proposed Changes to 14 CFR Part 45?

The FAA is proposing revisions to part 45 to require aircraft registration markings for powered parachutes and weight-shift-control aircraft. The revisions would set forth requirements

for the size of these registration marks and how they should be displayed.

Proposed section 45.27 would require each operator of a powered parachute or weight-shift-control aircraft to display registration marks. The marks would be required to be displayed horizontally and in two diametrically opposite positions on any structural member or airfoil.

Proposed section 45.29 would permit an aircraft issued an experimental certificate for the purpose of operating a light-sport aircraft to display marks at least 3 inches high when the maximum cruising speed of the aircraft does not exceed 180 kts CAS. This proposal is identical to that contained in § 45.29(b)(iii) for exhibition aircraft and amateur-built aircraft. The proposal also would require marks displayed on all powered parachutes and weight-shift-control aircraft. This proposal is similar to the current requirement for airships, balloons, and non-spherical balloons.

E. What Are the Proposed Changes to 14 CFR Part 61?

The FAA is proposing a new sport pilot certificate and flight instructor certificate with a sport pilot rating. The proposal would establish two new aircraft category and class ratings, weight-shift-control (with land and sea class ratings), and powered parachute, in addition to new training and certification requirements for these new aircraft ratings at the sport pilot and private pilot levels.

The FAA would establish a Special Federal Aviation Regulation (SFAR) under part 61 that would apply to the issuance of a student pilot certificate to operate light-sport aircraft, a sport pilot certificate, a flight instructor certificate with a sport pilot rating, and ground instructor privileges for these certificates. The FAA's decision to propose many of these rule changes in the format of an SFAR was based on a number of factors. First, the proposed SFAR would consolidate all requirements for sport pilot certification, flight instructor certification with a sport pilot rating, student pilot certification to operate a light-sport aircraft, and ground instructor privileges applicable to certificates issued under the SFAR in one location. The FAA believes that this approach would make it easier for you to use the certification rules that apply to you. Additionally, because this proposal would be a significant amendment to part 61, we see this as an opportunity to revise our regulations using plain language writing techniques, which would make the regulations clearer to you. Finally, it provides us with greater flexibility to further refine the new regulations over a period of time. We will evaluate the impact of the SFAR after we have had operational experience with the regulations. At that point, we will determine the most appropriate location for the provisions of the SFAR and we expect to integrate them into the permanent portion of 14 CFR part 61. The proposed certification of sport pilots is a new concept that may require revisions once it is put into place. Although the question-and-answer format in the rule text is a departure from what you may be used to, it is easier to understand and apply. The FAA specifically requests that you comment on the language of the NPRM and on the proposal to incorporate these rules initially as an SFAR, rather than in the body of part 61.

Part 61 SFAR No. 89

General

Proposed section 1 would set forth the scope of SFAR 89. It would state that the SFAR would establish the requirements to apply for a student pilot certificate to operate a light-sport aircraft, a sport pilot certificate, and a flight instructor certificate with a sport pilot rating. It would also establish requirements for ground instructors who would provide training for a sport pilot certificate or a flight instructor certificate with a sport pilot rating.

Proposed section 3 of SFAR 89 would list the eligibility requirements for student pilot, sport pilot, and flight instructor certificates.

If you are an applicant for a student pilot certificate, you would have to be at least 16 years old to operate a light-sport aircraft other than a glider or a balloon. You would have be at least 14 years old to apply for a certificate to operate a light-sport glider or balloon.

If you are an applicant for a sport pilot certificate, you would have to be at least 17 years old to operate light-sport aircraft other than a glider or balloon. You would have to be at least 16 years old to apply for a certificate to operate a light-sport glider or balloon. These age limitations are consistent with the current age requirements for recreational and private pilot certificates.

If you are an applicant for a flight instructor certificate with a sport pilot rating, you would have to be at least 18 years old. This age requirement is consistent with age requirements for all other flight instructor certificates.

The FAA is not considering changes to the existing age requirements, because there has not been any indication of a decrease in the level of safety due to the age of a pilot or flight instructor.

Student pilots, sport pilots, and flight instructors would have to be able to read, speak, write, and understand the English language, which currently is required of all student pilots, private pilots, and flight instructors. The FAA may place operating limitations on you, as necessary, for the safe operation of light-sport aircraft. This procedure would be identical to that used for current student pilot, private pilot, and flight instructor applicants.

Proposed section 5 would indicate that the SFAR would remain effective until superceded or rescinded. The FAA expects to incorporate the provisions of SFAR 89 into the permanent portions of 14 CFR part 61 after evaluating the operational needs of the SFAR.

Proposed section 7 of SFAR 89 would establish that a sport pilot certificate issued under this SFAR would not expire.

Proposed section 9 of SFAR 89 would indicate that the term ''light-sport aircraft,'' as used in the SFAR, would be defined in § 1.1. This definition would provide the criteria for a light-sport aircraft and which aircraft you would be authorized to fly. A light-sport aircraft may hold either a standard or special airworthiness certificate.

Proposed section 11 of SFAR 89 would indicate that the term ''authorized instructor,'' as used in this SFAR, would be defined under § 61.1. The definition of authorized instructor would be amended to include a flight instructor with a sport pilot rating.

Proposed section 13 of SFAR 89 would require that as a sport pilot, you would have to comply with parts 61 and 91 and any other applicable regulations under 14 CFR.

Proposed section 15 of SFAR 89 would require you, while exercising the privileges of a student pilot operating light-sport aircraft or a sport pilot (other than a glider or balloon), to hold and possess either a current and valid U.S. driver's license or a current and valid airman medical certificate issued under part 67. The FAA would consider a U.S. driver's license to be any license to operate a motor vehicle issued by a state, the District of Colombia, Puerto Rico, a territory, a possession, or the Federal government. Consistent with all other pilot certificates, if you are a student pilot or a sport pilot operating a light-sport balloon or glider, you would not be required to hold a current and valid U.S. driver's license or a current and valid airman medical certificate.

If you do not possess a current and valid airman medical certificate and

your driver's license is revoked or rescinded for any offense, you couldn't exercise the privileges of your sport pilot certificate until your license is reinstated. If you choose to use your driver's license to satisfy the medical requirements for your sport pilot certificate (or a student pilot operating light-sport aircraft), your driver's license must be in your personal possession at all times when you conduct operations under your sport pilot certificate. Similarly, if you choose to use a current and valid airman medical certificate to meet the medical requirements for your sport pilot certificate, you would be required to carry that medical certificate at all times when you conduct operations under your certificate.

It should be noted that any restrictions on a U.S. driver's license (e.g., vision restrictions) also would apply when exercising the privileges of a student pilot certificate operating light-sport aircraft or a sport pilot certificate.

The FAA proposes to require a pilot to hold and possess a U.S. driver's license because it provides generally accepted evidence of basic health. Further, the FAA believes the medical standards that permit an individual to drive an automobile in close proximity to other automobiles at high speeds provides an adequate level of safety to operate a light-sport aircraft.

Although the process for applying for a driver's license varies throughout the United States, U.S. issuing authorities typically require applicants to verify some basic level of health on their various driver's license applications. Each State requires an applicant to meet minimum vision standards. Additionally, many authorities require applicants to provide a summary of any medical condition(s) that might preclude them from obtaining a U.S. driver's license in that jurisdiction. In the District of Columbia, for example, applicants for a driver's license are asked to indicate whether they have ever been treated for any of the following: stroke or paralysis; loss of function in an extremity; alcoholism or drug abuse; a mental disorder; a brain disorder; diabetes; glaucoma; cataracts or other eye diseases; any heart disorder; seizure disorder or fainting spells; poor muscle control, or dizzy spells. If a driver's license applicant affirms having received treatment for any of these conditions, a licensed physician must further evaluate whether that person should be allowed to drive a motor vehicle. The FAA believes that the level of health evidenced by a U.S. driver's license is a necessary prerequisite to safely operate a light-sport aircraft.

If the U.S. driver's license of a pilot who does not possess a current and valid airman medical certificate is revoked or rescinded for any offense—including, among others, substance abuse, excessive speeding, careless and reckless operation of a vehicle, numerous traffic violations—the individual's pilot certificate would not be valid until the license is reinstated. Unless and until the U.S. driver's license is reinstated, a pilot would not be authorized to operate a light sport aircraft. If an individual is precluded from driving an automobile, then the FAA believes that the individual should not operate a light-sport aircraft '' a more complex and demanding activity.

It is possible that a student pilot or a sport pilot whose U.S. driver's license has been revoked or rescinded could seek airman medical certification as a means to obtaining certification to operate light-sport aircraft. However, on FAA Form 8500–8, Application for Airman Medical Certificate or Airman Medical and Student Pilot Certificate, under Items 18 and 20, applicants must state whether their U.S. driver's license has been denied, suspended, cancelled, or revoked. An applicant must authorize the FAA, as set forth under existing § 67.7, access to search the National Driver Register to obtain information on and condition(s) that might preclude the issuance of an airman medical certificate.

Under the proposal if a pilot knows or has reason to know of any medical condition that would affect his or her ability to operate a light-sport aircraft, then the pilot would have to refrain from acting as a pilot in command. Data available in the National Aviation Safety Data Analysis Center (NASDAC) accident database indicates that a pilots medical condition is rarely a causal factor in general aviation accidents. A review of balloon and glider accidents contained in that database from 1990 to 2000 revealed that only two accidents occurred because of a pilot's medical condition. The absence of any medical certificate requirement for persons operating balloons and gliders has not resulted in a demonstrated reduction in safety.

The ARAC, in its findings, provided accident summary data from 1986 through 1992 indicating that the percentage of aviation accidents involving medical causal factors is lower for those activities that do not require medical certificates than for those activities that do. During this 7-year timeframe, the ARAC indicates there were 761 accidents in lighter-than-air aircraft and gliders—operations that do not require airman medical certification. Only one of the 761 accidents showed a medical cause, according to ARAC (slightly more than one-tenth of one percent of total accidents). For general aviation operations requiring airman medical certification, ARAC indicates there were 46,976 total accidents, 99 of which (slightly more than one-fifth of one percent) showed a medical cause. The FAA believes, therefore, that medical conditions are not a significant cause of accidents in aircraft that are used for sport and recreational purposes.

Copies of the following items are filed in the docket for this rulemaking: examples of medical questions asked on selected U.S. driver's license application forms and on FAA Form 8500–8; NASDAC accident data; and ARAC's final recommendation containing it's accident data findings.

Proposed section 17 of SFAR 89 consists of a table that sets forth the circumstances under which a medical deficiency would preclude a student pilot or sport pilot from operating a light-sport aircraft. These provisions would be consistent with the prohibitions against operating with a medical deficiency specified in § 61.53.

Student Pilot Certificate—Operating Light-Sport Aircraft

Proposed section 31 of SFAR 89 consists of a table that sets forth the procedures that you would follow when you apply for a student pilot certificate to operate a light-sport aircraft. This proposed process to obtain a student pilot certificate to operate a light-sport aircraft is consistent with current part 61 rules to obtain a student pilot certificate.

Proposed section 33 of SFAR 89 would establish that you could not operate a light-sport aircraft in solo flight unless you have met the requirements under § 61.87(a)–(c). Those requirements are the general, aeronautical knowledge, and pre-solo flight training requirements for all student pilots. Additionally, the proposal would establish that you must meet the existing student pilot requirements under § 61.87(d), (g), and (i)–(k). Those requirements are the maneuvers and procedures for your pre-solo flight training in a single-engine airplane, glider, gyroplane, airship, or balloon. This proposal would establish new maneuvers and procedures for pre-solo flight training in a powered parachute or weight-shift-control aircraft. These maneuvers and procedures would be similar to those specified in current § 61.87 with certain

variations due to the unique nature of those aircraft.

This proposal also would establish that a student pilot may not operate a light-sport aircraft on a solo cross-country flight, unless he or she meets the general solo cross-country requirements of current § 61.93(a) and receives the endorsements specified in § 61.93(b)–(c).

This proposal also would establish the maneuvers and procedures for solo cross-country flight training in a single-engine airplane, glider, gyroplane, or airship. A student pilot would have to receive and log flight training for the maneuvers and procedures specified in § 61.93(e), (h), (j), and (k), as applicable. This proposal also would establish new maneuvers and procedures for solo cross-country flight training in a powered parachute or weight-shift-control aircraft. There would be no cross-country requirements for balloons.

Proposed section 35 of SFAR 89 would set forth limits for you to operate light-sport aircraft as a student pilot. You would have to comply with §§ 61.87(l), 61.89(a)(1)–(4), (a)(7), and (a)(8). You would be restricted from operating a light-sport aircraft that has a VH that exceeds 87 knots CAS. The FAA believes that limiting a student pilot to this airspeed would establish an acceptable level of safety in view of the minimal amount of training required to be eligible for a student pilot certificate.

Additionally, you could not operate a light-sport aircraft with a flight or surface visibility of less than 3 statute miles, at night, at an altitude of more than 10,000 feet MSL or 2,000 feet AGL (whichever is higher), or outside the United States. However, you could operate light-sport aircraft on a solo flight in Class B, C, or D airspace if you have received the ground and flight training from an authorized instructor. You must also receive a logbook endorsement specifying that you are proficient to operate in the specific airspace or the airport at which you intend to fly solo.

Current part 103 operating rules permit an ultralight pilot to operate in Class B, C, or D airspace only if the area over which the pilot operates is not congested, and the pilot has obtained prior authorization from ATC. The FAA does not want to restrict you from operating light-sport aircraft in the same airspace, but in the interest of safety, decided to require you to get additional training and an endorsement from an authorized instructor if you want to operate and carry passengers in this airspace.

You would have to comply with any operating limitation placed on the light-sport aircraft's airworthiness certificate. You also would have to comply with any limitation or endorsement on your pilot certificate, airman medical certificate, U.S. driver's license, or any other limitation or endorsement from an authorized instructor.

You would have to hold a student pilot certificate, FAA Form 8710–2, ''Student Pilot Certificate'' or FAA Form 8420–2 ''Medical Certificate__Class and Student Pilot Certificate,'' identical to all other student pilots. All applicable endorsements for your student pilot certificate and logbooks would apply. The FAA would revise AC No. 61–65 ''Certification: Pilots and Flight and Ground Instructors'' to address the new endorsements for a student pilot operating light-sport aircraft.

Proposed section 37 of SFAR 89 would establish how to obtain a logbook endorsement for operations in Class B, C, or D airspace and at airports located in Class B, C, or D airspace. The FAA would require this endorsement within 90 days before you conduct flights in that airspace or at those airports. This proposal is consistent with the requirements established for other student pilots operating in Class B airspace. Persons operating ultralight vehicles are authorized to fly into Class B, C, or D airspace that is not over a congested area without training, but they must have ATC prior authorization. The new requirement has the potential to raise the level of safety for pilots operating similar aircraft in this airspace by requiring training before conducting such operations.

Sport Pilot Certificate

Proposed section 51 of SFAR 89 would establish the aeronautical experience requirements needed for a sport pilot certificate. You would have to receive and log ground training from an authorized instructor or complete a home-study course on aeronautical knowledge areas that would be applicable to the light-sport aircraft category or class privilege you seek. Your instructor would review your home-study course to determine that it adequately addresses the aeronautical knowledge areas. The proposed aeronautical knowledge areas are partly based on existing criteria for part 103 FAA-recognized training programs, and partly based on existing criteria contained in part 61 for existing pilot certificates. The FAA believes the training in these subject areas would be appropriate for an applicant for a sport pilot certificate and they reflect the simplicity of the aircraft and the less complex operating environment in which a sport pilot would operate. There would be no requirement for training on radio communications with ATC or for operations in Class B, C, or D airspace, because operation in that airspace requires an additional endorsement that has specific training requirements under proposed section 37 of SFAR 89.

Proposed section 53 of SFAR 89 would establish that you would have to receive and log ground and flight training from an authorized instructor on the areas of operations applicable to the light-sport aircraft category or class privileges you seek. These areas would be consistent with the flight proficiency requirements established for higher certificate levels under part 61. The FAA would establish new flight proficiency requirements for weight-shift-control aircraft and powered parachutes. The flight proficiency requirements are partly based on existing criteria for part 103 FAA-recognized training programs, and partly based on criteria contained in part 61 for existing pilot certificates.

Proposed section 55 of SFAR 89 would set forth the aeronautical experience requirements for your sport pilot certificate. To obtain your sport pilot certificate for all category and/or class privileges, with some variations for lighter-than-air aircraft and gliders, you would have to log at least 20 hours of flight time. This experience would include aeronautical experience requirements for weight-shift-control aircraft and powered parachutes. This experience generally would include at least 15 hours of flight training in an aircraft from an authorized instructor and 5 hours of solo flight training in the areas of operation established for a student pilot operating light-sport aircraft. The training for each category, with some variations for the different categories of aircraft, would include at least 2 hours of cross-country flight training; 10 takeoffs and landings to a full stop; 1 solo cross-country flight; and 3 hours of flight training in preparation for the practical test.

The proposal would specify cross-country distances for each category of aircraft. Due to the slow operating speeds of powered parachutes, the FAA would amend the definition of ''cross-country time'' in § 61.1(b)(3). Any flight over 15 nm would be considered a cross-country flight for training purposes in a powered parachute. The aeronautical experience requirements for a sport pilot are partly based on existing criteria for part 103 FAA-recognized training programs, and partly based on criteria contained in part 61 for existing pilot certificates.

The FAA considered, but did not agree with, the ARAC proposal, that cross-country flight should be permitted through a separate endorsement, so that cross-country privileges would be needed only by those sport pilots who choose to operate outside the small radius of their local airport. However, the FAA concluded that most ultralight operators conduct short cross-country flights. Therefore, to ensure a minimum level of safety is met for carrying a passenger, the FAA is proposing to require cross-country training for all sport pilot certificates. The FAA notes that many instructors within FAA-recognized ultralight organizations conduct some cross-country training, even though it is not required by all of those organizations. The FAA determined that, unless a sport pilot receives a minimum amount of training on cross-country procedures, the pilot would not have the skills necessary to navigate properly and avoid airspace that he or she would be prohibited from entering.

Proposed section 57 of SFAR 89 would establish the tests that you would have to take to obtain a sport pilot certificate. You would have to pass a test on the aeronautical knowledge areas, after receiving a logbook endorsement from an authorized instructor certifying that you are prepared for the knowledge test. That instructor would have conducted your training or reviewed and evaluated your home-study course on the aeronautical knowledge areas. If you completed a home-study course, the authorized instructor would be required to review your home-study course to ensure that it prepared you for the knowledge test on the aeronautical knowledge areas listed in section 51 of the SFAR. The FAA would develop this general knowledge test with industry input; it would not be aircraft-category specific.

You would have to pass the required practical test on the areas of operation that apply to the light-sport aircraft privilege you seek. You would have to receive a logbook endorsement from an authorized instructor certifying that you have met the applicable aeronautical knowledge and experience requirements and are prepared for the required practical test. That instructor would have conducted the required flight training in preparation for the practical test on the areas of operation that apply to the light-sport aircraft privilege you seek. An FAA designated pilot examiner or an FAA aviation safety inspector who is qualified in that category, class, and make and model of light-sport aircraft would conduct this practical test. After successfully passing the practical test for a sport pilot certificate, you would be issued a pilot certificate and the FAA designated pilot examiner or FAA aviation safety inspector would make the appropriate logbook endorsements establishing that you are proficient in this category, class and make and model of light-sport aircraft.

The FAA envisions that the initial cadre of FAA-designated examiners would come from the group of ''advanced'' flight instructors established in FAA-recognized ultralight organizations, or existing designated pilot examiners who are currently qualified in these types of light-sport aircraft. These advanced flight instructors serve in a similar role as pilot examiners for the FAA-recognized ultralight organizations. The initial cadre of FAA-designated pilot examiners authorized to certificate these new pilots would receive standardized FAA-designated examiner training and would be designated under 14 CFR part 183 as a representative of the FAA. Although an FAA aviation safety inspector would still have the authority to give the practical test for the certification of a sport pilot or flight instructor with a sport pilot rating, the FAA expects that most tests would be administered by FAA-designated examiners.

The FAA would develop Practical Test Standards for each category and class of aircraft for the sport pilot certificate. The FAA intends to seek industry input in developing these standards. Additionally, the FAA would amend AC No. 61–65, ''Certification: Pilots and Flight and Ground Instructors,'' to address the new endorsements that would be necessary for this proposed certificate.

Proposed sections 59 and 61 of SFAR 89 would establish that your sport pilot certificate would not list aircraft category and class ratings. You would receive logbook endorsements for each category and class of light-sport aircraft that you are entitled to operate. The designated pilot examiner or FAA inspector who conducted your practical test would provide your initial endorsements.

You would be required to have a logbook endorsement from an authorized instructor in your logbook for each additional category and class of light-sport aircraft you operate. You must also have a logbook endorsement for each additional make and model of light-sport aircraft that you operate.

The ARAC's proposal called for the establishment of ''type ratings'' in addition to category and class ratings for these new light-sport aircraft. The ARAC thought this was necessary because the listed ''classes of light-sport aircraft'' may be further divided to address such dissimilar features as pusher and tractor engine locations; single- and double-surface wings; conventional tail, canard tail, and tail-less aircraft in many of the above categories; and tricycle or conventional landing gear configurations. The FAA does not think that it is necessary to establish ratings on the sport pilot certificate to operate various types of light-sport aircraft. However, the FAA believes that a pilot should be required to demonstrate proficiency to operate each aircraft and is proposing to require a one-time logbook endorsement by an authorized instructor for each additional make and model of light-sport aircraft the sport pilot wishes to fly, in lieu of the ARAC ''type rating'' recommendation. The proposed training and one-time logbook endorsement requirement would ensure that any time a pilot exercising sport pilot privileges chooses to fly a new make and model of aircraft within a specific category he or she would receive the appropriate training.

This new concept requiring a logbook endorsement for each make and model of light-sport aircraft would ensure that if you fly any of the unique light-sport aircraft that fall into the broad aircraft categories and class ratings of aircraft established in § 61.5, you would receive training and demonstrate a minimum level of proficiency to an authorized instructor.

The FAA will work with industry to develop procedures to allow flight instructors with a sport pilot rating to issue logbook endorsements for a particular group of make and model aircraft having similar operating characteristics. This process should reduce the administrative burden of obtaining logbook endorsements for all make and models of aircraft the pilot wishes to fly. The FAA has implemented a similar policy for check airmen and pilots operating under part 135. The FAA specifically requests comments on whether the make and model endorsements for sport pilots is in the public interest.

Proposed sections 63 and 65 of SFAR 89 would establish how you receive sport pilot privileges to operate additional categories, classes, or makes and models of light-sport aircraft.

If you want to fly an additional category or class of light-sport aircraft, you would have to receive training from an authorized instructor in the specific make and model aircraft you intend to operate. That instructor would endorse your logbook, certifying that you meet the aeronautical experience

requirements. After completing this training, you would be required to receive a proficiency check and an additional logbook endorsement from a different authorized instructor. This instructor's endorsement would certify you are proficient on the areas of operation for the additional light-sport aircraft category or class and make and model privilege you seek. Having a second instructor conduct your proficiency check would serve as an independent verification of your abilities.

If you want to fly an additional make and model of light-sport aircraft within the same category of aircraft for which you already have privileges, you would have to receive training from an authorized instructor on the specific training requirements for the light-sport aircraft make and model you seek. Then, that authorized instructor would endorse your logbook certifying that you are proficient in that make and model of light-sport aircraft. You would not need the additional proficiency check required for the operation of an additional category or class of aircraft. This is similar to the ''type rating'' concept proposed by ARAC.

This new concept of requiring logbook endorsements authorizing privileges, rather than obtaining ratings through flight tests with FAA personnel or designated examiners, would make the sport pilot certificate more affordable than a recreational pilot or a private pilot certificate. It also would significantly reduce the number of FAA aviation safety inspectors and FAA designated examiners needed to support airman certification.

Proposed section 67 of SFAR 89 would establish that as a sport pilot, you would have to carry on all flights your pilot certificate and a logbook or documented proof of appropriate endorsements specified in § 61.31, for example, a tail-wheel endorsement. This is necessary because you would not carry ratings listed on the certificate like other pilot certificates. Your sport pilot privileges would be documented through logbook endorsements. The FAA would permit other ''documented proof,'' because in some light-sport aircraft it may be impracticable to carry a logbook. Documented proof could include a photocopy of your logbook endorsements or a preprinted form that includes your endorsement.

Privileges and Limits of Holders of a Sport Pilot Certificate

Proposed sections 71–79 of the SFAR would contain your sport pilot certificate privileges and limits. You would be permitted to operate a light-sport aircraft, as defined in § 1.1, for which you hold the proper logbook endorsements. You could not operate light-sport aircraft at night, in Class A airspace; however, you could operate in class B, C, or D airspace if you receive the ground and flight training and a logbook endorsement. You also would not be permitted to operate an aircraft outside the United States unless you have prior authorization from the country in which you want to operate. Your sport pilot certificate does not meet minimum ICAO requirements and would carry the limitation ''Holder does not meet ICAO requirements.''

You would be required to operate a light-sport aircraft in accordance with part 91 but could not carry more than one passenger, or operate for a purpose other than sport and recreational flying, such as carrying a passenger for compensation or hire. You could share the operating expenses of a flight with a passenger, and you could demonstrate an aircraft in flight to a prospective buyer unless you are an aircraft salesperson. You could not to tow any object.

The FAA also considered permitting you to be reimbursed for aircraft operating expenses that are directly related to search and location operations. However, the FAA believes that search and location operations go beyond the scope of sport and recreational flying and that this privilege should be limited to pilots who hold at least a private pilot certificate.

You also could not operate light-sport aircraft: (1) In a passenger-carrying airlift sponsored by a charitable organization; (2) at an altitude of more than 10,000 feet MSL or 2,000 feet AGL, whichever is higher; (3) when the flight or surface visibility is less than 3 statute miles; (4) without visual reference to the surface; (5) that exceeds a V_H of 87 kts CAS (unless the pilot received ground and flight training and a logbook endorsement); (6) contrary to any limitations placed on an aircraft's airworthiness certificate; or (7) contrary to any limitation or endorsement on that person's pilot certificate, airman medical certificate, U.S. driver's license or any other limitation or endorsement from an authorized instructor.

You would not be authorized to fly at night, which currently is defined in § 1.1 as the time between the end of evening civil twilight and the beginning of morning civil twilight as published in the American Almanac. An ultralight vehicle can usually operate only between sunrise and sunset, which is more restrictive than the provisions for a sport pilot. However, when the vehicle is operated in uncontrolled airspace and with anti-collision lights, it can be operated during the twilight periods 30 minutes before official sunrise and 30 minutes after official sunset.

Unlike ultralight vehicles, light-sport aircraft could operate in congested areas and controlled airspace. Therefore, you would be permitted to operate light-sport aircraft at night only if it is equipped with lights, as required by § 91.209 and you are appropriately certificated. Although you could not operate at night with a sport pilot certificate, you could operate, even light-sport aircraft, at night with a private pilot certificate.

The FAA would allow you to fly over congested areas, which is not allowed under part 103. However, any particular light-sport aircraft may have operating limitations that prohibit such operations. You could not conduct any operation prohibited by the operating limitations of the light-sport aircraft.

As a sport pilot, you would have to comply with any limits on your pilot certificate, airman medical certificate, and driver's license (if your driver's license is being used to meet the medical requirements of the SFAR). For example, if your driver's license requires you to wear glasses while driving, you also would have to wear them while flying.

Proposed section 81 of SFAR 89 would establish how you receive a logbook endorsement to operate in Class B, C, or D airspace. You would receive specific ground and flight training on the use of radios, communications, navigation systems/facilities, and radar services; operations at airports with an operating control tower; and operations within Class B, C, or D airspace. The authorized instructor who conducts your training would then endorse your logbook with a one-time logbook endorsement. Similar to current part 103 and the recreational pilot certificate, you couldn't operate in Class A airspace, because your sport pilot certificate wouldn't be issued with an instrument rating.

If you want to operate in airspace that requires communication with ATC, you would complete the training requirements above; however, the FAA would not require this training for you to get your sport pilot certificate. You can avoid some training costs by choosing to operate outside that airspace. The FAA believes that many sport pilots would operate outside of this type of airspace, because their aircraft is not properly equipped for operations within this airspace, because of the aircraft's operating limitations, or by choice. Many pilots choose not to

equip their aircraft for operations in this airspace due to the additional costs to purchase, install, and maintain the equipment, in addition to the extra weight it adds.

Proposed section 83 of SFAR 89 would establish how to receive a logbook endorsement to operate a light-sport aircraft exceeding a V_H of 87 knots CAS. You would receive and log ground and flight training from an authorized instructor, and then receive a one-time logbook endorsement certifying proficiency in the operation of this type of light-sport aircraft.

Again, by establishing separate training requirements that can be accomplished at any time, the FAA would relieve you from incurring these training costs if you chose not to operate in this type of aircraft. The FAA believes that most light-sport aircraft a sport pilot would operate would not exceed a V_H of 87 knots. Therefore the FAA is not proposing more extensive training requirements for the issuance of the sport pilot certificate than would be necessary to operate aircraft exceeding a V_H of 87 knots.

The FAA recognizes the need to allow for aircraft with a V_H as high as 115 knots to meet the definition of a light-sport aircraft, but we also recognize the need for additional training requirements and a one-time logbook endorsement to provide the appropriate level of safety for operation of these aircraft. This concept is similar to the requirements specified in § 61.31 for additional training and endorsements (e.g., high-performance airplanes, complex airplanes).

The FAA considered proposing no maximum V_H for these aircraft, but determined that aircraft that exceed a V_H of 115 kts CAS would not be suited solely for sport and recreational operations. The FAA believes that the operation of aircraft that exceed a V_H of 115 kts is more appropriate for persons who meet the training and experience requirements of at least a recreational pilot certificate. When a pilot has the ability to use an aircraft primarily for other than sport and recreational purposes, the FAA believes that pilot should have the minimum training required at the private pilot certificate level. That training provides basic instrument training, night training, and additional navigation and cross-country training. Pilots who use aircraft for other than sport and recreational purposes need more training and experience because they are more likely to encounter flight into marginal weather, inadvertent flight into instrument meteorological conditions, or night flight.

Transitioning to a Sport Pilot Certificate

Proposed section 91 of SFAR 89 would allow you to exercise the privileges of the holder of a sport pilot certificate if you already hold a current and valid private pilot certificate, or higher, issued under part 61. You would not be required to demonstrate any further level of proficiency to exercise the privileges of a sport pilot certificate. However, you would be limited to the aircraft category and class ratings listed on your private pilot certificate, or higher, when exercising sport pilot privileges. You also would have to meet the training and endorsement requirements in proposed sections 63 and 65 of the SFAR for any additional categories or classes, and makes and models of light-sport aircraft you currently are not rated in and wish to fly. If you have not acted as pilot in command of a specific make and model aircraft, you would be required to receive training on the make and model of light-sport aircraft you wish to fly. You would have to log your pilot-in-command time in accordance with § 61.51. For aircraft manufactured after the effective date of the rule, the manufacturer would provide a flight training manual that would include specific training requirements. If you meet these specific training requirements, you would satisfy the training required by this section for the operation of a particular make and model of light-sport aircraft.

You also would need a logbook endorsement from an authorized instructor who certifies you are proficient to fly that make and model aircraft. You also would have to carry your logbook or documented proof of endorsements to verify the proper endorsements.

Proposed section 93 of SFAR 89 would set forth procedures for you to obtain a sport pilot certificate if you have been flying ultralight vehicles under part 103 but do not hold a pilot certificate issued under part 61. If you are an ultralight pilot registered with an FAA-recognized ultralight organization before 24 months after the effective date of the rule, you would have to meet minimum age, language, and medical requirements established in proposed sections 3 and 15 of the SFAR. You also would have to pass the appropriate knowledge and practical tests for the certificate. You would not have meet the aeronautical knowledge, flight proficiency, and aeronautical experience requirements in proposed sections 51–55 of the SFAR. The FAA has concluded that if you have successfully completed the training conducted by an FAA-recognized ultralight organization and you are a pilot registered with that organization, you would meet the level of experience required by proposed sections 51–55 of the SFAR. You wouldn't need a separate endorsement from an authorized instructor recommending you for the knowledge and practical test.

The proposal would require you to obtain a notarized copy of your ultralight pilot records from the FAA-recognized ultralight organization. Those records would document that you are a registered ultralight pilot with that FAA-recognized ultralight organization; and would list each category and class of ultralight vehicle that the organization recognizes that you are qualified to operate. You would still have to pass the knowledge test and practical test for a sport pilot certificate.

The proposal would require you to present records, along with the results from the knowledge test, to a designated pilot examiner or FAA inspector when applying for your sport pilot certificate. The designated pilot examiner or FAA inspector would review these records and document the appropriate endorsements for each category and class of ultralight vehicle that you are qualified to operate in your logbook, after you successfully complete the practical test.

Proposed section 93(b) of the SFAR would address ultralight pilots registered with an FAA-recognized ultralight organization after 24 months after the effective date of the rule. These pilots would be required to meet the same requirements set forth in proposed section 93(a) of the SFAR. However those pilots would be required to meet proposed sections 51–55 of SFAR 89. In meeting the requirements, a pilot would be permitted to credit his or her ultralight flight and ground time in accordance with the logging of flight and ground time requirements under proposed section 177 of the SFAR.

Proposed section 93(c) of SFAR 89 would apply to you if you are not registered with an ultralight organization. You would be required to meet the eligibility requirements in proposed sections 3 and 15 of SFAR 89, the experience requirements in proposed sections 51–55 of SFAR 89, and pass the appropriate knowledge and practical tests for the certificate. When you successfully complete the practical test, the designated pilot examiner or FAA inspector would document in your logbook the appropriate endorsements for the category, class, and make and model of light-sport aircraft. You would not be permitted to credit your ultralight flight and ground time toward the

experience requirements in proposed sections 51–55 of the SFAR. The FAA has concluded that although you may have received some form of training, we would not have evaluated the training or the qualifications of the trainers. Therefore, we would be unable to assess whether it would be appropriate to credit that training toward the issuance of your sport pilot certificate.

With the adoption of part 103, the FAA chose not to promulgate rules regarding ultralight pilot certification, vehicle certification, and vehicle registration, preferring that the ultralight community assume the initiative for developing these important safety programs. The FAA has granted exemptions to permit the ultralight industry to conduct flight training in aircraft that do not meet the definition of ultralight vehicles specified in part 103. Aero Sports Connection (ASC), Experimental Aircraft Association (EAA), and the United States Ultralight Association (USUA) currently are conducting such flight training programs under exemptions. The FAA issued these exemptions because the organizations demonstrated to the FAA that they have the capability to establish the training programs, aircraft and operator certification and registration programs, and safety programs for ultralight vehicle owners and operators. At this time, the FAA considers only these organizations to be ''FAA-recognized ultralight organizations.''

The ARAC noted that the flight training provided by these FAA-recognized ultralight organizations has resulted in an improving safety record for ultralight vehicle operations. The success of these flight training programs exemplifies the ability of the aviation industry to take responsibility for the safety of its flight operations. Therefore, the FAA concurs with the ARAC recommendation to allow credit of ultralight flight and training experience.

The FAA-recognized ultralight organizations have established training programs that today meet most of the training requirements established for a sport pilot certificate. Any requirements that may not be met by these programs, such as the cross-country requirements, must be met by the applicant in addition to the 3 hours in preparation for the practical test.

Proposed section 95 of SFAR 89 would require you to meet all the requirements under proposed sections 3, 15, and 51 through 57 of the SFAR if you don't hold a pilot certificate and have never flown an ultralight vehicle.

Flight Instructor Certificate With a Sport Pilot Rating

Proposed section 111 of SFAR 89 would apply to you if you are exercising your privileges of a flight instructor certificate with a sport pilot rating. If you are acting as pilot in command of a light-sport aircraft other than a glider or balloon, the FAA would require you to hold and possess a current and valid U.S. driver's license or a current and valid airman medical certificate issued under 14 CFR part 67. You would not need to meet this requirement if the other pilot is acting as pilot in command.

Proposed section 113 of SFAR 89: To apply for a flight instructor certificate with a sport pilot rating, you would have to receive and log ground training from an authorized instructor on the aeronautical knowledge areas applicable to the category or class of light-sport aircraft in which you want to provide instruction. You also would have to receive and log ground training on the fundamentals of instructing unless you are a certified teacher. The aeronautical knowledge requirements are partly based on existing criteria for part 103 FAA-recognized training programs and on criteria contained in part 61 for existing flight instructor certificates. Consistent with all flight instructor certificates, you would not have to comply with the fundamentals of instructing requirements if you meet any of the experience requirements established in proposed section 113(b) of SFAR 89.

Proposed sections 115 and 117 of SFAR 89 would establish the flight proficiency and aeronautical experience requirements for you to get a flight instructor certificate with a sport pilot rating. You would have to receive and log ground and flight training on the areas of operation applicable to the flight instructor privileges you seek. The flight proficiency requirements are partly based on existing criteria for part 103 FAA-recognized training programs and on existing criteria contained in part 61 for existing flight instructor certificates. The FAA also would establish new flight proficiency requirements for weight-shift-control aircraft and powered parachutes.

Traditionally, the FAA requires a flight instructor to hold a commercial pilot certificate and, in some cases, an instrument rating. The FAA does not think this is necessary for flight instructors with a sport pilot rating due to the simplicity of the aircraft, the limited operating environment, and the purposes of the operations (sport and recreation). However, the FAA believes it is necessary to have a minimum amount of aeronautical experience to be eligible for a flight instructor certificate with a sport pilot rating. You would have to meet a minimum level of aeronautical experience, which would include up to 150 hours of flight time with variations for the different aircraft categories. The specific aeronautical experience requirements would be established in proposed section 117 of the SFAR for each category and/or class of light-sport aircraft. This would include the aeronautical experience requirements for weight-shift-control aircraft and powered parachutes.

Proposed section 119 of SFAR 89 would establish which FAA tests you would have to take to receive a flight instructor certificate with a sport pilot rating. You would have to pass the required knowledge test on the fundamentals of instructing, unless you qualify for credit for this knowledge under proposed section 113(b) of SFAR 89. In addition, you would have to pass the required knowledge test on the aeronautical knowledge areas appropriate to a sport pilot certificate listed in section 113(c) of SFAR 89 and receive a logbook endorsement from an authorized instructor certifying that you are prepared to take the knowledge tests.

You would have to pass the practical test on the areas of operation that apply to the flight instructor privilege you seek. You would have to receive a logbook endorsement from an authorized instructor certifying that you have met the applicable aeronautical knowledge and experience requirements and are prepared for the required practical test. You would have to receive the flight training in preparation for the practical test on the areas of operation that apply to the light-sport aircraft privilege you seek. An FAA designated pilot examiner or an FAA aviation safety inspector who is qualified in that category, class, and make and model of light-sport aircraft would conduct this practical test. If you pass the practical test, the FAA-designated pilot examiner or FAA aviation safety inspector would make the appropriate endorsements showing that you are proficient to provide training in the category, class, and make and model of light-sport aircraft in which you passed the practical test.

The FAA would develop Practical Test Standards for each category and class of aircraft for the flight instructor certificate with a sport pilot rating. Additionally, the FAA would amend AC No. 61–65, ''Certification: Pilots and Flight and Ground Instructors,'' to address the new endorsements that

would be necessary for this new certificate.

If you wish to obtain flight instructor privileges in an airplane, glider, or weight-shift-control aircraft, you would be required to obtain training and demonstrate proficiency in stall awareness, spin entry, spins, and spin recovery procedures in those aircraft. After you demonstrate instructional proficiency in all those areas, an authorized instructor would again endorse your logbook, indicating specifically that you are competent and possess instructional proficiency in those areas. If you fail to show proficiency in the knowledge or skill of stall awareness, spin entry, spins, or spin recovery instructional procedures, an examiner must retest you on all those items in the appropriate category of aircraft certificated for spins.

Proposed section 121 of SFAR 89 would establish recordkeeping requirements for flight instructors with a sport pilot rating. You would have to retain the records required by this section for at least 3 years. You would sign the logbook of each person for whom you provided flight training or ground training, and would maintain a record in a logbook or a separate document that contains the requirements established in this section. These proposals are consistent with the requirements established for other flight instructors certificated under part 61.

Proposed section 123 of SFAR 89: After successfully passing the practical test for the issuance of your flight instructor certificate with a sport pilot rating, regardless of the particular light-sport aircraft privilege you sought, your certificate would not include category and class ratings. You would receive the initial logbook endorsements, as a sport pilot, for the category, class, and make and model of light-sport aircraft from the designated pilot examiner or FAA inspector who conducted the practical test. This is consistent with proposals for the sport pilot certificate explained in section 59 of the SFAR above.

Proposed section 125 of SFAR 89 would require you to have the proper logbook endorsements from an authorized instructor in your logbook for each additional category and class of light-sport aircraft in which you would provide training. This is in addition to your logbook endorsement for each additional make and model of light-sport aircraft you will provide training in. This is consistent with proposals for the sport pilot certificate explained in proposed section 61 of SFAR 89 above.

Proposed section 127 of SFAR 89 would establish how you would obtain privileges to provide flight training for an additional category or class of light-sport aircraft. You would receive a logbook endorsement from an authorized instructor certifying your training on the areas of operation for the additional category or class. Then you would receive a proficiency check and a logbook endorsement from a different authorized instructor certifying you are proficient in the areas of operation for the additional category or class. The FAA is proposing that your proficiency check be conducted by a second instructor so you have an independent verification of your abilities.

Proposed section 129 of SFAR 89 would establish how to you would obtain privileges to provide flight training in an additional make and model. You would receive a logbook endorsement from the authorized instructor who conducted your training on the requirements for that make and model. Your logbook endorsement would certify that you are proficient to provide flight training in that additional make and model. You would not need a proficiency check by another flight instructor.

Proposed section 131 of SFAR 89 would require you to carry a logbook or documented proof of endorsements on all flights while exercising the privileges of your flight instructor certificate with a sport pilot rating.

Proposed section 133 of SFAR 89 would state your authority as a flight instructor with a sport pilot rating. Within the limitations of your flight instructor certificate, you could give training and endorsements for: (1) A student pilot certificate for operating light-sport aircraft; (2) a sport pilot certificate; (3) a sport pilot privilege; (4) a flight review; (5) a practical test for a sport pilot; (6) a knowledge test for a sport pilot; and (7) a proficiency check for an additional category or class and make and model privilege as described above.

Proposed section 135 of SFAR 89 proposes that you would be subject to specific limitations as a flight instructor with a sport pilot rating. You must have received proper logbook endorsement(s) for your pilot certificate and flight instructor certificate in the category, class, and make and model of light-sport aircraft. You would have to comply with the limitations established in § 61.87(n), limitations on flight instructors authorizing solo flight; § 61.93(d), limitations on authorized instructors to permit solo cross-country flights; § 61.195(a), hours of training; § 61.195(d)(1)–(d)(3), limitations on endorsements for student pilots; and § 61.195(d)(5), limitations on endorsements for flight reviews.

You could not provide flight training required for the issuance of a sport pilot certificate or privilege, or a flight instructor certificate with a sport pilot rating or privilege, unless you have at least 5 hours of pilot-in-command time in the specific make and model of light-sport aircraft in which your training is provided. The FAA believes it would be in the best interest of safety to require you to have at least 5 hours of pilot-in-command time in the specific make and model of light-sport aircraft before you are authorized to provide flight instruction. This is in addition to the minimum flight experience required for the issuance of a flight instructor certificate. A similar requirement exists today in § 61.191(f) for flight instructors providing training in a multiengine airplane, helicopter, or powered-lift. Many of these light-sport aircraft have unique operating characteristics. This proposal would prevent flight instructors qualified in other aircraft from providing training in light-sport aircraft without any experience in the specific make and model of light-sport aircraft. Lack of specific make and model experience has contributed to a number of ultralight accidents, and the FAA believes that this proposal would reduce these types of accidents.

You could not provide training for operations in Class B, C, or D airspace, unless you have the endorsement specified in proposed section 81 of the SFAR or are authorized to conduct operations in this airspace. Additionally, you couldn't provide training in a light-sport aircraft with a V_H greater than 87 knots CAS, unless you have the endorsement specified in proposed section 83 of the SFAR or are otherwise authorized to operate that aircraft.

Proposed section 137 of SFAR 89 would specify that you would not be required to meet any additional requirements for training first-time flight instructor applicants. The FAA may, however, revise these provisions based upon a review of safety data obtained after the implementation of this proposal. Instructors who would initially train first-time flight instructor applicants may not have a level of experience commensurate to that of instructors who currently train first-time flight instructor applicants under part 61.

Proposed section 139 of SFAR 89 would establish that flight instructors with a sport pilot rating would not be allowed to make any self-endorsement for a certificate, privilege, flight review, authorization, practical test, knowledge test, or proficiency check required by

the SFAR. This is consistent with existing requirements in § 61.195(i).

Transitioning to a Flight Instructor Certificate With a Sport Pilot Rating

Proposed section 151 of SFAR 89 would allow you to exercise the privileges of a flight instructor with a sport pilot rating if you already hold a current and valid flight instructor certificate issued under part 61. You would be limited to providing instruction in the same aircraft category and class listed on your existing pilot certificate and flight instructor certificate. Additionally, you would have to receive training on any specific make and model of light-sport aircraft in which you have not acted as pilot-in-command. You would need a logbook endorsement from the authorized instructor who conducted your training certifying proficiency in that make and model of light-sport aircraft. You also would have to comply with the requirement in proposed section 135 of SFAR 89, which would require at least 5 hours of pilot-in-command time in the specific make and model light-sport aircraft before you could provide instruction in that aircraft.

If you want to provide training in additional categories, classes, or makes and models of light-sport aircraft, you would have to obtain the proper logbook endorsement(s), as proposed in sections 127 and 129 of the SFAR.

Proposed section 153 of SFAR 89 would allow you to apply for a flight instructor certificate with a sport pilot rating if you are an ultralight flight instructor. You must be registered with an FAA-recognized ultralight organization not later than 36 months after the effective date of the rule, and hold either a current and valid sport pilot certificate, or a current and valid private pilot certificate issued under part 61.

You would have to comply with proposed sections 3 and 111 of SFAR 89, which would establish the minimum age, language, and medical requirements. You would not need to meet the experience requirements in sections 115 and 117 of the SFAR, establishing the aeronautical knowledge, flight proficiency, and aeronautical experience, except that you would have to have at least the minimum total pilot flight time in the category and class of light-sport aircraft specified in proposed section 117 of SFAR 89.

You would not need to meet the pilot-in-command, time in aircraft category, or cross-country pilot flight time requirements specified in proposed section 117 of SFAR 89. You would be allowed to credit flight time as the operator of an ultralight vehicle in accordance with the logging of flight and ground time requirements in section 177 of SFAR 89.

You would not need to meet the aeronautical knowledge requirement specified in section 113 of SFAR 89 if you passed the Fundamentals of Instruction knowledge test given by the FAA or an FAA-recognized ultralight organization.

The FAA believes that if you are a flight instructor with an FAA-recognized ultralight organization, you would have a level of experience equivalent to that required by sections 113–117 of the SFAR. You would not need a separate logbook endorsement from an authorized instructor recommending you for the practical test.

The proposal would require you to obtain a notarized copy of your ultralight flight instructor records from your FAA-recognized ultralight organization. Those records must document that you are a registered ultralight flight instructor with that FAA-recognized ultralight organization and must list each category and class of ultralight vehicle in which the organization recognizes you are qualified to operate and authorized to provide flight training. You would be required to pass the knowledge test on the aeronautical knowledge areas specified in proposed section 113 of SFAR 89 and the practical test on the areas of operation listed in proposed section 115 of SFAR 89.

The proposal would require you to present these records, as well as the results from your knowledge test, to a designated pilot examiner or FAA inspector when you apply for a flight instructor certificate with a sport pilot rating. After you pass the practical test, the examiner or inspector would review your records and endorse your logbook for each category and class of ultralight vehicle in which you are qualified and authorized to provide flight training.

This proposal would establish a transition phase to ensure that ultralight flight instructors have ample time to obtain both their sport pilot and flight instructor certificates with a sport pilot rating. Also, this would allow the FAA-recognized ultralight organizations to continue to instruct under the existing exemptions. During this 36-month transition phase, an ultralight flight instructor could continue to instruct in a two-place vehicle under an existing exemption. This same flight instructor could also hold a flight instructor certificate with a sport pilot rating and be authorized to instruct a sport pilot, a student pilot operating light-sport aircraft, or a flight instructor with a sport pilot rating.

At the end of the 36 months, the existing training exemptions would expire and would not be renewed. At that point, all two-place training vehicles that meet the definition of a light-sport aircraft would be required to be certificated as light-sport aircraft and there would no longer be a need for these exemptions. Any flight training in a light-sport aircraft would be required to be conducted by a certificated flight instructor. The FAA recognizes that persons who wish to operate ultralight vehicles under part 103 would still need to receive training to safely operate a single-place vehicle. Under this proposal, a certificated flight instructor with a sport pilot rating could train an ultralight pilot to fly a single-place ultralight under part 103.

Proposed section 155 of SFAR 89 proposes that, if you have never provided flight or ground training in an aircraft or an ultralight vehicle, you would have to meet all the requirements in sections 3 and 111–117 of the SFAR to apply for a flight instructor certificate with a sport pilot rating.

Pilot Logbooks

Proposed section 171 of SFAR 89 would require you, as the holder of a sport pilot certificate or a flight instructor certificate with a sport pilot rating, to document and record training time and aeronautical experience. You would be allowed to credit ground and flight time earned as a sport pilot toward a higher certificate under § 61.51.

Proposed section 173 of SFAR 89 would allow you, as the holder of a sport pilot certificate, to log flight time as pilot in command only when you are the sole manipulator of the controls of an aircraft for which you have privileges. This includes any time during which you are the sole occupant of the aircraft. This is equivalent to the provisions in § 61.51(e) for the logging of pilot-in-command time for all other certificates.

Proposed section 175 of SFAR 89 would allow you to credit training time and aeronautical experience documented as a sport pilot toward the requirements for a higher certificate or rating.

Proposed section 177 of SFAR 89 would allow you to credit training time and aeronautical experience as the operator of an ultralight vehicle toward the experience requirements for a sport pilot certificate. Your ultralight training time and aeronautical experience would have to be documented as specified by an FAA-recognized ultralight

organization with which you are a registered ultralight pilot. You would be allowed to credit only the training time and aeronautical experience logged in the same category and class of ultralight vehicle as the category and class of light-sport aircraft for which privileges you seek.

Proposed section 179 of SFAR 89 would prohibit you from crediting aeronautical experience obtained as the operator of an ultralight vehicle to meet the requirements for a higher level certificate or rating specified in § 61.5 if you have a sport pilot certificate. However, you would be allowed to credit time used to meet the requirements for the issuance of a sport pilot certificate under the SFAR (i.e., a maximum of 20 hours) for the issuance of a higher level certificate. The FAA does not generally permit aeronautical experience obtained in a noncertificated aircraft to be used to meet the requirements for the issuance of a certificate under part 61; however, the FAA has proposed this limited exception to this policy to facilitate the issuance of airman certificates to sport pilots who have obtained their aeronautical experience in ultralight vehicles.

Recent Flight Experience Requirements for a Sport Pilot Certificate or a Flight Instructor Certificate With a Sport Pilot Rating

Proposed section 191 of SFAR 89 would require a sport pilot to comply with the recent flight experience requirements under § 61.57, which is applicable to all other pilots. The FAA thinks that the recent flight experience requirements for persons acting as pilot in command are minimum standards that should apply to all certificated pilots. We do not find any benefit to making this requirement less restrictive.

Proposed section 193 of SFAR 89 would require a sport pilot to comply with the flight review requirements under § 61.56, which is applicable to all other pilots. As with proposed section 191 of SFAR 89, the FAA thinks that the flight review requirements for persons acting as pilot in command are minimum standards that should apply to all certificated pilots, and we do not find any benefit to making this requirement less restrictive.

Proposed section 195 of SFAR 89 would specify that to renew your flight instructor certificate, you would have to comply with the requirements in § 61.197, which is consistent with the requirement for all other flight instructors.

Proposed section 197 of SFAR 89 would specify that, if your flight instructor certificate with a sport pilot rating expires, you may exchange that certificate for a new certificate by passing a practical test as prescribed in section 119 of SFAR 89. Any privilege authorized by the expired certificate would be reinstated. This proposal is consistent with the requirement for all other flight instructors.

Ground Instructors

Proposed section 211 of SFAR 89 would specify that a ground instructor would continue to be required to meet only the eligibility requirements established in § 61.213 for a ground instructor certificate or rating.

Proposed section 213 of SFAR 89 would specify that if you hold the privileges of a ground instructor certificate with a basic ground instructor rating under § 61.215(a), you would remain authorized to provide the training and recommendations specified in that paragraph. To accommodate the proposed sport pilot certificate, this paragraph also would permit you to provide: (1) Ground training in the aeronautical knowledge areas required for the issuance of a sport pilot certificate or privileges; (2) ground training required for a sport pilot flight review; and (3) a recommendation for a knowledge test required for the issuance of a sport pilot certificate.

Proposed section 215 of SFAR 89 would specify that if you hold the privileges of an advanced ground instructor rating under § 61.215(b), you would continue to be authorized to provide the training and recommendations specified in that paragraph. The privileges specified by that section permit an advanced ground instructor to provide: (1) Ground training in the aeronautical knowledge areas required for the issuance of any certificate or privileges under the SFAR, (2) ground training required for a sport pilot flight review, and (3) a recommendation for a knowledge test required for the issuance of any certificate under the SFAR.

The following discussion of the changes to 14 CFR part 61 address amendments to current sections and would not be included in SFAR 89.

Proposed section 61.1 would be amended to permit an authorized instructor to provide ground or flight training under the proposed SFAR. It also would be modified to revise the definition of cross-country time to accommodate the certification of persons seeking a sport pilot certificate with powered parachute privileges, or private pilot certificate with a powered parachute rating. For these certificates, the FAA would consider cross-country time as time acquired during a flight that includes a point of landing at least a straight-line distance of 15 nm from the original point of departure. This revision reflects the slow operating speed of powered parachutes.

Proposed section 61.5 would add a sport pilot certificate, and a flight instructor certificate with a sport pilot rating, to the list of certificates and ratings issued under this part. It also would add ratings for the powered parachute aircraft category, weight-shift-control aircraft category, and weight-shift-control aircraft class ratings for land and sea.

Proposed section 61.31 would be amended by revising the exceptions to that section. Currently, paragraph (k)(2) lists those persons to whom the rating limitations of this section do not apply. Paragraph (k)(2)(iii) states that the rating limitations do not apply to the holder of a pilot certificate when operating an aircraft under the authority of an experimental or provisional aircraft type certificate. Therefore, the rating limitations in this section currently do not apply to pilots when operating aircraft with experimental or provisional aircraft type certificates even if they carry passengers.

The proposal would revise this provision to state that the rating limitations of this section would apply for flight operations involving the carriage of passengers in these aircraft. In this case, pilots would need to hold an appropriate category and class rating to operate the aircraft when carrying passengers. The FAA notes the logbook endorsements that provide sport pilots with additional category and class privileges do not constitute category and class ratings under part 61. These aircraft have varying performance characteristics, operational profiles, and diverse control and flight features. In addition, the pilots who would be flying these aircraft will have varying levels of experience. Therefore, in the interest of safety and to protect the public, the FAA is proposing to change § 61.31(k). Certificated pilots who operate experimental aircraft would be required to hold an appropriate category and class rating if they wish to carry passengers.

Proposed section 61.99 would be revised to correct the introductory language of the section. The proposal would delete the word ''training'' from the phrase ''flight training time.'' This revision would make this section consistent with those sections that establish aeronautical experience requirements for other certificates issued under this part.

Proposed section 61.101 would be revised by adding the phrase ''current and valid'' before the term ''recreational pilot certificate.'' The proposal also would add a new paragraph (d), which would permit you to operate in Class B, C, or D airspace if you hold a current and valid recreational pilot certificate. You would have to receive and log ground and flight training from an authorized instructor on the aeronautical knowledge and areas of operation appropriate to the aircraft rating you hold and operation in that airspace. Secondly, you would have to be found proficient on these ground and flight training requirements. And thirdly, you would have to receive a logbook endorsement from an authorized instructor certifying that you have received training on these ground and flight training requirements and been found proficient.

The FAA also is proposing to allow recreational pilots to operate on a flight outside the United States only with prior authorization from the country in which the operation would be conducted. This proposal is consistent with a similar proposal for the sport pilot certificate.

Proposed section 61.107 would be revised to include new flight proficiency requirements for a person obtaining a private pilot certificate with a powered parachute rating or a weight-shift-control aircraft rating.

Proposed section 61.109 would include new aeronautical experience requirements for a private pilot obtaining a powered parachute rating or a weight-shift-control aircraft rating. Consistent with ICAO requirements for a private pilot certificate and all other private pilot requirements under part 61, the minimum flight time proposed for the issuance of the certificate with either rating would be 40 hours. The 40 hours would include 20 hours of flight training from an authorized instructor and 10 hours of solo flight training in specified areas of operation. These areas of operation would address night training, cross country training, and operations at airports with operating control towers.

Proposed section 61.195 would establish the qualifications for a flight instructor who provides training for the issuance of a private pilot certificate with a weight-shift-control aircraft or powered parachute rating. You would have to hold at least a flight instructor certificate with a sport pilot rating and at least a private pilot certificate with a category and class rating appropriate to the aircraft in which the training is sought. Unlike the private pilot certificate, commercial pilot certificates would not have powered parachute or weight-shift-control aircraft ratings. Therefore, the FAA would not require a flight instructor conducting flight training in those aircraft to hold a commercial pilot certificate. Similarly, because instrument ratings would not be issued for the operation of these aircraft, the FAA would not require a flight instructor conducting flight training in these aircraft to also hold an instrument rating.

F. What Are the Proposed Changes to 14 CFR Part 65?

Under this proposal, the FAA would establish the repairman certificate (light-sport aircraft). That certificate would be issued with inspection and maintenance ratings. The purpose of this new certificate is to permit persons, in addition to appropriately rated mechanics and repair stations, to perform maintenance on light-sport aircraft that have special airworthiness certificates. The FAA envisions that this new certificate would facilitate the maintenance of these aircraft by their owners and operators.

Proposed section 65.101 would be revised to indicate that its requirements would not apply to the repairman certificates established by this proposal.

Proposed section 65.107 would set forth the eligibility requirements, privileges, and limitations if you want to obtain a repairman certificate (light-sport aircraft). This proposal would require you to be at least 18 years of age, which would be identical to the requirements for all current repairman certificates. The proposal would require you to read, speak, write, and understand the English language. This is identical to the requirement for current repairmen who are not employed outside the United States. The proposal also includes provisions for the FAA to place limitations on the certificate if you are unable to meet any of the English language eligibility requirements for medical reasons. This provision is similar to those in the eligibility requirements for pilot certificates issued under part 61. The proposal would require you to meet citizenship or residency requirements identical to those for repairman certificates issued to experimental aircraft builders under § 65.104. The proposal also would require you to demonstrate the requisite skill to determine whether a light-sport aircraft is in a condition for safe operation.

The proposal also would establish additional eligibility requirements if you want to obtain a repairman certificate (light-sport aircraft) with an inspection rating or with a maintenance rating. For either rating, you would have to meet the general eligibility requirements described above. For an inspection rating, you would be required to complete a 16-hour training course acceptable to the FAA on the inspection requirements for the particular make and model of light-sport aircraft certificated under § 21.191(i) for which you seek an inspection rating. For a maintenance rating, you would be required to complete an 80-hour course applicable to the particular category of light-sport aircraft for which you intend to exercise privileges.

The proposal also would specify the privileges of the certificate and ratings. If you have an inspection rating, you would be permitted to perform a condition inspection on a light-sport aircraft with an experimental certificate that you own. If you have a maintenance rating, you would be permitted to perform maintenance on a light-sport aircraft that has a special airworthiness certificate issued under proposed § 21.186 or 21.191(i). Because the definition of maintenance includes inspections, your maintenance rating would allow you to perform any required inspection of a light-sport aircraft with a special airworthiness certificate issued under proposed § 21.186 or 21.191(i). You would be required to have completed training on the same category of light-sport aircraft on which you will perform maintenance. Additionally, to perform a major repair on a light-sport aircraft, you would be required to complete acceptable training appropriate to the repair performed.

The proposed paragraph would also note that the privileges and limitations in § 65.103 for a repairman certificate issued under § 65.101 would not apply to a repairman certificate (light-sport aircraft) while exercising the privileges of that certificate.

G. What Are the Proposed Changes to 14 CFR Part 91?

The majority of the proposed amendments to part 91 would facilitate the integration of powered parachutes and weight-shift-control aircraft into the general operating rules.

Proposed section 91.1 would be revised to include current section 91.325 and proposed § 91.327 in the list of rules that a person would be required to comply with while operating an aircraft in the airspace overlying the waters between 3 and 12 nm from the coast of the United States.

Proposed section 91.113 would be amended to address the addition of the two new categories of aircraft and the effect they would have on converging

aircraft. The proposal would give gliders and airships the right of way over weight-shift-control aircraft and powered parachutes. Balloons would continue to have right of way over any other category of aircraft.

Proposed section 91.126 would be amended to include powered parachutes, so that they also would have to avoid the flow of fixed-wing aircraft when approaching to land at an airport without an operating control tower in Class G airspace. The FAA is proposing this revision because powered parachute operating characteristics are similar to those of helicopters when operating in airport traffic patterns. The FAA would establish new procedures in the Aeronautical Information Manual to address traffic pattern procedures for powered parachutes.

Proposed section 91.131 would be amended to permit a sport pilot who has received the training and endorsement required by section 4 of SFAR 89 to operate within Class B airspace or takeoff or land at an airport within Class B airspace. The current rule would permit operations by student pilots operating light-sport aircraft provided the required training and endorsements were received.

Proposed section 91.155 would be amended by revising paragraph (b) to include the two new categories of aircraft that would be permitted to operate in Class G airspace. At night, powered parachutes and weight-shift-control aircraft could be operated when the visibility is between 1 and 3 statute miles. They would have to remain clear of clouds if operated in an airport traffic pattern within one-half mile of the runway. These provisions currently apply only to airplanes. Although they have different control characteristics, the FAA has determined that weight-shift-control aircraft and airplanes should be permitted to operate similarly in the NAS. Powered parachutes are similar in many ways to helicopters, but do not have the capability to hover or back up, which affords helicopters more maneuverability. Therefore, the FAA is proposing that powered parachutes may be operated in an airport traffic pattern; however, to remain in compliance with § 91.126, they must avoid the flow of fixed-wing aircraft similar to helicopter operations.

Proposed section 91.213 would be amended to allow for any light-sport aircraft to operate with inoperative equipment unless a master Minimum Equipment List has been developed for the aircraft. Currently, rotorcraft, non turbine-powered airplanes, gliders, and lighter-than-air aircraft are also afforded a similar privilege.

Proposed section 91.319 would establish procedures used by the FAA to permit operators of experimental aircraft to receive compensation while conducting flight training, which would include testing and evaluation. The current rule prohibits the operation of an aircraft with an experimental category airworthiness certificate for other than the purpose for which the aircraft was certificated or for the carriage of persons or property for compensation or hire.

To permit the operation of these experimental aircraft for compensation or hire while conducting initial flight training, the FAA would revise paragraph (a)(2) of this section. Proposed § 21.191(i)(1) would permit aircraft certificated under that paragraph to be operated for compensation or hire for flight training only for 36 months after the effective date of the rule. After that 36-month period, these aircraft would be allowed to continue to be used for flight training; however, the aircraft could not be operated for compensation or hire while training is being conducted.

To permit the operation of experimental aircraft (certificated under proposed § 21.191) for compensation or hire for the sole purpose of flight training, the FAA is proposing to allow owners of experimental aircraft to apply for a Letter of Deviation Authority issued by the FAA. A deviation authority request should be forwarded to the General Aviation and Commercial Division, AFS–800, for review and issuance. The request would contain a statement of the proposed operation and justification for the deviation.

If an operator is granted deviation authority, the operator may be authorized to provide flight training in experimental aircraft and receive compensation for the use of the aircraft. This provision would not be intended to allow commercial operators to establish training schools using experimental aircraft. In the interest of safety, and as a result of recommendations from the National Transportation Safety Board, the FAA has determined that allowing flight training in experimental aircraft when the aircraft is operated for compensation or hire under certain circumstances is in the public interest.

Proposed section 91.327 would establish operating limitations of an aircraft having a light-sport category airworthiness certificate issued under proposed § 21.186. Such aircraft could be used for sport and recreation, flight training, and rental as long as the owner adheres to all conditions and provisions for maintenance and alteration, as stipulated in the operating limitations. The aircraft must be purchased from a manufacturer that has completed a production and reliability test program to a consensus standard. These limitations would prohibit a person from operating these aircraft for other than the purpose for which it was certificated, or while carrying persons or property for compensation or hire, except while conducting flight training or renting the aircraft.

Special airworthiness certificates commonly include various additional operating limitations allowing or prohibiting specific operations. Operating limitations applicable to light-sport category aircraft also may restrict certain operations or prohibit aerobatic maneuvers. The proposal also would state that the FAA may prescribe additional limitations necessary for operation of the aircraft.

The aircraft must also be maintained in accordance with the manufacturer's maintenance and inspection procedures and have a condition inspection performed once every 12 calendar months, and its owner or operator must comply with a program for monitoring safety-of-flight issues for the aircraft. Additionally, the proposal would require an aircraft used for flight instruction to have a condition inspection performed within the preceding 100 hours of aircraft time in service. This provision is similar to that contained in § 91.409 for other aircraft. The maintenance and inspection procedures required by the operating limitations would meet the scope and detail of Appendix A to 14 CFR part 43. And consistent with part 43, a certificated pilot could perform preventive maintenance on these aircraft.

Proposed section 91.409 would be amended to extend to experimental light-sport aircraft the relief from inspection requirements that already apply to all other aircraft with a current experimental certificate. The FAA notes however, that these aircraft would still be required to meet the maintenance requirements of their operating limitations.

VII. Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Transportation has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft.

Summary: This proposal would establish requirements for the certification, operation, and maintenance of light-sport aircraft. For the operation of light-sport aircraft, the FAA is proposing to establish a sport pilot certificate and a flight instructor certificate with a sport pilot rating. The FAA also is proposing to establish requirements for student pilots and private pilots to operate these aircraft, and to revise the recreational pilot certificate to align it with privileges proposed for the new sport pilot certificate. The FAA proposes a new repairman certificate with ratings for individuals who would inspect and maintain light-sport aircraft.

In addition, the FAA is proposing a new category of special airworthiness certificate for light-sport aircraft that meet a consensus standard. This proposal also would revise the requirements for the issuance of experimental certificates to include light-sport aircraft.

This proposal would generate a need for new designated pilot examiners and designated airworthiness representatives to support the certification of these new aircraft, pilots, flight instructors, and ground instructors.

Respondents: The likely respondents to this proposed information requirement are designated pilot examiners; airman certification representatives; designated airworthiness representatives authorized by 14 CFR part 183; pilots, flight instructors, ground instructors authorized by 14 CFR part 61; operators, owners, and manufacturers of light-sport aircraft authorized by 14 CFR parts 21 and 45; and repairman authorized by 14 CFR part 65 who would be responsible for maintaining light-sport aircraft.

Frequency: The FAA estimates the number of respondents impacted by this proposal and the annual frequency of information requirements to be as established in the table below.

Respondents	Frequency (avg. yearly total)
14 CFR part 65—No. of Repairmen:	
Inspection Rating	1,725
Maintenance Rating	182
Total	1,907
14 CFR part 61—No. of Sport Pilots, Flight Instructors w/ sport pilot rating, and Ground Instructors:	
Pilots	1,714
Flight Instructors	192
Ground Instructors	50
Total	1,956
14 CFR part 183—No. of Designated Pilot Examiners (DPE) and Airman Certification Representatives (ACR):	
DPE's	300
ACR's	5
Total	305
14 CFR part 183—No. of Designated Airworthiness Rep's (DAR's):	
DAR from the FAA Aircraft Certification Office (AIR)	100
DAR from the FAA Flight Standards Office (AFS)	200
Total	300
14 CFR parts 45 and 21—No. of Aircraft:	
Existing Aircraft (§ 21.191(i))	1,725
New Aircraft (§ 21.186)	182
Total	1,907

Annual Burden Estimate: This proposal would result in an annual recordkeeping and reporting burden as follows:

14 CFR Part 21

Responses—1,907
Burden hours (Public)—2,725 hours
Burden hours (Government)—2,725 hours
Annual cost to respondents—$1,427, 500
Annual cost to government—$40, 875

14 CFR Part 47

Responses—4,580
Burden hours (Public)—2,530 hours
Burden hours (Government)—2,846 hours
Annual cost to respondents—$28, 463
Annual cost to government—$25, 656

14 CFR Part 61

Responses—2,150
Burden hours (Public)—3,476 hours
Burden hours (Government)—107 hours
Annual cost to respondents—$25, 800
Annual cost to government—$23, 650

14 CFR Part 183

Responses—605
Burden hours (Public)—1,007.5 hours
Burden hours (Government)—1,027
Annual cost to respondents—$26, 195
Annual cost to government—$29, 315

14 CFR Part 65

Responses—1,907
Burden hours (Public)—698 hours
Burden hours (Government)—630 hours
Annual cost to respondents—$10, 069
Annual cost to government—$19, 192

Total Impact of the Proposal

Responses—11,149
Burden hours (Public)—10,436.5 hours
Burden hours (Government)—7,335 hours
Annual cost to respondents—$1,518,027
Annual cost to government—$ 138,688

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by April 8, 2002, and should direct them to the address listed in the **ADDRESSES** section of this document.

According to the regulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

VIII. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. Under this proposal, the FAA would issue student pilot certificates for operating light-sport aircraft, sport pilot certificates, and airworthiness certificates, which would not be issued pursuant to the requirements of the Convention on International Civil Aviation, dated December 7, 1944.

IX. Regulatory Evaluation Summary—Executive Order 12866 and DOT Regulatory Policies and Procedures

A. Economic Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency proposing or adopting a regulation to first make a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory

Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this act requires agencies to consider international standards, and use them where appropriate as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs and benefits and other effects of proposed and final rules. An assessment must be prepared only for rules that impose a Federal mandate on State, local or tribal governments, or on the private sector, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation.)

In conducting these analyses, the FAA has determined that this proposed rule has benefits that justify its costs; is ''significant,'' as defined in regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979); and is a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866. This proposed rule is a significant action because of public interest rather than on the basis of economic impacts. It is subject to review by the Office of Management and Budget. This proposed rule is not expected to have a significant impact on a substantial number of small entities, nor to present a significant impediment to international trade. It would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Analysis of Costs

The proposal would impose an estimated compliance cost of $40.4 million ($34.0 million, discounted) in 1999 dollars over the next 10 years (2002–2011), as the result of the new certification standards. The cost estimate is based on three components. Each of these cost components is discussed below.

Light-Sport Aircraft Airworthiness Certification Costs

This section of the proposal would amend 14 CFR part 21 by providing for the issuance of special light-sport aircraft and experimental light-sport aircraft airworthiness certificates. Specifically, existing light-sport aircraft would obtain experimental light-sport airworthiness certificates and newly manufactured light-sport aircraft would obtain special light-sport airworthiness certificates. All newly manufactured light-sport kit-built aircraft would obtain experimental light-sport airworthiness certificates. The special and experimental light-sport aircraft certificates would be issued for the purposes of: (1) Enhancing aviation safety by ensuring that all light-sport aircraft operating in the future meet an acceptable standard, (2) facilitating sport and recreation operations, and (3) enhancing flight training and rental activities (excluding experimental light-sport aircraft). This section of the proposal would impose an estimated one-time compliance cost of $13.9 million ($11.8 million, discounted), in 1999 dollars over the next 10 years.

Annual Condition Inspection and Repairman Certification Costs

This section of the proposal would amend 14 CFR part 91 by requiring that operators of light-sport aircraft have their aircraft inspected for maintenance compliance annually (commonly referred to in this evaluation as ''annual condition inspections''). A new repairman certificate would be established with ratings for individuals who would inspect and maintain light-sport aircraft. The cost of compliance associated with meeting this annual condition inspection requirement and the cost to obtain a repairman certificate are estimated to be $16.7 million ($14.4 million, discounted), in 1999 dollars over the next 10 years.

Sport Pilot Certificate and Flight Instructor Certification (With a Sport Pilot Rating) Costs

This section of the proposal would amend 14 CFR part 61 by requiring that operators of light-sport aircraft obtain at least a sport pilot certificate and by requiring that operators who instruct sport pilots obtain a flight instructor certificate with a sport pilot rating. The proposed rule would impose an estimated compliance cost of $9.8 million ($7.8 million, discounted) over the next 10 years.

Analysis of Benefits

The estimated benefits of avoiding the accidents involving light-sport aircraft are $221.4 million ($153.3 million, discounted). The estimated benefits are based only on the avoidance of fatalities in these accidents. Injuries and property loss were not included in this analysis due to lack of information. The FAA believes that the benefits from avoided injuries and property are small in comparison to the benefits of avoided fatalities. According to FAA and Aviation Rulemaking Advisory Committee (ARAC) technical personnel, the benefits of avoiding the fatalities due to these accidents would be achieved, in part, by requiring airworthiness certificates for light-sport aircraft, and pilot certificates (sport pilot and flight instructor with a sport pilot rating) for those who wish to fly light-sport aircraft.

The monetary estimate of $221.4 million ($153.3 million, discounted) for potential safety benefits is based on accident information obtained from several sources. One major accident data source was the National Transportation Safety Board (NTSB) database on aviation accidents. However, the NTSB focuses primarily on aircraft and generally does not collect accident data or investigate accidents involving fat ultralight vehicles because they are non-registered aircraft. For this reason, accident data were obtained from additional sources. The additional accident data sources include the three organizations that conduct training in two-place fat ultralights under an exemption from part 103. The FAA sometimes requires exemption holders to collect specific data while operating under an exemption. The FAA may decide that it should initiate rulemaking to address provisions under an exemption. If so, this data may be used to justify and support such an action. The FAA began gathering data on part 103 training accidents and incidents in 1995 when it issued the first exemption from part 103 for training. The three training exemption holders are Aero Sport Connection (ASC), Experimental Aircraft Association (EAA), and the U.S. Ultralight Association (USUA). The part 103 training exemption requires the three exemption holders to report to the FAA accidents that involve vehicles operated under that exemption.

A review of the information from all these data sources revealed that there were 41 fatal accidents between 1995 and 2001 that involved fat ultralight vehicles and light aircraft. (The FAA verified that data from the three exemption holders were not counted more than once.) These accidents were determined to be relevant based on conversations with several industry representatives, and the relevancy determination focused on two essential factors. First, only those aircraft that fall within the proposed definition of light-sport aircraft were considered. Second, only those accidents that either could have been prevented or whose likelihood of occurrence could have been significantly reduced were considered. For example, in instances where enhanced training and/or required safety standards could have

reduced accidents, these types of accidents were considered relevant.

A review of the 1995–2001 data showed that there were 51 fatalities in accidents involving aircraft that would be defined by this rule as light-sport aircraft. During that 6-year period there were roughly 8 or 9 fatalities a year. At that rate, there would be 83 fatalities during the next 10 years.

In this analysis, the FAA estimates that a total of 82 fatalities could potentially be avoided by adopting the proposed rule. The FAA assumed that there could only be five fatalities potentially avoided during the first year because not all light-sport aircraft operators could comply with all of the proposed requirements during the first year after the proposed rule was issued. If the value of a fatality avoided is $2.7 million, then the 10-year potential benefit of the proposed rule would be $221.4 million ($153.3 million, discounted).

The assessment of potential safety benefits is subject to the following uncertainties:

• Accuracy as to the actual number light-sport aircraft accidents contained in the NTSB's historical record for primarily U.S.-registered aircraft. There is uncertainty as to what extent the NTSB's database has fully captured those accidents involving unregistered light-sport aircraft over the past 10 years.

• Accuracy as to the actual number of light-sport aircraft accidents contained in the historical records of the three organizations that hold a training exemption to train in two-place fat ultralights. There is uncertainty as to what extent these exemption holders' databases have fully captured those accidents for unregistered light-sport aircraft over the past 10 years.

Because the accident databases listed above may not capture all relevant accidents, the potential safety benefits estimate for light-sport aircraft may be understated. In view of the uncertainties, the FAA solicits comments from the general aviation community and the recreational light-sport aircraft industry in particular. All commenters are asked to provide documented information in support of their comments.

In addition to safety benefits, there would be a benefit gained from ''consumer surplus,'' which is derived from the recreational value gained from operating light-sport aircraft. If the derived (net) recreational value is $25 per recreational day and a sport pilot conducted 20 days of recreational flying annually, a sport pilot would obtain $500 in net annual recreational benefits. The FAA estimates that 9,000 pilots will seek a sport pilot certificate, providing an additional estimated benefit of recreational value gained of $4.5 million annually. The FAA solicits comments regarding the recreational values established from the general aviation community and the recreational light-sport aircraft industry in particular.

Benefit-Cost Comparison

The proposed rule costs much less than the estimated potential benefits. The estimated cost of the proposed rule is $40.4 million ($34.0 million, discounted). The estimated potential benefits of avoiding 82 fatalities are $221.4 million ($153.3 million, discounted). The estimated benefits are based only on the avoidance of fatalities in these accidents. The FAA believes that some of the identified benefits may not be achieved. However, if the proposed rule is 23 percent effective, or more, then the rule would be cost-beneficial.

Analysis of Alternatives

Status Quo Alternative

When analyzing alternatives to any proposed regulatory action, the status quo is typically analyzed with other alternatives. However, this is not the case for this evaluation. The status quo represents a situation in which the FAA would issue training exemptions from part 103 indefinitely. This would perpetuate ''rulemaking by exemption,'' which does not qualify as a viable alternative. The FAA issued exemptions for flight training in 1995 after the initiation of this rulemaking project. The FAA issued the exemptions under the assumption that they would soon be superceded by rulemaking.

Alternative One—Strictly Enforce Current Regulations

Under this option, the FAA would rescind the three existing exemptions from part 103 that allow training in two-place fat ultralight vehicles. Rescinding the existing exemption would be necessary because it is DOT and FAA policy to issue exemptions only to those with unique situations, usually for a limited time. The FAA does not intend to issue exemptions to address situations of a general nature. In that case, the FAA initiates rulemaking.

Anyone who wanted to learn to fly an ultralight could not receive any flight training in a two-place fat ultralight before soloing because those ultralights do not meet part 103. Future two-place fat ultralights would have to be certificated in the primary or standard category to be used for flight training. The design standards for these airworthiness certificates may not be appropriate for many of the fat ultralights in the ultralight community.

Some existing or new fat ultralights would be eligible for an experimental airworthiness certificate. In this case, the operator of the aircraft would be responsible for building a majority of the aircraft and these aircraft would not be eligible for flight training.

Costs

1. *Significant costs for private pilot certificates and flight instructor certificates for existing fat ultralights.* The FAA estimates the cost to operators of existing fat ultralights to obtain a private pilot certificate and flight instructor certificate to be $45.9 million ($40.9 million, discounted) over 10 years.

2. *Significant costs for private pilot certificates and flight instructor certificates for future fat ultralights.* Under this alternative, the costs of obtaining a pilot certificate or an instructor certificate would be much higher than under the proposed rule. The FAA believes that if this alternative is adopted, the number of new pilots would be much less than would be the case with the proposed rule. The FAA estimates the cost to operators of future fat ultralights to obtain private pilot certificates and flight instructor certificates to be $33.4 million ($27.0 million, discounted) over 10 years.

3. *Significant aircraft certification costs to manufacturers.* Aircraft manufacturers can expect to incur costs to obtain airworthiness certificates for the fat ultralights they manufacture. Based on information received from several industry sources, under strict enforcement of the current rules, the cost of aircraft certification would be higher than under the proposed rule. Only newly produced fat ultralights would be eligible to receive a primary or standard category airworthiness certificate (existing fat ultralights were not manufactured under a production certificate and, therefore, would not be eligible for these types of airworthiness certificate). Primary and standard category airworthiness certificates allow the operator to conduct flight training and rental activities. For those fat ultralights that would meet such standards, the potential cost of compliance is estimated to be as low as $4,800 per fat ultralight for a primary airworthiness certificate, or as high as $6,400 per fat ultralight for a standard airworthiness certificate. Those fat ultralights that do not meet the standards for primary or standard category airworthiness certificates could

be eligible for an experimental airworthiness certificate. The potential cost of compliance for experimental airworthiness certificate is estimated as $750 per fat ultralight. The FAA estimated the cost of aircraft certification under this alternative to be $6.9 million ($5.7 million, discounted) by assuming that each new pilot or flight instructor would purchase a new aircraft during the same year the pilot received his/her pilot certificate or his/her flight instructor certificate. The new aircraft would be certificated as either an experimental aircraft or a primary aircraft. In this analysis, the FAA assumed that 95 percent of the new pilots and flight instructors would purchase an experimental aircraft and only five percent of them would purchase a primary aircraft. In this case the weighted average certification cost would be $952.50 per new aircraft. Aircraft certification costs would be underestimated if a higher percentage of new aircraft are certificated as primary aircraft rather than experimental aircraft. Some new pilots may also choose to purchase new aircraft that received a standard airworthiness certificate. To the extent that this happens the aircraft certification costs would also be underestimated. This alternative does not provide a method for aircraft certification of powered parachutes. They can not be certificated under experimental amateur-built, primary, or standard category. Additionally, weight-shift-control aircraft can not be certificated under standard or primary category.

4. *Increased FAA Costs.* The FAA did not estimate the increased cost to the FAA of strictly enforcing current regulations. The FAA would either have to hire new inspectors or shift inspectors away from other enforcement activities (e.g., air carrier operations) to enforce the current regulations on ultralight activities.

Since the cost of this alternative is at least $86.2 million ($73.6 million, discounted) and is more expensive than the proposed rule, alternative 1 (strictly enforcing the current rules) must be much more effective (greater than 47 percent) than the proposed rule (23 percent) in order to be cost beneficial.

Alternative 2—Proposed Rule (Preferred)

Under this preferred alternative, the FAA would establish unique requirements for the certification, operation, and maintenance of light-sport aircraft, including powered parachutes and weight-shift-control aircraft. Anyone operating fat ultralights (single-place or 2-place types) would be required to obtain at least a sport pilot certificate. Flight instructors would obtain a sport pilot rating. This alternative would eliminate the need for training exemptions from part 103 and would also establish requirements for private pilots to operate powered parachutes and weight-shift-control aircraft. Under this alternative, the FAA would also establish a new repairman certificate with ratings for individuals who would inspect and maintain light-sport aircraft.

As discussed earlier, the potential benefits from this alternative are estimated to be $221.4 million ($153.3 million, discounted). The FAA believes that many of these benefits could be achieved by requiring:

1. All operators of fat ultralights to obtain sport pilot or flight instructor (with a sport pilot rating) certificates. Accidents would be reduced as a result of required training for all pilots operating light-sport aircraft. The FAA believes that training and testing, appropriate to the type of operation conducted, reduces aircraft accidents.

2. All sport pilots to receive training tailored to specific make/model light-sport aircraft and sport and recreational operations. Due to the unique characteristics of each make/model of light-sport aircraft within the same category, this training is necessary to gain the skills necessary to operate those aircraft.

In addition, a sport pilot could choose to add privileges, as needed, with appropriate training. This would reduce accidents or incidents by limiting the privileges and would allow a sport pilot to gain the skills necessary to operate in a simple operating environment and build experience. This building block approach would allow a sport pilot to gain additional skills through additional training, (e.g. operations in Class D, C, or B airspace) when the pilot wants to add more privileges.

3. All aircraft to meet the needed certification requirements. Accidents would be reduced because light-sport aircraft would be manufactured to a standard. In addition, these aircraft would be inspected by the FAA or a representative to ensure they are safe to fly before the issuance of an airworthiness certificate. Standard materials and processes would be used to build these aircraft.

4. All aircraft to meet the needed aircraft maintenance requirements. Accidents would be reduced because required maintenance done in regular intervals by certificated repairmen or mechanics would ensure that light-sport aircraft are maintained properly.

5. Training for repairmen. Establishing maintenance standards and repairman training standards means well-maintained, safer aircraft. The aircraft would be maintained and inspected by individuals who would be trained by manufacturers or industry organizations on these unique types of light-sport aircraft. Repairmen would be trained on specific make and model light-sport aircraft.

The benefits listed in items 2 and 5 above are unique to the proposed rule alternative (preferred). Those two benefits would not be achieved by strictly enforcing current regulations. Benefits in items 1, 3, and 4 above would be achieved under either alternative.

As stated earlier, these proposed requirements are estimated to cost $40.4 million ($34.0 million, discounted). If the proposed rule were only 23 percent effective, the proposed rule would be cost beneficial.

The FAA selected this alternative primarily because, not only is the proposed rule less costly than the current rule, it likely would provide a higher level of safety because of the additional two unique safety benefits. In addition, this alternative would fulfil the FAA's responsibility under 49 U.S.C. 44701, which requires the FAA to promote safe flight of civil aircraft and establish regulations covering aircraft operations.

B. Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities,

section 605(b) of the Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

There are two types of small commercial entities that would be potentially affected by the proposal: (1) Flight instructors with a sport pilot rating and (2) Certificated repairmen (maintenance). These entities are considered small. Since there is no established size criterion for these types of operators, all of them (flight instructors and maintenance repairmen) are considered to be small from a worst case standpoint. Each of these small entities is discussed below.

Flight Instructors With a Sport Pilot Rating

Of the 10,000 existing operators of fat ultralight vehicles that would be affected by the proposal between 2002 and 2003, an estimated 1,000 (or 10 percent) would become flight instructors with a sport pilot rating. An estimated 925 additional new flight instructors with a sport pilot rating are expected to enter the industry between 2002 and 2011, as part of those newly produced light-sport aircraft.

While a small number of new flight instructors with a sport pilot rating would teach part-time for the love of flying, the vast majority (about 75–90 percent) of them likely would be compensated beyond coverage of their operating expenses. These individuals would either be self-employed independent flight instructors for hire, who operate and own flight schools, or they would be employed as flight instructors at flight schools. In most cases, the FAA believes these individuals operate as self-employed independent flight instructors. All of these flight instructors are considered small commercial entities. The proposal would impose, at most, an annualized cost of compliance of $274 on each of the potentially affected flight instructors over the next 10 years. While no financial data is available for these entities, due to their small size and the nature of their general aviation operations (i.e., many of them have yet to start operating as small entities), the magnitude of the potential compliance cost impact is not considered to be significant.

Repairmen (Maintenance)

The proposal would potentially affect an estimated 19,065 light-sport aircraft operators seeking either a sport pilot certificate or a flight instructor certificate with a sport pilot rating over the next 10 years. For those reasons noted previously in the major assumptions section of this evaluation, an estimated 5 percent of these operators are expected to obtain repairman certificates to perform aircraft maintenance on training and rental aircraft. These light sport-aircraft repairmen (maintenance) would operate as independent small commercial entities or as employees for small fixed base operators.

The proposal would impose an annualized cost of compliance of about $513 on each of the potentially affected repairmen over the next 10 years. For the same reasons stated previously for flight instructors, no financial data are available for these entities. Nonetheless, the magnitude of the potential compliance cost impact is not considered significant.

In view of the above discussion, the FAA certifies that the proposal would not have a significant economic impact on a substantial number of small entities operating either as light-sport aircraft repairmen (maintenance) or flight instructors with a sport pilot rating.

C. International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This effort includes both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute, the FAA has assessed the potential effect of the proposal and has determined that it would not present a significant impediment to either U.S. firms doing business aboard or foreign firms doing business in the United States. The proposal, if adopted as a rule, is expected to stimulate a great deal of growth for the light-sport aircraft aviation industry in the United States and abroad. The belief that no significant trade disadvantage would take place is based on the premise that the number of the requirements contained in the proposal (namely, aircraft certification standards) essentially mirrors those that already exist internationally.

D. Initial Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

Since the highest annual cost of compliance would be about $15.5 million, the proposal does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

X. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, we determined that this notice of proposed rulemaking would not have federalism implications.

XI. Environmental Analysis

FAA order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion. Currently there are no noise certification regulations that apply to light-sport aircraft.

XII. Energy Impact

The energy impact of this proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. The FAA has determined that this proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

14 CFR Part 43

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 45

Aircraft, Exports, Signs and symbols.

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Teachers.

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Alcohol abuse, Drug abuse, Reporting and recordkeeping requirements.

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidate, Reporting and recordkeeping requirements, Yugoslavia.

The Proposed Amendment

In consideration of the above, the Federal Aviation Administration proposes to amend parts 1, 21, 43, 45, 61, 65, and 91 of title 14, Code of Federal Regulations (14 CFR parts 1, 21, 43, 45, 61, 65, and 91) as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

2. Amend § 1.1 by adding the following definitions in alphabetical order:

§ 1.1 General definitions.

* * * * *

Consensus standard means, for the purpose of certificating light-sport aircraft, an industry-developed consensus airworthiness standard that governs aircraft design and performance, quality assurance system requirements, production acceptance test specifications, and continued operational safety monitoring system characteristics.

* * * * *

Light-sport aircraft means an aircraft, other than a helicopter or powered-lift, that is limited to:

(1) A maximum takeoff weight of 1,232 pounds (560 kilograms) or, for lighter-than-air aircraft, a maximum gross weight of 660 pounds (300 kilograms);

(2) A maximum airspeed in level flight with maximum continuous power (V_H) of 115 knots CAS under standard atmospheric conditions;

(3) A maximum never-exceed speed (V_{NE}) of 115 knots CAS for a glider;

(4) A maximum stalling speed or minimum steady flight speed in the landing configuration (V_{S0}) of 39 knots CAS;

(5) A maximum stalling speed or minimum steady flight speed without the use of lift-enhancing devices (V_{S1}) of 44 knots CAS;

(6) A maximum seating capacity of two persons, including the pilot;

(7) A single, non-turbine engine, if powered;

(8) A fixed or ground-adjustable propeller, if powered;

(9) A fixed-pitch, semi-rigid, teetering, two-blade rotor system, if a gyroplane;

(10) A non-pressurized cabin, if equipped with a cabin; and

(11) Fixed landing gear, or for seaplanes, repositionable landing gear.

* * * * *

Powered parachute means a powered aircraft that derives its lift from a non-rigid wing that inflates into a lifting surface when exposed to a wind. A powered parachute is propelled by an engine that is an integral part of the aircraft and is controlled by a pilot within a fuselage suspended beneath the non-rigid wing.

* * * * *

Weight-shift-control aircraft means a powered aircraft with a framed pivoting wing and a fuselage that is controllable in pitch and roll only by the pilot's ability to change the aircraft's center of gravity.

* * * * *

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

4. Amend § 21.175 by revising paragraph (b) to read as follows:

§ 21.175 Airworthiness certificates: classification.

* * * * *

(b) Special airworthiness certificate categories are primary, restricted, limited, light-sport, provisional, and experimental airworthiness certificates; and special flight permits.

5. Amend § 21.181, by revising paragraphs (a)(1) and (a)(3) to read as follows:

§ 21.181 Duration.

(a) * * *

(1) Standard airworthiness certificates and special airworthiness certificates issued for primary, restricted, or limited category aircraft are effective as long as the maintenance, preventive maintenance, and alterations are performed in accordance with parts 43 and 91 of this chapter, and the aircraft is registered in the United States. A special airworthiness certificate in the light-sport category is effective as long as the aircraft is maintained in accordance with the operating limits limitations issued with the airworthiness certificate, and the aircraft is registered in the United States.

* * * * *

(3) An experimental certificate for research and development, showing compliance with regulations, crew training, or market surveys is effective for one year after the date of issue or renewal unless FAA prescribes a shorter period. The duration of amateur-built, exhibition, air-racing, primary kit-built, and light-sport experimental certificates is unlimited, unless FAA establishes a specific period for good cause.

* * * * *

6. Amend § 21.182 by revising paragraph (b)(2) to read as follows:

§ 21.182 Aircraft identification.

* * * * *

(b) * * *

(2) An experimental certificate for an aircraft not issued for the purpose of operating amateur-built aircraft, operating primary kit-built aircraft, or operating light-sport aircraft.

* * * * *

7. Add § 21.186 to read as follows:

§ 21.186 Issue of special airworthiness certificates for light-sport category aircraft.

(a) *Special, light-sport category aircraft airworthiness certificates.* The FAA issues a special airworthiness certificate in the light-sport category to operate a light-sport aircraft, other than a gyroplane, for sport and recreation, flight training, or rental.

(b) *Eligibility.* To be eligible for a special airworthiness certificate in the light-sport category—

(1) A registered owner must submit—

(i) The applicable pilot operating handbook;

(ii) The applicable maintenance and inspection procedures;

(iii) The manufacturer's Statement of Compliance as described in paragraph (c) of this section;

(iv) A written statement declaring that the aircraft has not been altered after its date of manufacture; or that any alteration performed on the aircraft meets the applicable consensus standard and has been authorized by the manufacturer or a person acceptable to FAA who has established a program to review alterations performed on the manufacturer's aircraft; and

(v) A written statement declaring that any future alterations performed on the aircraft will meet the applicable consensus standard and be authorized by the manufacturer or a person acceptable to FAA who has established a program to review alterations performed on the manufacturer's aircraft;

(2) The aircraft must not have been previously issued an airworthiness certificate in the standard or primary category; and

(3) The aircraft must be inspected by FAA and found to be in a condition for safe operation.

(c) *Manufacturer's Statement of Compliance for light-sport category aircraft.* A manufacturer of an aircraft intended for certification with a special airworthiness certificate in the light-sport category must issue a Statement of Compliance that:

(1) Identifies the aircraft make and model designation, aircraft serial number, class of light-sport aircraft, and the date of manufacture;

(2) Identifies the consensus standard used to manufacture the aircraft;

(3) States that the aircraft complies with the consensus standard specified in paragraph (c)(2) of this section;

(4) States that the manufacturer has determined the aircraft conforms to the manufacturer's design data, using a quality system that complies with the consensus standard;

(5) Identifies the applicable pilot operating handbook, maintenance and inspection procedures, pilot flight-training manual and states that this information will be made available to any interested person;

(6) Identifies a document describing the system the manufacturer will use for monitoring and correcting safety-of-flight issues;

(7) States that, upon request of the FAA, the manufacturer will provide unrestricted access to its facilities; and

(8) States that the aircraft was tested in accordance with a production acceptance test procedure that meets a consensus standard, that the manufacturer has found the aircraft performance acceptable, and that the aircraft is in a condition for safe operation.

(d) *Imported light-sport aircraft.* For an imported aircraft to be eligible for a special airworthiness certificate in the light-sport category, a registered owner must meet the requirements of paragraph (b) of this section and provide to the FAA evidence that:

(1) The aircraft was manufactured in a country with which the United States has an agreement for the import or export of that product;

(2) The make and model of the aircraft to be imported is eligible for an airworthiness certificate or flight authority in the country of manufacture; and

(3) The civil aviation authority of the country of export has determined that the aircraft is in a condition for safe operation.

8. Amend § 21.191 by revising the paragraph caption of paragraph (h) and adding paragraph (i) to read as follows:

§ 21.191 Experimental certificates.

* * * * *

(h) *Operating primary kit-built aircraft.* * * *

(i) *Operating light-sport aircraft.*

(1) Operating a light-sport aircraft for which a person applied for registration no later than [Date 24 months after the effective date of the final rule.] and for which FAA issued an experimental airworthiness certificate under this paragraph no later than [Date 36 months after the effective date of the final rule.]. Only aircraft that do not meet the provisions of § 103.1 of this chapter may receive this certificate. The FAA issues this certificate for the purpose of sport and recreation and flight training. A person may operate an aircraft for compensation or hire with this certificate while conducting initial flight training until [Date 36 months after the effective date of the final rule.].

(2) Operating a light-sport aircraft that was assembled from an eligible kit by a person without the supervision and quality system of the manufacturer for the purpose of sport and recreation and flight training.

(3)Operating a light-sport aircraft that was previously issued a special airworthiness certificate in the light-sport category under § 21.186 for the purpose of sport and recreation and flight training.

9. Amend § 21.193 by adding paragraph (e) to read as follows:

§ 21.193 Experimental certificates: general.

* * * * *

(e) In the case of a light-sport aircraft assembled from a kit to be certificated in accordance with § 21.191(i)(2), a registered owner must provide the following:

(1) Evidence that any aircraft of the same make and model previously has been issued a special airworthiness certificate in the light-sport aircraft category and has been manufactured and assembled by the aircraft kit manufacturer;

(2) The applicable pilot operating handbook;

(3) The applicable instructions for maintenance and inspection procedures;

(4) A Statement of Compliance issued by the manufacturer that meets the scope and detail of § 21.186(c) for that specific aircraft kit, except that in-lieu of § 21.186(c)(8), the statement should identify the applicable Assembly Instructions for that aircraft;

(5) The instructions that were used to assemble the aircraft; and

(6) For an imported aircraft kit, evidence that the aircraft kit was manufactured in a country with which the United States has an agreement for the import or export of the product to be made from the kit.

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

10. The authority citation for part 43 continues to read as follows:

Authority: 49 U. S. C. 106(g), 40113, 44701, 44703, 44705, 44707, 44711, 44713, 44717.

11. Amend § 43.1 by revising paragraph (b) to read as follows:

§ 43.1 Applicability.

* * * * *

(b) This part does not apply to any aircraft for which FAA issued a special airworthiness certificate in the light-sport aircraft category or an experimental certificate, unless FAA had previously issued a different kind of airworthiness certificate for that aircraft.

PART 45—IDENTIFICATION AND REGISTRATION MARKING

12. The authority citation for part 45 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40109, 40113–40114, 44101–44105, 44107–44108, 44110–44111, 44504, 44701, 44708–44709, 44711–44713, 45302–45303, 46104, 46304, 46306, 47122.

13. Amend § 45.27 by adding paragraph (e) to read as follows:

§ 45.27 Location of marks; nonfixed-wing aircraft.

* * * * *

(e) *Powered parachute and weight-shift-control aircraft.* Each operator of a powered parachute or a weight-shift-control aircraft must display the marks required by § 45.23. The marks must be displayed horizontally and in two diametrically opposite positions on any structural member or airfoil.

14. Amend § 45.29 by revising paragraphs (b)(1)(iii), and (b)(2) to read as follows:

§ 45.29 Size of marks.

* * * * *

(b) * * *

(1) * * *

(iii)Marks at least 3 inches high may be displayed on an aircraft for which FAA has issued an experimental certificate under § 21.191(d), § 21.191(g), or § 21.191(i) of this chapter to operate as an exhibition aircraft, an amateur-built aircraft, or a light-sport aircraft when the maximum cruising speed of the aircraft does not exceed 180 knots CAS; and

* * * * *

(2) Airships, spherical balloons, nonspherical balloons, powered parachutes, and weight-shift-control aircraft must be at least 3 inches high; and

* * * * *

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

15. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

16. Add SFAR No. 89 to part 61 to read as follows:

SFAR No. 89—Sport Pilot Certification

General

Section

1. What is the purpose of this SFAR?
3. When am I eligible for a certificate under this SFAR?
5. Does this SFAR expire?
7. Does a sport pilot certificate issued under this SFAR expire?
9. What is a light-sport aircraft?
11. Who is an authorized instructor?
13. Do regulations other than those contained in this SFAR apply to a sport pilot?
15. Must I hold an airman medical certificate?
17. Am I prohibited from operating a light-sport aircraft if I have a medical deficiency?

Student Pilot Certificate to Operate Light-Sport Aircraft

31. How do I apply for a student pilot certificate to operate light-sport aircraft?
33. What solo requirements must a student pilot operating light-sport aircraft meet?
35. Are there any limits on how a student pilot may operate a light-sport aircraft?
37. How do I obtain privileges to operate in Class B, C, or D airspace and at an airport located in Class B, C, or D airspace?

Sport Pilot Certificate

51. What aeronautical knowledge must I have to apply for a sport pilot certificate?
53. What flight proficiency requirements must I meet to apply for a sport pilot certificate?
55. What aeronautical experience must I have to apply for a sport pilot certificate?
57. What tests do I have to take to receive a sport pilot certificate?
59. Will my sport pilot certificate list light-sport aircraft category and class ratings?
61. May I operate all categories, classes, and makes and models of light-sport aircraft with my sport pilot certificate?
63. How do I obtain privileges to operate an additional category or class of light-sport aircraft?
65. How do I obtain privileges to operate an additional make and model of light-sport aircraft?
67. Must I carry my logbook with me in the aircraft?

Privileges and Limits of Holders of a Sport Pilot Certificate

71. What type of aircraft may I fly if I hold a sport pilot certificate?
73. What are my limits for the operation of light-sport aircraft?
75. May I demonstrate an aircraft in flight to a prospective buyer?
77. May I carry a passenger?
79. May I share operating expenses of a flight with a passenger?
81. How do I obtain privileges to operate in Class B, C, or D airspace?
83. How do I obtain privileges to operate a light-sport aircraft that has a V_H greater than 87 knots CAS?

Transitioning to a Sport Pilot Certificate

91. How do I obtain a sport pilot certificate if I already hold at least a private pilot certificate issued under 14 CFR part 61?
93. How do I obtain a sport pilot certificate if I do not hold a pilot certificate issued under 14 CFR part 61, but I have been flying ultralight vehicles under 14 CFR part 103?
95. How do I obtain a sport pilot certificate if I don't hold a pilot certificate and have never flown an ultralight vehicle?

Flight Instructor Certificate With a Sport Pilot Rating

111. Must I hold an airman medical certificate?
113. What aeronautical knowledge requirements must I meet to apply for a flight instructor certificate with a sport pilot rating?
115. What training must I have in areas of operation to apply for a flight instructor certificate with a sport pilot rating?
117. What aeronautical experience must I have to apply for a flight instructor certificate with a sport pilot rating?
119. What tests do I have to take to get a flight instructor certificate with a sport pilot rating?
121. What records do I have to keep and for how long?
123. Will my flight instructor certificate with a sport pilot rating list light-sport aircraft category and class ratings?
125. Am I authorized to provide training in all categories and classes of light-sport aircraft with my flight instructor certificate with a sport pilot rating?
127. How do I obtain privileges to provide flight training in an additional category or class of light-sport aircraft?
129. How do I obtain privileges authorizing me to provide flight training in an additional make and model of light-sport aircraft?
131. Do I need to carry my logbook with me in the aircraft?
133. What privileges do I have if I hold a flight instructor certificate with a sport pilot rating?
135. What are the limits of a flight instructor certificate with a sport pilot rating?
137. Are there any additional qualifications for training first-time flight instructor applicants?
139. May I give myself an endorsement?

Transitioning to a Flight Instructor Certificate With a Sport Pilot Rating

151. What if I already hold a flight instructor certificate issued under 14 CFR part 61 and want to exercise the privileges of a flight instructor certificate with a sport pilot rating?
153. What if I am only a registered ultralight instructor with an FAA recognized ultralight organization?
155. What if I've never provided flight or ground training in an aircraft or an ultralight vehicle?

Pilot Logbooks

171. How do I log training time and aeronautical experience?
173. How do I log pilot-in-command flight time?
175. May I use training time and aeronautical experience logged as a sport pilot toward a higher certificate or rating issued under 14 CFR part 61?
177. May I credit training time and aeronautical experience logged as an ultralight operator toward a sport pilot certificate?
179. May I use aeronautical experience I got as the operator of an ultralight vehicle to meet the requirements for a higher certificate or rating issued under 14 CFR part 61?

Recent Flight Experience Requirements for a Sport Pilot Certificate or a Flight Instructor Certificate With a Sport Pilot Rating

191. What recent flight experience requirements must I meet for a sport pilot certificate?
193. What are the flight review requirements for a sport pilot certificate?
195. How do I renew my flight instructor certificate?
197. What must I do if my flight instructor certificate with a sport pilot rating expires?

Ground Instructor Privileges

211. What are the eligibility requirements for a ground instructor certificate?

213. What additional privileges do I have if I hold a ground instructor certificate with a basic ground instructor rating?
215. What additional privileges do I have if I hold a ground instructor certificate with an advanced ground instructor rating?

General

Section 1. What is the purpose of this SFAR? This SFAR—

(a) Establishes requirements to apply for a student pilot certificate to operate light-sport aircraft, a sport pilot certificate, and a flight instructor certificate with a sport pilot rating;

(b) Expands the privileges of ground instructors to permit them to provide training for a sport pilot certificate and for a flight instructor certificate with a sport pilot rating; and

(c) Establishes the following for the certificates and ratings issued by FAA under the provisions of this SFAR:

(1) Eligibility requirements;
(2) Experience requirements;
(3) Testing requirements;
(4) Endorsements;
(5) Privileges and limitations;
(6) Logging of ground and flight time;
(7) Recent flight experience requirements; and
(8) Transition provisions.

Section 3. When am I eligible for a certificate under this SFAR? (a) See the following table for the eligibility requirements for the different kinds of airman certificates issued under this SFAR:

To be eligible for a . . .	You must be able to read, speak, write, and understand English and be . . .
(1) Student pilot certificate for operating light-sport aircraft,	At least 16 (or 14 if you are applying to operate a glider or balloon)
(2) Sport pilot certificate,	At least 17 (or 16 if you are applying to operate a glider or balloon
(3) Flight instructor certificate with a sport pilot rating,	(i) At least 18; and (ii) Hold a current and valid sport pilot certificate or a current and valid private pilot certificate issued under 14 CFR part 61.

(b) If you can't read, speak, write, and understand English due to medical requirements, the FAA may place limitations on your certificate as are necessary for the safe operation of light-sport aircraft.

Section 5. Does this SFAR expire? This SFAR will remain in effect until superceded, rescinded, or until it is incorporated into the permanent portion of Title 14, Code of Federal Regulations.

Section 7. Does a sport pilot certificate issued under this SFAR expire? No, a sport pilot certificate issued under this SFAR does not expire.

Section 9. What is a light-sport aircraft? A *light-sport aircraft* is defined in 14 CFR 1.1.

Section 11. Who is an authorized instructor? An authorized instructor is defined in 14 CFR 61.1.

Section 13. Do regulations other than those contained in this SFAR apply to a sport pilot? Yes. As a certificated pilot, you must comply with 14 CFR part 61 and with the general operating and flight rules under 14 CFR part 91 of this chapter. In addition, you must comply with all other applicable regulations under this chapter.

Section 15. Must I hold an airman medical certificate? In lieu of the provisions of 14 CFR 61.23(a)(3)(iii), which require a student pilot to hold an airman medical certificate, you must hold and possess while exercising the privileges of a student pilot certificate to operate a light-sport aircraft or a sport pilot certificate, when operating other than a glider or balloon:

(a) A current and valid U.S. driver's license; or

(b) A current and valid airman medical certificate issued under 14 CFR part 67.

Section 17. Am I prohibited from operating a light-sport aircraft if I have a medical deficiency? See the following table to determine when you are prohibited from operating a light-sport aircraft due to a medical deficiency:

If you hold a sport pilot certificate or a student pilot certificate to operate light-sport aircraft . . .	And . . .	Then . . .
(a) That is a glider or balloon,		You must not act as pilot in command of the aircraft if you know or have reason to know of any medical condition that would make you unable to operate the aircraft in a safe manner.
(b) Other than a glider or balloon,	You hold a U.S. driver's license (regardless of whether you hold an airman medical certificate issued under 14 CFR part 67),	You must not act as pilot in command of the aircraft if you know or have reason to know of any medical condition that would make you unable to operate the aircraft in a safe manner.
(c) Other than a glider or balloon,	(1) You hold an airman medical certificate issued under 14 CFR part 67, but don't hold a U.S. driver's license,	(i) You must not act as pilot in command of the aircraft if: (A) You know or have reason to know of any medical condition that would make you unable to meet the requirements of at least a third-class medical certificate; or (B) You are taking medication or receiving other treatment for a medical condition that results in you being unable to meet the requirements of at least a third-class medical certificate.

Student Pilot Certificate for Operating Light-Sport Aircraft

Section 31. How do I apply for a student pilot certificate to operate light-sport aircraft? Use the following table to determine how to apply for a student pilot certificate to operate light-sport aircraft:

If . . .	Then . . .
(a) You are operating a balloon or glider, or you have a current and valid airman medical certificate issued under 14 CFR part 67, or a current and valid U.S. driver's license,	You must apply for a student pilot certificate to operate light-sport aircraft with a Flight Standards District Office (FSDO) or an FAA designated pilot examiner.

If . . .	Then . . .
(b) You are not operating a balloon or a glider, you do not have a current and valid airman medical certificate issued under 14 CFR part 67, and you are not able to get a current and valid U.S. driver's license,	You must apply for a student pilot certificate to operate light-sport aircraft and an airman medical certificate issued under 14 CFR part 67 with an FAA aviation medical examiner.

Section 33. What solo requirements must a student pilot operating light-sport aircraft meet? (a) To operate a light-sport aircraft in solo flight, you must meet the requirements under 14 CFR 61.87(a) through (c).

(b) If you are receiving training for single-engine airplane, glider, gyroplane, airship, or balloon privileges, you must receive and log flight training for the maneuvers and procedures specified in 14 CFR 61.87(d), (g), and (i) through (k), as applicable.

(c) If you are receiving training for powered parachute or weight-shift-control aircraft privileges, you must receive and log flight training for the following maneuvers and procedures:

(1) Proper flight preparation procedures, including preflight planning and preparation, preflight assembly and rigging, aircraft systems, and powerplant operations;

(2) Taxiing or surface operations, including run-ups;

(3) Takeoffs and landings, including normal and crosswind;

(4) Straight and level flight, and turns in both directions;

(5) Climbs, and climbing turns in both directions;

(6) Airport traffic patterns, including entry and departure procedures;

(7) Collision avoidance, windshear avoidance, and wake turbulence avoidance;

(8) Descents and descending turns in both directions;

(9) Emergency procedures and equipment malfunctions;

(10) Ground reference maneuvers;

(11) Recovery from partial canopy collapse (powered parachute only);

(12) Meta-stable stalls and avoidance (powered parachute only);

(13) Flight at various airspeeds from maximum cruise to slow flight (weight-shift-control aircraft only);

(14) Stall entry, stall, and stall recovery (weight-shift-control aircraft only);

(15) Straight glides, and gliding turns in both directions;

(16) Go-arounds;

(17) Approaches to landing areas with a simulated engine malfunction;

(18) Procedures for canopy packing and aircraft disassembly (powered parachute only); and

(19) Procedures for disassembly (weight-shift-control aircraft only).

(d) Solo cross-country flight requirements. You may not operate a light-sport aircraft on a solo cross-country flight unless you have met the requirements specified in 14 CFR 61.93(a) through (c).

(e) Maneuvers and procedures for solo cross-country flight training in a single-engine airplane, glider, gyroplane, or airship. If you are receiving training for single-engine airplane, glider, gyroplane, or airship privileges you must receive and log flight training for the maneuvers and procedures specified in 14 CFR 61.93 (e), (h), (j), and (k), as applicable.

(f) If you are receiving training for powered parachute and weight-shift control privileges, you must receive and log flight training in the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) If equipped for flight using navigation radios, the procedures for the use of radios for VFR navigation; and

(10) Recognition of weather and upper air conditions favorable for the cross-country flight.

Section 35. Are there any limits on how a student pilot may operate a light-sport aircraft? As a student pilot you may not operate a light-sport aircraft:

(a) Unless you comply with 14 CFR 61.87(l) and 61.89 (a)(1) through (a)(4), (a)(7), (a) (8), and (b);

(b) With a flight or surface visibility of less than 3 statute miles;

(c) In flight at night;

(d) At an altitude of more than 10,000 feet MSL or 2,000 feet AGL, whichever is higher;

(e) That exceeds a V_H of 87 knots CAS;

(f) Outside of the United States;

(g) In Class B, C, or D airspace or at an airport located in Class B, C, or D airspace; unless you have received the ground and flight training from an instructor authorized to provide training and any logbook endorsement necessary for the solo flight;

(h) Contrary to any operating limitation placed on the airworthiness certificate of the aircraft being flown; or

(i) Contrary to any limitation or endorsement on your pilot certificate, airman medical certificate, U.S. driver's license, or any other limitation or endorsement from an authorized instructor.

Section 37. How do I obtain privileges to operate in Class B, C, or D airspace and at an airport located in Class B, C, or D airspace? If you hold a student pilot certificate to operate light-sport aircraft and seek to obtain privileges to operate in Class B, C, or D airspace or at an airport located in Class B, C, or D airspace, you must receive and log ground and flight training from an authorized instructor. The instructor must provide a logbook endorsement that certifies you are proficient in the following aeronautical knowledge areas and areas of operation:

(a) The use of radios, communications, navigation systems and facilities, and radar services;

(b) Operations at airports with an operating control tower, to include 3 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower;

(c) Applicable flight rules of 14 CFR part 91 for operations in Class B, C, or D airspace and ATC clearances;

(d) Ground training for the specific airspace for which the solo flight is authorized, and flight training in the specific airspace for which the solo flight is authorized within the 90-day period preceding the date of the flight into that airspace; and

(e) Ground and flight training for the specific airport for which the solo flight is authorized, if applicable, within the 90-day period preceding the date of the flight at that airport.

Sport Pilot Certificate

Section 51. What aeronautical knowledge must I have to apply for a sport pilot certificate? To apply for a sport pilot certificate, you must receive and log ground training from an authorized instructor or complete a home-study course on the following aeronautical knowledge areas:

(a) Applicable regulations of this chapter that relate to sport pilot privileges, limits, and flight operations;

(b) Accident reporting requirements of the National Transportation Safety Board;

(c) Use of the applicable portions of the ''Aeronautical Information Manual'' and FAA advisory circulars;

(d) Use of aeronautical charts for VFR navigation using pilotage, dead reckoning, and navigation systems;

(e) Recognition of critical weather situations from the ground and in flight, windshear avoidance, and the procurement and use of aeronautical weather reports and forecasts;

(f) Safe and efficient operation of aircraft, including collision avoidance, and recognition and avoidance of wake turbulence;

(g) Effects of density altitude on takeoff and climb performance;

(h) Weight and balance computations;

(i) Principles of aerodynamics, powerplants, and aircraft systems;

(j) Stall awareness, spin entry, spins, and spin recovery techniques, if applicable;

(k) Tumble entry, tumble avoidance techniques for weight-shift-control aircraft category privileges;

(l) Aeronautical decision making and judgment; and

(m) Preflight action that includes—

(1) How to get information on runway lengths at airports of intended use, data on takeoff and landing distances, weather reports and forecasts, and fuel requirements; and

(2) How to plan for alternatives if the planned flight cannot be completed or delays are encountered.

Section 53. What flight proficiency requirements must I meet to apply for a sport pilot certificate? To apply for a sport pilot certificate, you must receive and log ground and flight training from an authorized instructor on the following areas of operation for airplane single-engine, glider, gyroplane, airship, balloon, powered parachute, and weight shift control privileges:

(a) Preflight preparation;

(b) Preflight procedures;

(c) Airport, seaplane base, and gliderport operations, as applicable;

(d) Takeoffs (or launches), landings, and go-arounds:

(e) Performance maneuvers, and for gliders, performance speeds;

(f) Ground reference maneuvers (not applicable to gliders and balloons);

(g) Soaring techniques (applicable to gliders only);

(h) Navigation;

(i) Slow flight and stalls (stalls not applicable to lighter-than-air aircraft and gyroplanes);

(j) Emergency operations; and

(k) Post-flight procedures.

Section 55. What aeronautical experience must I have to apply for a sport pilot certificate? Use the following table to determine the experience you must have to apply for a sport pilot certificate depending on aircraft category and class:

If you are applying for a sport pilot certificate with . . .	Then you must log	Which must include
	at least . . .	at least . . .
(a) Airplane category and single-engine class privileges,	20 hours flight time, including at least 15 hours of flight training in a single-engine airplane from an authorized instructor and at least 5 hours solo flight training in areas of operation established in section 53 of this SFAR,	(1) 2 hours cross-country flight training; (2) 10 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; (3) One solo cross-country flight of at least 75 nautical miles total distance, with a full stop landing, and one segment of the flight consisting of a straight-line distance of at least 25 nautical miles between the takeoff and landing locations; and (4) 3 hours flight training on those areas of operation specified in section 53 of this SFAR preparing for the practical test within 60 days before the date of the test.
(b) Glider category privileges, and you haven't logged 20 hours flight time in a heavier-than-air aircraft,	10 hours flight time in a glider, including 10 flights in a glider receiving flight training from an authorized instructor and at least 2 hours of solo flight time in the areas of operation listed in section 53 of this SFAR,	(1) 5 solo launches and landings; and (2) 3 hours flight training on those areas of operation specified in section 53 of this SFAR preparing for the practical test within 60 days before the date of the test.
(c) Glider category privileges, and you have logged 20 hours flight time in a heavier-than-air aircraft,	3 hours flight time in a glider, including 5 flights in a glider receiving flight training from an authorized instructor and at least 1 hour solo flight training in the areas of operation listed in section 53 of this SFAR,	(1) 3 solo launches and landings; and (2) 3 hours flight training on those areas of operation specified in section 53 of this SFAR preparing for the practical test within 60 days before the date of the test.
(d) Rotocraft category and gyroplane class privileges,	20 hours flight time, including 15 hours flight training in a gyroplane from an authorized instructor and at least 5 hours solo flight training in the areas of operation listed in section 53 of this SFAR,	(1) 2 hours cross-country flight training; (2) 10 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; (3) One solo cross-country flight of at least 50 nautical miles total distance, with a full stop landing, and one segment of the flight consisting of a straight-line distance of at least 25 nautical miles between the takeoff and landing locations; and (4) 3 hours flight training on those areas of operation specified in section 53 of this SFAR preparing for the practical test within 60 days before the date of the test.
(e) Lighter-than-air category and airship class privileges,	20 hours flight time, including 15 hours flight training in an airship from an authorized instructor at least 3 hours performing the duties of pilot in command in an airship with an instructor in the areas of operation listed in section 53 of this SFAR,	(1) 2 hours cross-country flight training; (2) 3 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; (3) One cross-country flight of at least 25 nautical miles between the takeoff and landing locations; and (4) 3 hours flight training on those areas of operation specified in section 53 of this SFAR preparing for the practical test within 60 days before the date of the test.

If you are applying for a sport pilot certificate with . . .	Then you must log at least . . .	Which must include at least . . .
(f) Lighter-than-air category and balloon class privileges,	7 hours flight time in a balloon, including 3 training flights with an authorized instructor and one flight performing the duties of pilot in command in a balloon with an authorized instructor in the areas of operation listed in section 53 of this SFAR,	(1) 2 hours cross-country flight training; (2) One solo cross-country flight of at least 25 nautical miles total distance between take-off and landing locations; and (3) 3 hours flight training on those areas of operation specified in section 53 of this SFAR preparing for the practical test within 60 days before the date of the test.
(g) Powered parachute category privileges,	20 hours flight time, including 15 hours flight training in a powered parachute from an authorized instructor and at least 5 hours solo flight training in the areas of operation listed in section 53 of this SFAR,	(1) 2 hours cross-country flight training; (2) 10 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; (3) One solo cross-country flight of at least 25 nautical miles total distance and one segment of the flight consisting of a straight-line distance of at least 15 nautical miles between takeoff and landing locations; and (4) 3 hours flight training on those areas of operation specified in section 53 of this SFAR preparing for the practical test within 60 days before the date of the test.
(h) Weight-shift-control aircraft category privileges,	20 hours flight time, including 15 hours flight training in a weight-shift-control aircraft from an authorized instructor and at least 5 hours solo flight training in the areas of operation listed in section 53 of this SFAR,	(1) 2 hours cross-country flight training; (2) 10 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport; (3) One solo cross-country flight of at least 75 nautical miles total distance, with a full stop landing, and one segment of the flight consisting of a straight-line distance of at least 25 nautical miles between takeoff and landing locations; and (4) 3 hours flight training on those areas of operation specified in section 53 of this SFAR preparing for the practical test within 60 days before the date of the test.

Section 57. What tests do I have to take to receive a sport pilot certificate? To receive a sport pilot certificate you must pass the following tests:

(a) Knowledge test. You must pass the required knowledge test on the applicable aeronautical knowledge areas listed in section 51 of this SFAR. Before you can take the knowledge test for a sport pilot certificate you must receive a logbook endorsement certifying you are prepared for the test from the authorized instructor who trained you or reviewed and evaluated your home-study course on the aeronautical knowledge areas listed in section 51 of this SFAR.

(b) Practical test. You must pass the required practical test on the applicable areas of operation listed in sections 51 and 53 of this SFAR that apply to the light-sport aircraft privilege you seek. Before you can take the practical test for a sport pilot certificate, you must receive a logbook endorsement from the authorized instructor who provided you with flight training on the areas of operation specified in sections 51 and 53 of this SFAR in preparation for the practical test. This endorsement certifies you meet the applicable aeronautical knowledge and experience requirements and are prepared for the required practical test.

Section 59. Will my sport pilot certificate list light-sport aircraft category and class ratings? No. Sport pilot certificates do not list light-sport aircraft category and class ratings. When you successfully pass the practical test for a sport pilot certificate, regardless of the light-sport aircraft privilege you seek, FAA will issue you a sport pilot certificate without any category and class ratings. You will receive a logbook endorsement of the category, class, and make and model aircraft you are authorized to operate.

Section 61. May I operate all categories, classes, and makes and models of light-sport aircraft with my sport pilot certificate? No. If you hold a sport pilot certificate, you must have a logbook endorsement from an authorized instructor for each category, class, or make and model of light-sport aircraft you operate.

Section 63. How do I obtain privileges to operate an additional category or class of light-sport aircraft? To operate an additional category or class of light-sport aircraft you must:

(a) Receive a logbook endorsement from the authorized instructor who trained you on the areas of operation specified in sections 51 and 53 of this SFAR certifying that you have met the aeronautical and knowledge experience requirements for the additional light-sport aircraft privilege you seek;

(b) Successfully complete a proficiency check from an authorized instructor other than the instructor who conducted your training on the areas of operation specified in sections 51 and 89 of this SFAR for the additional light-sport aircraft privilege you seek; and

(c) Receive a logbook endorsement certifying you are proficient in the areas of operation and authorized for the additional light-sport aircraft privilege.

Section 65. How do I obtain privileges to operate an additional make and model of light-sport aircraft? To operate an additional make and model of light-sport aircraft, you must receive a logbook endorsement from the authorized instructor who provided you aircraft-specific training for the additional light-sport aircraft make and model privileges you seek, certifying you are proficient in that make and model of light-sport aircraft.

Section 67. Must I carry my logbook with me in the aircraft? If you hold a sport pilot certificate, you must carry your logbook or documented proof of all required endorsements with you on all flights. Documented proof includes a photocopy of the logbook endorsements or a pre-printed form that includes the endorsements.

Privileges and Limits of Holders of a Sport Pilot Certificate

Section 71. What type of aircraft may I fly if I hold a sport pilot certificate? If you hold a sport pilot certificate, you may operate any light-sport aircraft, as defined in 14 CFR 1.1, for which you have received the proper logbook endorsements.

Section 73. What are my limits for the operation of light-sport aircraft? (a) If you

hold a sport pilot certificate, you must operate a light-sport aircraft in accordance with 14 CFR part 91. You are limited to sport and recreational flying only.

(b) You may not operate a light-sport aircraft:

(1) At night;

(2) In Class A airspace;

(3) In Class B, C, or D airspace, unless you have received ground and flight training and a logbook endorsement from an authorized instructor certifying you are authorized to exercise this privilege;

(4) Outside the United States, unless you have prior authorization from the country in which you seek to operate. Your sport pilot certificate carries the limitation ''Holder does not meet ICAO requirements;''

(5) That is used in a passenger-carrying airlift sponsored by a charitable organization;

(6) At an altitude of more than 10,000 feet MSL or 2,000 feet AGL, whichever is higher;

(7) When the flight or surface visibility is less than 3 statute miles;

(8) Without visual reference to the surface;

(9) That exceeds a V_H of 87 knots CAS, unless you have received ground and flight training and a logbook endorsement from an instructor authorized to provide this training;

(10) Contrary to any operating limitation placed on the airworthiness certificate of the aircraft being flown;

(11) Contrary to any limitation or endorsement on your pilot certificate, airman medical certificate, U.S. driver's license, or any other limitation or logbook endorsement from an authorized instructor;

(12) While towing any object; or

(13) While carrying a passenger or property for compensation or hire.

Section 75. May I demonstrate an aircraft in flight to a prospective buyer? If you are a sport pilot and you are not an aircraft salesperson, you may demonstrate an aircraft in flight to a prospective buyer. However, if you are an aircraft salesperson; you must hold a private pilot certificate and meet the requirements of 14 CFR 61.113(f).

Section 77. May I carry a passenger? Yes. As the holder of a sport pilot certificate, you may carry one passenger.

Section 79. May I share operating expenses of a flight with a passenger? Yes. You may share with a passenger the operating expenses of a flight, including fuel, oil, airport expenditures, and rental fees. However, you must pay at least half the operating expenses of a flight.

Section 81. How do I obtain privileges to operate in Class B, C, or D airspace? If you hold a sport pilot certificate and seek privileges to operate in Class B, C, or D airspace, you must receive and log ground and flight training from an authorized instructor who provides a logbook endorsement. That endorsement must certify you are proficient in the following aeronautical knowledge areas and areas of operation:

(1) The use of radios, communications, navigation system/facilities, and radar services;

(2) Operations at airports with an operating control tower to include 3 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower; and

(3) Applicable flight rules of part 91 for operations in Class B, C, or D airspace and ATC clearances.

Section 83. How do I obtain privileges to operate a light-sport aircraft that has a V_H greater than 87 knots CAS? If you hold a sport pilot certificate and seek privileges to operate a light-sport aircraft that has a V_H greater than 87 knots CAS you must—

(a) Receive and log ground and flight training from an authorized instructor in an aircraft that has a V_H greater than 87 knots CAS; and

(b) Receive a logbook endorsement from an authorized instructor certifying that you are proficient in the operation of this light-sport aircraft.

Transitioning to a Sport Pilot Certificate

Section 91. How do I obtain a sport pilot certificate if I already hold at least a private pilot certificate issued under 14 CFR part 61? (a) If you already hold at least a current and valid private pilot certificate issued under 14 CFR part 61, and you seek to exercise the privileges of a sport pilot certificate, you may do so without any further showing of proficiency, subject to the following limits:

(1) You are limited to the aircraft category and class ratings listed on your existing pilot certificate when exercising your sport pilot privileges;

(2) You must receive specific training for any make and model of light-sport aircraft in which you have not acted as pilot-in-command; and

(3) You must receive a logbook endorsement from the authorized instructor who trained you and certified you are proficient in that make and model of light-sport aircraft.

(b) If you want to exercise the privileges of a sport pilot for a category or class for which you are not currently rated, you must meet the applicable category and class requirements contained in sections 51 through 57 of this SFAR.

Section 93. How do I obtain a sport pilot certificate if I do not hold a pilot certificate issued under 14 CFR part 61, but I have been flying ultralight vehicles under 14 CFR part 103? Use the following table to determine how to obtain a sport pilot certificate if you don't hold a pilot certificate issued under 14 CFR part 61, but you have been flying ultralight vehicles under 14 CFR part 103:

If you are . . .	Then you must . . .	And those records must . . .
(a) A registered ultralight pilot with an FAA-recognized ultralight organization not later than 24 months after the effective date of the final rule, and you want to apply for a sport pilot certificate.	(1) Meet the eligibility requirements in sections 3 and 15 of this SFAR, but not the experience requirements in sections 51, 53, and 55 of this SFAR; (2) Pass the knowledge test and practical test for a sport pilot certificate; and (3) Obtain a notarized copy of your ultralight pilot records from the FAA-recognized ultralight organization,	(i) Document that you are a registered ultralight pilot with that FAA-recognized ultralight organization; (ii) List each category and class of ultralight vehicle that the organization recognizes that you are qualified to operate; and (iii) Be presented when applying for a sport pilot certificate.
(b) A registered ultralight pilot with an FAA-recognized ultralight organization after 24 months after the effective date of the final rule, and you want to apply for a sport pilot certificate,	(1) Meet the eligibility requirements in sections 3 and 15 of this SFAR; (2) Meet the experience requirements in sections 51, 53, and 55, of this SFAR, however you may credit your ultralight flight and ground time in accordance with section 177 of this SFAR toward the experience requirements in sections 51, 53, and 55 of this SFAR; (3) Pass the knowledge test and practical test for a sport pilot certificate; and	

If you are . . .	Then you must . . .	And those records must . . .
	(4) Obtain a notarized copy of your ultralight pilot records from the FAA-recognized ultralight organization,	(i) Document that you are a registered ultralight pilot with that FAA-recognized ultralight organization; (ii) List each category and class of ultralight vehicle that the organization recognizes that you are qualified to operate; and (iii) Be presented when applying for a sport pilot certificate.
(c) Not a registered ultralight pilot with an FAA-recognized ultralight organization, and you want to apply for a sport pilot certificate.	(1) Meet the eligibility requirements in sections 3 and 15 of this SFAR; (2) Meet the experience requirements in sections 51, 53, and 55 of this SFAR; and (3) Pass the knowledge test and the practical test for a sport pilot certificate.	

Section 95. How do I obtain a sport pilot certificate if I don't hold a pilot certificate and have never flown an ultralight vehicle? If you don't hold a pilot certificate and haven't flown an ultralight vehicle, you must meet the applicable requirements of sections 3, 15 and 51 through 57 of this SFAR to obtain a sport pilot certificate.

Flight Instructor Certificate With a Sport Pilot Rating

Section 111. Must I hold an airman medical certificate? While exercising the privileges of a flight instructor certificate with a sport pilot rating and while acting as pilot in command of a light-sport aircraft other than a glider or balloon, you must hold and possess;

(a) A current and valid U.S. driver's license; or

(b) A current and valid airman medical certificate issued under 14 CFR part 67.

Section 113. What aeronautical knowledge requirements must I meet to apply for a flight instructor certificate with a sport pilot rating? (a) To apply for a flight instructor certificate with a sport pilot rating, you must receive and log ground training on the fundamentals of instruction from an authorized instructor on all of the following:

(1) The learning process;

(2) Elements of effective teaching;

(3) Student evaluation and testing;

(4) Course development;

(5) Lesson planning; and

(6) Classroom training techniques.

(b) You do not have to comply with paragraph (a) of this section if:

(1) You hold a flight instructor certificate or ground instructor certificate issued under 14 CFR part 61;

(2) You hold a current teacher's certificate issued by a State, county, city, or municipality; or

(3) You are employed as a teacher at an accredited college or university.

(c) You must receive and log ground training from an authorized instructor on the aeronautical knowledge areas applicable to a sport pilot certificate.

Section 115. What training to meet flight proficiency requirements must I have to apply for a flight instructor certificate with a sport pilot rating? (a) To apply for a flight instructor certificate with a sport pilot rating for all sport pilot aircraft categories, you must receive and log flight and ground training from an authorized instructor in the following areas of operation:

(1) Technical subject areas;

(2) Pre-flight preparation;

(3) Pre-flight lesson on a maneuver to be performed in flight;

(4) Pre-flight procedures;

(5) Airport, seaplane base, and gliderport operations, as applicable;

(6) Takeoffs (or launches), landings, and go-arounds;

(7) Fundamentals of flight;

(8) Performance maneuvers and for gliders performance speeds;

(9) Ground reference maneuvers (except for gliders and lighter-than-air);

(10) Soaring techniques;

(11) Slow flight and stalls (stalls not applicable to lighter-than-air and gyroplanes);

(12) Spins (applicable to airplanes, gliders, and weight-shift-control aircraft);

(13) Emergency operations; and

(14) Post-flight procedures.

(b) [Reserved]

Section 117. What aeronautical experience must I have to apply for a flight instructor certificate with a sport pilot rating? Use the following table to determine the experience you must have for each aircraft category and class:

If you are applying for a flight instructor certificate with a sport pilot rating for . . .	Then you must log at least . . .	Which must include at least . . .
(a) Airplane category and single-engine class privileges,	(1) 150 hours flight time as a pilot,	(i) 100 hours flight time as pilot in command in powered aircraft; (ii) 50 hours flight time in a single-engine airplane; (iii) 25 hours cross-country flight time; (iv) 10 hours cross-country flight time in a single-engine airplane; and (v) 15 hours flight time as pilot in command in a single-engine airplane that is a light-sport aircraft.
(b) Glider category privileges,	(1) 25 hours flight time as pilot in command in a glider, 100 flights in a glider, and 15 flights as pilot in command in a glider that is a light-sport aircraft; or (2) 100 hours in heavier-than-air aircraft, 20 flights in a glider, and 15 flights as pilot in command in a glider that is a light-sport aircraft.	
(c) Rotocraft category and gyroplane class privileges.	(1) 125 hours flight time as a pilot,	(i) 100 hours flight time as pilot in command in powered aircraft; (ii) 50 hours flight time in a gyroplane; (iii) 10 hours cross-country flight time;

If you are applying for a flight instructor certificate with a sport pilot rating for . . .	Then you must log at least . . .	Which must include at least . . .
		(iv) 3 hours cross-country flight time in a gyroplane; and (v) 15 hours flight time as pilot in command in a gyroplane airplane that is a light-sport aircraft.
(d) Lighter-than-air category and airship class privileges,	(1) 100 flight time as a pilot,	(i) 40 hours flight time in an airship; (ii) 20 hours pilot in command time in an airship; (iii) 10 hours cross-country flight time; (iv) 5 hours cross-country flight time in an airship; and (v) 15 hours flight time as pilot in command in an airship that is a light-sport aircraft.
(e) Lighter-than-air category and balloon class privileges,	(1) 35 hours flight time as pilot in-command,	(i) 20 hours flight time in a balloon; (ii) 10 flights in a balloon; and (iii) 5 flights as pilot in command in a balloon that is a light-sport aircraft.
(f) Weight-shift-control aircraft category privileges,	(1) 150 hours flight time as a pilot,	(i) 100 hours flight time as pilot in command in powered aircraft; (ii) 50 hours flight time in a weight-shift-control aircraft; (iii) 25 hours cross-country flight time; (iv) 10 hours cross-country flight time in a weight-shift-control aircraft; and (v) 15 hours flight time as pilot in command in a weight-shift-cotnrol aircraft that is a light-sport aircraft.
(g) Powered-parachute category privileges,	(1) 100 hours flight time as a pilot,	(i) 75 hours flight time as pilot in command in powered aircraft; (ii) 50 hours flight time in a powered parachute; (iii) 15 hours cross-country flight time; (iv) 5 hours cross-country flight time in a powered parachute; and (v) 15 hours flight time as pilot in command in a powered parachute that is a light-sport aircraft.

Section 119. What tests do I have to take to get a flight instructor certificate with a sport pilot rating? To obtain a flight instructor certificate with a sport pilot rating, you must pass the following tests:

(a) *Knowledge test.* Before you can take a knowledge test you must receive a logbook endorsement from an authorized instructor certifying that you are prepared for that knowledge test. You must pass knowledge tests on:

(1) The fundamentals of instructing listed in section 113(a) of this SFAR, unless you met the requirements of section 113(b) of this SFAR; and

(2) The aeronautical knowledge areas required by section 113(c) of this SFAR.

(b) *Practical test.* Before you can take the practical test for a flight instructor certificate with a sport pilot rating, you must receive a logbook endorsement certifying that you meet the applicable aeronautical knowledge and experience requirements and you are prepared for the practical test. You must receive this endorsement from the authorized instructor who provided you the flight training on the areas of operation specified in section 115 of this SFAR that apply to the light-sport aircraft privilege you seek. You must also:

(1) Pass a practical test on the areas of operation listed in section 115 of this SFAR that are appropriate to the flight instructor privilege you seek;

(2) Pass a practical test in a light-sport aircraft that is representative of the category and class of aircraft for the privilege you seek;

(3) Receive a logbook endorsement from an authorized instructor indicating that you are competent and possess instructional proficiency in stall awareness, spin entry, spins, and spin recovery procedures after you have received flight training in those training areas in an airplane, glider, or weight-shift-control aircraft, as appropriate, that is certificated for spins;

(4) Demonstrate you are able to teach stall awareness, spin entry, spins, and spin recovery procedures in an airplane, glider, or weight-shift-control aircraft, as appropriate. If you haven't previously failed a test based on this requirement, and you provide the endorsement required by paragraph (b)(3) of this section, an examiner may accept it instead of the demonstration required by this paragraph; and

(5) If you are taking a retest because you previously failed a test based on the requirement of paragraph (b)(4) of this section, you must pass a test on stall awareness, spin entry, spins, and spin recovery instructional procedures in the applicable light-sport aircraft that is certificated for spins.

Section 121. What records must I keep and for how long? (a) You must keep records that include the name of:

(1) Each person whose logbook or student pilot certificate you have endorsed for solo flight privileges, and the date of the endorsement;

(2) Each person for whom you have provided an endorsement for a knowledge test, practical test, or proficiency check and the record must indicate the kind of test or check, the date, and the results;

(3) Each person whose logbook you have endorsed as proficient to operate:

(i) An additional category or class of light-sport aircraft;

(ii) An additional make and model of light-sport aircraft;

(iii) In Class B, C, or D airspace; and

(iv) A light-sport aircraft with a V_H greater than 87 knots CAS; and

(4) Each person whose logbook you have endorsed as proficient to provide flight training in an additional:

(i) Category or class of light-sport aircraft; and

(ii) Make and model of light-sport aircraft.

(b) You must keep the records listed in paragraph (a) of this section for 3 years. You

may keep these records in a logbook or a separate document.

Section 123. Will my flight instructor certificate with a sport pilot rating list light-sport aircraft category and class ratings? No. A flight instructor certificate with a sport pilot rating does not list light-sport aircraft category and class ratings. When you successfully pass the practical test for a flight instructor certificate with a sport pilot rating, regardless of the light-sport aircraft privilege you seek, FAA will issue you a flight instructor certificate with a sport pilot rating without any category and class ratings. You will receive logbook endorsements for the category, class, and make and model aircraft in which you are authorized to provide training.

Section 125. Am I authorized to provide training in all categories and classes of light-sport aircraft with my flight instructor certificate with a sport pilot rating? No, you may provide training only in a category and class of light-sport aircraft for which you have received the proper endorsements. If you hold a flight instructor certificate with a sport pilot rating, you must have a logbook endorsement from an authorized instructor for each additional category and class and for each additional make and model of light-sport aircraft in which you provide training.

Section 127. How do I obtain privileges to provide flight training in an additional category or class of light-sport aircraft? To obtain privileges to provide flight training for an additional category or class of light-sport aircraft, you must:

(a) Receive a logbook endorsement from the authorized instructor who trained you as specified in section 115 of this SFAR for the additional light-sport aircraft privilege you seek. This endorsement certifies you have met the aeronautical and knowledge experience requirements for the additional light-sport aircraft privilege you seek; and

(b) Successfully complete a proficiency check from an authorized instructor other than the instructor who trained you on the areas specified in section 115 of this SFAR for the additional light-sport aircraft privilege you seek. The authorized instructor will certify in your logbook that you are proficient in the areas of operation and authorized for the additional light-sport aircraft privilege.

Section 129. How do I obtain privileges authorizing me to provide flight training in an additional make and model of light-sport aircraft? To obtain privileges to provide flight training in an additional make and model of light-sport aircraft, you must receive a logbook endorsement from the authorized instructor who provided you aircraft-specific training for the additional light-sport aircraft make and model you seek. The endorsement certifies you are proficient to provide flight training in that make and model of light-sport aircraft.

Section 131. Do I need to carry my logbook with me in the aircraft? Yes. You must carry your logbook or documented proof of required endorsements with you while exercising the privileges of your flight instructor certificate with a sport pilot rating.

Section 133. What privileges do I have if I hold a flight instructor certificate with a sport pilot rating? You are authorized, within the limitations of your flight instructor certificate with a sport pilot rating, to provide training and logbook endorsements for:

(a) A student pilot certificate to operate light-sport aircraft;

(b) A sport pilot certificate;

(c) A sport pilot privilege;

(d) A flight review for a sport pilot;

(e) A practical test for a sport pilot;

(f) A knowledge test for a sport pilot; and

(g) A proficiency check for an additional category or class and make and model privilege for a sport pilot certificate or flight instructor certificate with a sport pilot rating.

Section 135. What are the limits of a flight instructor certificate with a sport pilot rating? If you hold a flight instructor certificate with a sport pilot rating, you are subject to the following limits:

(a) You may provide ground and flight training only in the category, class, and make and model of light-sport aircraft for which you have received the proper logbook endorsements for both your pilot certificate and your flight instructor certificate;

(b) You must comply with the limitations established in §§ 61.87(n), 61.93(d), 61.195 (a), (d)(1)–(d)(3), and (d)(5);

(c) You must not provide flight training required for a sport pilot certificate or privilege or a flight instructor certificate with a sport pilot rating or privilege unless you have at least 5 hours of pilot-in-command time or aeronautical experience, or any combination thereof, in the make and model of light-sport aircraft. You must get the aeronautical experience as a registered pilot with an FAA-recognized ultralight organization.

(d) You must not provide training for operations in Class B, C, or D airspace, unless you have the endorsement specified in section 81 of this SFAR, or are otherwise authorized to conduct operations in this airspace; and

(e) You must not provide training in a light-sport aircraft with a V_H greater that 87 knots CAS, unless you have the endorsement specified in section 83 of this SFAR or are otherwise authorized to operate that aircraft.

Section 137. Are there any additional qualifications for training first-time flight instructor applicants? No. You do not have to comply with the requirements for training first-time flight instructor applicants specified in 14 CFR 61.195(h).

Section 139. May I give myself an endorsement? No. If you hold a flight instructor certificate with a sport pilot rating, you may give yourself an endorsement for any certificate, privilege, flight review, authorization, practical test, knowledge test, or proficiency check required by 14 CFR part 61.

Transitioning to a Flight Instructor Certificate With a Sport Pilot Rating

Section 151. What if I already hold a flight instructor certificate issued under 14 CFR part 61 and want to exercise the privileges of a flight instructor certificate with a sport pilot rating? (a) If you already hold at least a current and valid flight instructor certificate issued under 14 CFR part 61, and you seek to exercise the privileges of a flight instructor certificate with a sport pilot rating, you may do so without any further showing of proficiency, subject to the following limits:

(1) You are limited to the aircraft category and class ratings listed on your existing pilot certificate and flight instructor certificate when exercising your flight instructor privileges;

(2) You must receive specific training for any make and model of light-sport aircraft in which you have not acted as pilot in command, and the instructor who conducted your training must endorse your logbook certifying that you are proficient in that make and model of light-sport aircraft; and

(3) You must comply with the requirement in section 135 of this SFAR to have at least 5 hours of pilot in command time in the specific make and model light-sport aircraft.

(b) If you want to exercise the privileges of your flight instructor certificate in a category, class, or make and model of light-sport aircraft for which you are not currently rated you must meet the requirements contained in sections 127 and 129 of this SFAR.

Section 153. What if I am only a registered ultralight instructor with an FAA recognized ultralight organization? If you are a registered ultralight instructor with an FAA-recognized ultralight organization not later than [Date 36 months after the effective date of the final rule.], and you want to apply for a flight instructor certificate with a sport pilot rating:

(a) You must hold either a current and valid sport pilot certificate or at least a current and valid private pilot certificate issued under 14 CFR part 61;

(b) You must meet the eligibility requirements in sections 3 and 111 of this SFAR. You do not have to meet the experience requirements in sections 113 through 117 of this SFAR, except as specified in section 153(c) of this SFAR;

(c) You must have at least the minimum total pilot flight time in the category and class of light-sport aircraft specified in section 117 of this SFAR. You need not meet the pilot-in-command, time in aircraft category and class, and cross-country pilot flight time requirements specified in section 117 of this SFAR. You may credit flight time as the operator of an ultralight vehicle in accordance with the logging of flight and ground time requirements under section 177 of this SFAR;

(d) You need not meet the aeronautical knowledge requirement specified in section 113(a) of this SFAR or meet the exception specified in section 113(b) of this SFAR if you have passed the FAA's or an FAA-recognized ultralight organization's Fundamentals of Instruction knowledge test;

(e) You must obtain and present upon application a notarized copy of your ultralight pilot records from the FAA-recognized ultralight organization. Those records must:

(1) Document that you are a registered ultralight flight instructor with that FAA-recognized ultralight organization; and

(2) List each category and class of ultralight vehicle that the organization recognizes that you are qualified to operate and authorized to provide training in; and

(f) You must pass the knowledge test and practical test for a sport pilot certificate.

Section 155. What if I've never provided flight or ground training in an aircraft or an

ultralight vehicle? You must meet all of the applicable requirements under sections 3 and 11 through 119 of this SFAR to apply for a flight instructor certificate with a sport pilot rating.

Pilot Logbooks

Section 171. How do I log training time and aeronautical experience? If you hold a sport pilot certificate or flight instructor certificate with a sport pilot rating, you must document and record training time and aeronautical experience according to 14 CFR 61.51 and the pilot logbook requirements of this SFAR.

Section 173. How do I log pilot-in-command flight time? If you hold a sport pilot certificate you may log flight time as pilot in command only when—

(a) You are the sole manipulator of the controls of an aircraft for which you have privileges; or

(b) You are the sole occupant of the aircraft.

Section 175. May I use training time and aeronautical experience logged as a sport pilot toward a higher certificate or rating issued under 14 CFR part 61? Yes, you may use training time and aeronautical experience documented as a sport pilot to meet the requirements for a higher certificate or rating in accordance with 14 CFR 61.51 and sections 173, 177 and 179 of this SFAR.

Section 177. May I credit training time and aeronautical experience logged as an ultralight operator toward a sport pilot certificate? (a) You may credit training time and aeronautical experience as the operator of an ultralight vehicle toward the experience requirements of a sport pilot certificate if—

(1) You are a registered ultralight pilot with an FAA-recognized ultralight organization; and

(2) Your ultralight training time and aeronautical experience is documented in accordance with the provisions for logging training and aeronautical experience specified by that organization.

(b) If you want to credit the training time and aeronautical experience you have logged in an ultralight vehicle toward a sport pilot certificate or flight instructor certificate with a sport pilot rating, you can only do so in the same category and class of light-sport aircraft. That is, if you have been flying a powered parachute ultralight, you can apply your experience to the requirements for a powered parachute light-sport aircraft, but not to the requirements for a weight-shift-control light-sport aircraft.

Section 179. May I use aeronautical experience I obtained as the operator of an ultralight vehicle to meet the requirements for a higher certificate or rating issued under 14 CFR part 61? You may not use aeronautical experience you obtained as the operator of an ultralight vehicle to meet the requirements for a certificate or rating specified in 14 CFR 61.5, except for that time credited to meet the requirements for the issuance of a sport pilot certificate under this SFAR.

Recent Flight Experience Requirements for a Sport Pilot Certificate or a Flight Instructor Certificate With a Sport Pilot Rating

Section 191. What recent flight experience requirements must I meet for a sport pilot certificate? If you hold a sport pilot certificate, you must comply with the appropriate recent flight experience requirements specified in 14 CFR 61.57.

Section 193. What are the flight review requirements for a sport pilot certificate? If you hold a sport pilot certificate, you must comply with the appropriate flight review requirements specified in 14 CFR 61.56.

Section 195. How do I renew my flight instructor certificate? To renew your flight instructor certificate, you must comply with the requirements specified in 14 CFR 61.197.

Section 197. What must I do if my flight instructor certificate with a sport pilot rating expires? If your flight instructor certificate with a sport pilot rating expires, you may exchange that certificate for a new certificate by passing a practical test as prescribed in section 119 of this SFAR. The FAA will reinstate any privilege authorized by the expired certificate.

Ground Instructors

Section 211. What are the eligibility requirements for a ground instructor certificate? You must meet the eligibility requirements in 14 CFR 61.213 to be eligible for a ground instructor certificate or rating.

Section 213. What additional privileges do I have if I hold a ground instructor certificate with a basic ground instructor rating? If you hold a ground instructor certificate with a basic ground instructor rating, specified in 14 CFR 61.215(a), you are authorized the following additional privileges:

(a) Ground training in the aeronautical knowledge areas required for a sport pilot certificate or privileges under 14 CFR part 61;

(b) Ground training required for a sport pilot flight review; and

(c) A recommendation for a knowledge test required for a sport pilot certificate.

Section 215. What additional privileges do I have if I hold a ground instructor certificate with an advanced ground instructor rating? If you hold an advanced ground instructor rating, specified in 14 CFR 61.215(b), you are authorized the following additional privileges:

(a) Ground training in the aeronautical knowledge areas required for any certificate or privileges under this SFAR;

(b) Ground training required for a sport pilot flight review; and

(c) A recommendation for a knowledge test required for the issuance of any certificate under this SFAR.

17. Amend § 61.1 as follows:

a. Revise paragraphs (b)(2)(iii) and (b)(3)(i) introductory text;

b. Redesignate paragraphs (b)(3)(iii), (b)(3)(iv), and (b)(3)(v) as paragraphs (b)(3)(v), (b)(3)(vi), and (b)(3)(vii); and

c. Add new paragraphs (b)(3)(iii) and (b)(3)(iv). The revisions and additions read as follows:

§ 61.1 Applicability and definitions.

* * * * *

(b) * * *

(2) * * *

(iii) A person authorized by the FAA to provide ground training or flight training under SFAR No. 89, SFAR No. 58, or parts 61, 121, 135, or 142 of this chapter when conducting ground training or flight training in accordance with that authority.

(3) * * *

(i) Except as provided in paragraphs (b)(3)(ii) through (b)(3)(vi) of this section, time acquired during flight—

* * * * *

(iii) For the purpose of meeting the aeronautical experience requirements (except for powered parachute category privileges) for a sport pilot certificate time acquired during a flight—

(A) Conducted in an appropriate aircraft;

(B) That includes a point of landing that was at least a straight line distance of more than 25 nautical miles from the original point of departure; and

(C) That involves the use of dead reckoning, pilotage, electronic navigation aids; radio aids, or other navigation systems to navigate to the landing point.

(iv) For the purpose of meeting the aeronautical experience requirements for a sport pilot certificate with powered parachute privileges, or private pilot certificate with a powered parachute category rating, time acquired during a flight—

(A) Conducted in an appropriate aircraft;

(B) That includes a point of landing that was at least a straight line distance of more than 15 nautical miles from the original point of departure; and

(C) That involves the use of dead reckoning, pilotage, electronic navigation aids; radio aids, or other navigation systems to navigate to the landing point.

* * * * *

18. Amend § 61.5 by:

a. Redesignating paragraphs (a)(1)(ii) through (a)(1)(v) as paragraphs (a)(1)(iii) through (a)(1)(vi);

b. Adding new paragraphs (a)(1)(ii), (b)(1)(vi) and (b)(1)(vii);

c. Redesignating paragraphs (b)(5) and (b)(6) as paragraphs (b)(6) and (b)(7); and

d. Adding new paragraphs (b)(5) and (c)(5). The additions read as follows:

§ 61.5 Certificates and ratings issued under this part.

(a) * * *

(1) * * *

(ii) Sport pilot.

* * * * *

(b) * * *

(1) * * *

(vi) Powered parachute.

(vii) Weight-shift-control aircraft.

* * * * *

(5) Weight-shift-control aircraft class ratings—

(i) Weight-shift-control aircraft land.

(ii) Weight-shift-control aircraft sea.

* * * * *

(i) * * *

(5) Sport pilot rating.

* * * * *

19. Amend § 61.31 by revising paragraph (k)(2)(iii) to read as follows:

§ 61.31 Type rating requirements, additional training, and authorization requirements.

* * * * *

(k) * * *

(2) * * *

(iii) The holder of a pilot certificate when operating an aircraft under the authority of an experimental or provisional aircraft type certificate unless the operation involves carrying passengers;

* * * * *

20. Amend § 61.99 by revising the introductory language to read as follows:

§ 61.99 Aeronautical experience.

A person who applies for a recreational pilot certificate must receive and log at least 30 hours of flight time that includes at least:

* * * * *

21. Amend § 61.101 by revising paragraphs (b) introductory text and (c) introductory text, redesignating paragraphs (d) through (i) as paragraphs (e) through (j), adding a new paragraph (d), and revising newly designated paragraphs (e) introductory text, (e)(1), (e)(7) and (e)(11) to read as follows:

§ 61.101 Recreational pilot privileges and limits.

* * * * *

(b) A person who holds a current and valid recreational pilot certificate may act as pilot in command of an aircraft on a flight that is within 50 nautical miles from the departure airport, provided that person has:

* * * * *

(c) A person who holds a current and valid recreational pilot certificate may act as pilot in command of an aircraft on a flight that exceeds 50 nautical miles from the departure airport, provided that person has:

* * * * *

(d) A person who holds a current and valid recreational pilot certificate may act as pilot in command of an aircraft in Class B, C, or D airspace, provided that person has:

(1) Received and logged ground and flight training from an authorized instructor on the following aeronautical knowledge areas and areas of operation, as appropriate to the aircraft rating held:

(i) The use of radios, communications, navigation system/facilities, and radar services;

(ii) Operations at airports with an operating control tower to include 3 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower; and

(iii) Applicable flight rules of part 91 of this chapter for operations in Class B, C, or D airspace and air traffic control clearances.

(2) Been found proficient on ground and flight training requirements in paragraph (d)(1) of this section; and

(3) Received from an authorized instructor a logbook endorsement, which is carried on the person's possession in the aircraft, that certifies the person has received and been found proficient on the required ground and flight training in paragraph (d)(1) of this section.

(e) Except as provided in paragraphs (d) and (i) of this section, a recreational pilot may not act as pilot in command of an aircraft:

(1) That is certificated—

(i) For more than four occupants;

(ii) With more than one powerplant;

(iii) With a powerplant of more than 180 hp; or

(iv) With retractable landing gear.

* * * * *

(7) In Class A, B, C, or D airspace;

* * * * *

(11) On a flight outside the United States, unless authorized by the country in which the flight is conducted;

* * * * *

22. Amend § 61.107 by adding paragraphs (b)(9) and (b)(10) to read as follows:

§ 61.107 Flight proficiency.

* * * * *

(b) * * *

(9) For a powered parachute category rating:

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Ground reference maneuvers;

(vii) Navigation;

(viii) Slow flight and stalls;

(ix) Night operations, except as provided in § 61.110;

(x) Emergency operations; and

(xi) Post-flight procedures.

(10) For a weight-shift-control aircraft category rating:

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and seaplane base operations, as applicable;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Ground reference maneuvers;

(vii) Navigation;

(viii) Slow flight and stalls;

(ix) Night operations, except as provided in § 61.110;

(x) Emergency operations; and

(xi) Post-flight procedures.

23. Amend § 61.109 by:

a. Revising the reference ''paragraph (i)'' to read ''paragraph (j)'' the introductory text of paragraphs (a), (b), (c), (d), and (e);

b. Revising the reference ''paragraphs (i)(2)'' to read ''paragraph (j)(2)'' in paragraph (i)(1);

c. Redesignating paragraph (i) as paragraph (j); and

d. Adding a new paragraph (i).

The addition reads as follows:

§ 61.109 Aeronautical experience.

* * * * *

(i) Use the following table to determine the aeronautical experience requirements for a powered parachute rating and a weight-shift-control aircraft rating:

Except as provided in paragraph (k) of this section, a person who applies for a private pilot certificate with. . .	Must log at least 40 hours flight time that includes at least. . .	And the training must include at least. . .
(1) A powered parachute category rating,	20 hours flight training from an authorized instructor and 10 hours solo flight training in the areas listed in § 61.107(b)(9),	(i) Three hours cross-country flight training in a powered parachute; (ii) Except as provided in § 61.110, 3 hours night flight training in a powered parachute that includes: (A) One cross-country flight over 25 nautical miles total distance; and (B) Ten takeoffs and landings (with each landing involving a flight in the traffic pattern) at an airfield;

Except as provided in paragraph (k) of this section, a person who applies for a private pilot certificate with. . .	Must log at least 40 hours flight time that includes at least. . .	And the training must include at least. . .
		(iii) Three hours flight training in preparation for the practical test in a powered parachute, which must have been performed within the 60-day period preceding the date of the test; and (iv) Ten hours solo flight time in a powered parachute, consisting of at least— (A) Three hours solo cross-country time; (B) One solo cross-country flight over 50 nautical miles total distance, with one segment of the flight being a straight line distance of at least 25 nautical miles between takeoff and landing locations; and (C) Three takeoffs and 3 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.
(2) A weight-shift-control rating,	20 hours flight training from an authorized instructor and 10 hours solo flight training in the areas listed in § 61.107(b)(10),	(i) Three hours cross-country flight training in a weight-shift-control aircraft; (ii) Except as provided in § 61.110, 3 hours night flight training in a weight-shift-control aircraft that includes: (A) One cross-country flight over 100 nautical miles total distance; and (B) Ten takeoffs and landings (with each landing involving a flight in the traffic pattern) at an airport; (iii) Three hours flight training in preparation for the practical test in a weight-shift-control aircraft, which must have been performed within the 60-day period preceding the date of the test; and (iv) Ten hours solo flight time in a weight-shift-control aircraft, consisting of at least— (A) Five hours solo cross-country time; (B) One solo cross-country flight over 150 nautical miles total distance, with landings at a minimum of three points, and one segment of the flight being a straight line distance of at least 50 nautical miles between takeoff and landing locations; and (v) Three takeoffs and landings (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

* * * * *

24. Amend § 61.195 by revising paragraph (b) introductory text, and adding a new paragraph (k) to read as follows:

§ 61.195 Flight instructor limitations and qualifications.

(b) *Aircraft ratings.* Except as provided in paragraph (k) of this section, a flight instructor may not conduct flight training in any aircraft for which the flight instructor does not hold:

* * * * *

(k) *Weight-shift-control aircraft and powered parachute ratings.* A flight instructor who provides training for a private pilot certificate with a weight-shift-control aircraft rating or powered parachute rating must hold at least a flight instructor certificate with a sport pilot rating and a private pilot certificate with a category and class rating appropriate to the aircraft in which the training is provided.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

25. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

26. Amend § 65.101 by revising paragraph (b) to read as follows:

§ 65.101 Eligibility requirements: General.

* * * * *

(b) This section does not apply to a repairman certificate (experimental aircraft builder) under § 65.104 or to a repairman certificate (light-sport aircraft) under § 65.107.

27. Add § 65.107 to subpart E to read as follows:

§ 65.107 Repairman certificate (light-sport aircraft): Eligibility, privileges and limits.

(a) Use the following table to determine the eligibility requirements for a repairman certificate (light-sport aircraft):

To be eligible for . . .	You must . . .
(1) A repairman certificate (light-sport aircraft):	(i) Be at least 18 years of age; (ii) Be able to read, speak, write, and understand English. If for medical reasons you can't meet one of these requirements, the FAA may place limitations on your repairman certificate necessary to safely perform the actions authorized by the certificate and rating; (iii) Demonstrate the requisite skill to determine whether a light-sport aircraft is in a condition for safe operation; and (iv) Be a citizen of the United States, or a citizen of a foreign country who has lawfully been admitted for permanent residence in the United States.

To be eligible for . . .	You must . . .
(2) A repairman certificate (light-sport aircraft) with an inspection rating:	(i) Meet the requirements of paragraph (a)(1) of this section; and (ii) Complete a 16-hour training course acceptable to the FAA on the inspection requirements of the particular make and model of light-sport aircraft for which you intend to exercise the privileges of this rating.
(3) A repairman certificate (light-sport aircraft) with a maintenance rating:	(i) Meet the requirements of paragraph (a)(1) of this section; and (ii) Complete an 80-hour training course acceptable to the FAA on the maintenance requirements of the particular category of light-sport aircraft for which you intend to exercise the privileges of this rating.

(b) The holder of a repairman certificate (light-sport aircraft) with a inspection rating may perform a condition inspection on an aircraft owned by the holder with an experimental certificate issued under § 21.191(i) of this chapter, provided that person has completed the training specified in paragraph (a)(2)(ii) of this section on the same make and model of light-sport aircraft to be inspected; and

(c) The holder of a repairman certificate (light-sport aircraft) with a maintenance rating may perform maintenance on a light-sport aircraft that has a special airworthiness certificate issued under § 21.186 or § 21.191(i) of this chapter, provided that person has completed the training specified in paragraph (a)(3)(ii) of this section on the same category of light-sport aircraft on which maintenance is to be performed. To perform a major repair the holder must complete training acceptable to the Administrator appropriate to the repair performed.

(d) Section 65.103 does not apply to the holder of a repairman certificate (light-sport aircraft) while performing under that certificate.

PART 91—GENERAL OPERATING AND FLIGHT RULES

28. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–56507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

29. Amend § 91.1 by revising paragraph (b) to read as follows:

§ 91.1 Applicability.

* * * * *

(b) Each person operating an aircraft in the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States must comply with §§ 91.1 through 91.21; §§ 91.101 through 91.143; §§ 91.151 through 91.159; §§ 91.167 through 91.193; § 91.203; § 91.205; §§ 91.209 through 91.217; § 91.221; §§ 91.303 through 91.319; §§ 91.323 through 91.327; § 91.605; § 91.609; §§ 91.703 through 91.715; and § 91.903.

* * * * *

30. Amend § 91.113 by revising paragraphs (d)(2) and (d)(3) to read as follows:

§ 91.113 Right-of-way rules: Except water operations.

* * * * *

(d) * * *

(2) A glider has the right of way over an airship, powered parachute, weight-shift-control aircraft, airplane, or rotorcraft.

(3) An airship has the right of way over a powered parachute, weight-shift-control aircraft, airplane, or rotorcraft.

* * * * *

31. Amend § 91.126 by revising paragraph (b)(2) to read as follows:

§ 91.126 Operating on or in the vicinity of an airport in Class G airspace.

(b) * * *

(2) Each pilot of a helicopter or a powered parachute must avoid the flow of fixed wing aircraft.

* * * * *

32. Amend § 91.131 by redesignating paragraph (b)(1)(ii) as (b)(1)(iii), adding new paragraph (b)(1)(ii), and revising paragraph (b)(2) to read as follows:

§ 91.131 Operations in Class B airspace.

* * * * *

(b) * * *

(1) * * *

(ii) The pilot in command holds a sport pilot certificate and has met the requirements of section 81 of SFAR 89; or

* * * * *

(2) Notwithstanding the provisions of paragraph (b)(1)(iii) of this section, no person may take off or land a civil aircraft at those airports listed in section 4 of Appendix D of this part unless the pilot in command holds at least a private pilot certificate; or a sport pilot certificate and has met the requirements of section 81 of SFAR 89.

* * * * *

33. Amend § 91.155 by revising paragraph (b)(2) to read as follows:

§ 91.155 Basic VFR weather minimums.

(b) * * *

(2) *Airplane, powered parachute, or weight-shift-control aircraft.* If visibility is between 1 and 3 statute miles during night hours, and you are operating in an airport traffic pattern within one-half mile of the runway, you may operate an airplane, powered parachute, or weight-shift-control aircraft clear of clouds.

* * * * *

34. Amend § 91.213 by revising paragraph (d)(1)(i) to read as follows:

§ 91.213 Inoperative instruments and equipment.

* * * * *

(d) * * *

(1) * * *

(i) Rotorcraft, non-turbine powered airplane, glider, lighter-than-air aircraft, or light-sport aircraft, for which a Master Minimum Equipment List has not been developed; or

* * * * *

35. Amend § 91.319 by revising paragraph (a)(2) and adding paragraph (f) to read as follows:

§ 91.319 Aircraft having experimental certificates: Operating limitations.

(a) * * *

(2) Carrying persons or property for compensation or hire except while conducting flight training in an aircraft issued an airworthiness certificate under § 21.191(i)(1) of this chapter.

* * * * *

(f) The FAA may issue deviation authority providing relief from the compensation provisions of this section for the purpose of flight training. The FAA will issue this deviation authority as a Letter of Deviation Authority.

(1) The FAA may cancel or amend a Letter of Deviation Authority at any time.

(2) Submit a request for deviation authority to the FAA at least 60 days before the date of intended operations. A request for deviation authority must contain a complete description of the proposed operation and justification for the deviation requested.

36. Add § 91.327 to read as follows:

§ 91.327 Aircraft having special light-sport category airworthiness certificates: Operating limitations.

(a) No person may operate an aircraft that has a special airworthiness certificate in the light-sport category—

(1) For other than the purpose for which the certificate was issued;

(2) Carrying persons or property for compensation or hire, except while operating the aircraft for the purpose of conducting flight training or for rental;

(3) Unless the aircraft is maintained in accordance with the aircraft manufacturer's maintenance and inspection procedures by a certificated repairman with a light-sport aircraft-maintenance rating, an appropriately rated mechanic, or an appropriately rated repair station;

(4) Unless a condition inspection is performed once every 12 calendar months in accordance with the aircraft manufacturer's maintenance and inspection procedures by a certificated repairman with a light-sport aircraft-maintenance rating, an appropriately rated mechanic, or an appropriately rated repair station; and

(5) Unless the owner or operator complies with the provisions of a program for monitoring and correcting the safety of flight issues specified by—

(i) The manufacturer in the statement of compliance for the aircraft; or

(ii) A person acceptable to the FAA, provided the program meets a consensus standard.

(b) No person may operate an aircraft that has a special airworthiness certificate in the light-sport aircraft category for flight instruction unless—

(1) The person complies with the provisions of paragraph (a) of this section; and

(2) A certificated repairman with a light-sport aircraft-inspection rating or light-sport aircraft-maintenance rating, a certificated mechanic with airframe and powerplant ratings, or an appropriately rated repair station performs a condition inspection within the preceding 100 hours of aircraft time in service, as specified in the aircraft manufacturer's maintenance inspection procedures.

(c) The FAA may prescribe additional limitations necessary for operation of the aircraft.

37. Amend § 91.409 by revising paragraph (c)(1) to read as follows:

§ 91.409 Inspections.

* * * * *

(c) * * *

(1) An aircraft that carries the following special airworthiness certificates: special flight permit, light-sport aircraft, current experimental, or provisional;

* * * * *

Issued in Washington, DC, on January 25, 2002.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 02–2302 Filed 1–30–02; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
February 5, 2002

Part III

Department of Housing and Urban Development

Notice of FHA Accelerated Claim Disposition Demonstration; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4691–N–01]

Notice of FHA Accelerated Claim Disposition Demonstration

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces HUD's proposal to establish the Accelerated Claim Disposition (ACD) Demonstration. Under the ACD Demonstration, HUD would pay accelerated claims on certain defaulted FHA-insured mortgages. HUD intends to select approximately five to nine mortgagees to participate in the ACD Demonstration. The demonstration will have a limited initial duration and will initially include mortgage loans secured by properties located within the jurisdiction of HUD's Philadelphia, Pennsylvania and Atlanta, Georgia Homeownership Centers (HOCs). At the conclusion of the demonstration, HUD will assess its success and determine whether to implement the ACD process, on a permanent basis, throughout the country.

DATES: Comments Due Date: April 8, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Kathleen S. Malone, Director (Acting), Office of Asset Sales, Room 6266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone: (202) 708–2625 (this is not a toll-free telephone number). Hearing- and speech-impaired persons may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Background

Title VI of the Fiscal Year 1999 Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub.L. 105–276, approved October 21, 1998) (referred to as the ''FY 1999 HUD Appropriations Act'') made significant reforms to the claims and property disposition processes for the HUD-Federal Housing Administration (FHA) single family mortgage insurance programs. Section 601 of the FY 1999 HUD Appropriations Act amended section 204 of the National Housing Act (12 U.S.C. 1710) to make more effective the methods for paying insurance claims and disposing of HUD-acquired single family mortgages and properties.

Among other changes, section 601 amended section 204(a)(1)(A) of the National Housing Act to authorize the Secretary of HUD to pay accelerated claims upon assignment on certain defaulted FHA-insured mortgage loans. To be eligible for payment of an accelerated claim, the statute generally requires that the mortgage be in default for ''not less than 3 full monthly installments or whenever the mortgagee is entitled to foreclosure for a nonmonetary default.'' Further, the mortgagee must assign to HUD: (1) All rights and interests arising under the mortgage; (2) all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction; (3) title evidence satisfactory to HUD; and (4) such records relating to the mortgage transaction as HUD may require.

B. The Accelerated Claim Disposition (ACD) Demonstration

Before implementing the new accelerated claim payment process authorized by amended section 204 on a nationwide basis, HUD has decided to initially conduct a demonstration involving a finite group of defaulted mortgages. This demonstration—to be known as the Accelerated Claim Disposition (ACD) Demonstration—will allow HUD to assess the success of the new accelerated claim payment process and to address any programmatic concerns before authorizing its use throughout the country. The purpose of this notice is to announce HUD's intent to establish the ACD Demonstration, and to solicit public comments on this proposal. After reviewing all of the public comments on this notice, HUD will issue a follow-up **Federal Register** notice, which will formally establish the ACD Demonstration. All public comments will be considered in the development of the final notice.

II. Duration and Scope; Eligibility Requirements

A. Duration

The ACD Demonstration will have a limited initial duration commencing on the effective date of the final notice establishing the demonstration. HUD, however, may extend the duration of the demonstration in order to accurately assess its effectiveness. HUD will announce any such extension through **Federal Register** notice.

B. Geographic Scope

The demonstration will initially include mortgages secured by properties located within the jurisdiction of HUD's Philadelphia, Pennsylvania and Atlanta, Georgia Homeownership Centers (HOCs). HUD has four HOCs that are located in Atlanta, Georgia; Denver, Colorado; Philadelphia, Pennsylvania; and Santa Ana, California. Each HOC insures single family FHA mortgages and oversees the selling of HUD homes in a specified group of states.

The Philadelphia HOC serves the states of Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. The Atlanta HOC serves the states of Alabama, Florida, Georgia, Kentucky, Illinois, Indiana, Mississippi, North Carolina, South Carolina, and Tennessee, as well as the Caribbean.

HUD may decide at a future date to expand the scope of the ACD Demonstration to include one or more additional HOCs.

C. Participating Mortgagees

Mortgagee participation in the ACD Demonstration is voluntary. HUD is currently undertaking efforts to identify mortgagees who may be suitable candidates for participation in the ACD Demonstration. In addition, HUD invites mortgagees who meet the criteria described below to contact HUD at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice to explore the possibility of participation in the demonstration. From among the pool of interested candidates who meet the criteria described below, HUD intends to select approximately 5–9 mortgagees to participate in the ACD Demonstration. HUD, however, may decide to select a smaller or larger number of participating mortgagees. Eligible mortgagees who are not invited to participate in the demonstration may be selected by HUD to serve as a ''control group'' and provide comparative data for purposes

of evaluating the success of the ACD Demonstration. HUD's final **Federal Register** notice establishing the ACD Demonstration will include a list of the mortgagees selected to participate in the demonstration.

In order to be selected for participation in the ACD Demonstration, a mortgagee must satisfy all of the following criteria:

1. *Number of serviced loans.* The mortgagee must currently service in excess of 20,000 mortgage loans secured by properties that are located within the jurisdiction of the Philadelphia or Atlanta HOCs.

2. *Loss mitigation performance.* The mortgagee must be qualified in the top tier of the FHA Tiering System, which ranks mortgagees in loss mitigation performance. The FHA Tiering System was developed by HUD's National Servicing and Loss Mitigation Center and is subject to future refinement.

3. *Computer system capabilities.* The mortgagee must have the technical capability to interface with the FHA Single Family Claims system, through the internet (using the FHA Connection System) or using Electronic Data Interchange (EDI) technology. In addition, the mortgagee must have the technical capability to interface with any other computer systems utilized by FHA or its contractors pertaining to the ACD Demonstration.

4. *Use of the Freddie Mac Early Indicator Risk Scoring System.* The mortgagee must have the ability to run risk scoring models using the Freddie Mac Early Indicator risk scoring software program. Early Indicator is a scoring software that ranks the risk of delinquent loans, and determines the likelihood of a loan becoming more seriously delinquent or continuing through to loss. Under the system, delinquent loans are assigned a numeric score that corresponds to an alphabetic grade ranging from ''A'' (indicating a lower risk of nonpayment) to ''F'' (indicating a higher risk of nonpayment).

5. *Other criteria.* The mortgagee will be required to meet any additional criteria that HUD may establish regarding the eligibility of mortgagees for participation in the ACD Demonstration.

D. Eligible Loans

Only certain defaulted FHA-insured loans are eligible for the new accelerated claim payment process. To be eligible for payment of an accelerated claim, the defaulted mortgage must meet the following criteria:

1. The mortgage must be an FHA-insured single family mortgage loan on a one-unit home.

2. The mortgage must be secured by a property located within the jurisdiction of HUD's Philadelphia, Pennsylvania or Atlanta, Georgia HOCs.

3. The mortgage must have a loan to value ratio in excess of 90 percent (the loan to value ratio represents the relationship between the amount of the mortgage loan and the value of the real estate). The loan to value ratio must be determined using a Broker's Price Opinion (BPO) and the current unpaid principal balance of the mortgage loan.

4. The mortgagor must have a FICO score of less than 550 at the time of payment of the accelerated claim. (FICO stands for Fair, Issac and Company—the company that has developed the mathematical formulas used to derive FICO scores. FICO scores are commonly used by credit bureaus to evaluate the credit-worthiness of borrowers for a particular loan. The scores are continually updated to incorporate new information about the subject's credit history. FICO scores range from 300 to 850. The higher the score, the lower the credit risk of making the loan.)

5. The mortgage must have received one of the following scores on the Freddie Mac Early Indicator risk scoring software system:

a. Grade F (and the mortgagee has been unable to contact the borrower);

b. Grade F (and the condition of the property is fair or poor); or

c. Grades D, E, or F (and the property is vacant).

6. Any additional criteria that HUD may establish regarding the eligibility of defaulted mortgage loans for an accelerated claim under the ACD Demonstration.

III. Demonstration Overview

A. Risk Scoring

As noted above, amended section 204 of the National Housing Act allows HUD to pay an accelerated claim if a mortgage is in default for not less than three full monthly installments or whenever the mortgagee is entitled to foreclosure for a nonmonetary default. At the 60th day of delinquency, mortgagees participating in the ACD Demonstration will be required to begin running scoring models using the Freddie Mac Early Indicator Risk Scoring System to confirm the eligibility of the mortgage for payment of an accelerated claim. Provided that the mortgage meets the eligibility criteria described in paragraph II.D. of this notice, participating mortgagees will have the option to receive payment of an accelerated claim. However, in the case of a monetary default, HUD may only pay an accelerated claim upon the conclusion of the statutorily required three month period.

B. Disposition Methods

HUD will use one or both of the following disposition methods under the ACD Demonstration. HUD, in its sole discretion, will determine which of the two disposition methods to use for particular mortgages under the demonstration.

1. *Joint Venture Partnership.* The joint venture partnership method will be the primary disposition method used under the ACD Demonstration. Under this disposition method, HUD will sell the mortgages to a public-private joint venture, in which HUD will retain an equity interest. The public-private joint venture will be responsible for servicing and asset disposition. The joint venture partner will be selected through a competitive bidding process. HUD will announce the process for selection of the ACD joint venture partner in its final **Federal Register** notice establishing the ACD Demonstration.

2. *Special servicing with whole loan or securitization.* HUD may also use the special servicing disposition method under the demonstration. The ACD Demonstration will not initially use this method, and HUD may decide not to use this disposition method at all during the course of the demonstration. Under this disposition method, servicing of the mortgage would be transferred to a default servicer. The default servicer will provide assistance to HUD in undertaking one or more of the following actions: (a) Foreclosing and selling the properties; (b) accumulating mortgages for a whole loan sale; and/or (c) accumulating mortgages for disposition in a securitization (with or without Federal credit enhancement).

C. Required Documents

Unless otherwise specified by HUD, all documents required to be submitted to HUD under the ACD Demonstration must be paper originals signed in ink.

IV. Evaluating the Success of the ACD Demonstration

At the conclusion of the ACD Demonstration, HUD will assess its success and determine whether to implement the ACD process on a permanent basis throughout the country. In conducting this evaluation, HUD will assess such factors as whether the use of the ACD process will: (1) Reduce loss rates; (2) reduce the cost and time associated with claim dispositions; and (3) enhance the ability

of HUD to assess risk and manage the FHA mortgage insurance fund. The ACD Demonstration will be designed to permit ongoing review of these and other factors that HUD considers necessary for an accurate evaluation of the demonstration's success. HUD invites public comment on what factors it should consider in evaluating the success of the ACD Demonstration, as well as on appropriate methods HUD should use to conduct the evaluation (for example, the use of a ''control group'' of mortgagees, or the conducting of interviews with lenders and other ACD Demonstration participants).

V. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on State and local governments and are not required by statute, or preempt State law, unless the relevant requirements of section 6 of the Executive Order are met. This notice does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. The proposed demonstration would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Dated: January 22, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–2655 Filed 2–4–02; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Tuesday,
February 5, 2002

Part III

Department of Housing and Urban Development

Notice of FHA Accelerated Claim Disposition Demonstration; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4691–N–01]

Notice of FHA Accelerated Claim Disposition Demonstration

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces HUD's proposal to establish the Accelerated Claim Disposition (ACD) Demonstration. Under the ACD Demonstration, HUD would pay accelerated claims on certain defaulted FHA-insured mortgages. HUD intends to select approximately five to nine mortgagees to participate in the ACD Demonstration. The demonstration will have a limited initial duration and will initially include mortgage loans secured by properties located within the jurisdiction of HUD's Philadelphia, Pennsylvania and Atlanta, Georgia Homeownership Centers (HOCs). At the conclusion of the demonstration, HUD will assess its success and determine whether to implement the ACD process, on a permanent basis, throughout the country.

DATES: Comments Due Date: April 8, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Kathleen S. Malone, Director (Acting), Office of Asset Sales, Room 6266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone: (202) 708–2625 (this is not a toll-free telephone number). Hearing- and speech-impaired persons may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Background

Title VI of the Fiscal Year 1999 Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub.L. 105–276, approved October 21, 1998) (referred to as the ''FY 1999 HUD Appropriations Act'') made significant reforms to the claims and property disposition processes for the HUD-Federal Housing Administration (FHA) single family mortgage insurance programs. Section 601 of the FY 1999 HUD Appropriations Act amended section 204 of the National Housing Act (12 U.S.C. 1710) to make more effective the methods for paying insurance claims and disposing of HUD-acquired single family mortgages and properties.

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Only certain defaulted FHA-insured loans are eligible for the new accelerated claim payment process. To be eligible for payment of an accelerated claim, the defaulted mortgage must meet the following criteria:

1. The mortgage must be an FHA-insured single family mortgage loan on a one-unit home.

2. The mortgage must be secured by a property located within the jurisdiction of HUD's Philadelphia, Pennsylvania or Atlanta, Georgia HOCs.

3. The mortgage must have a loan to value ratio in excess of 90 percent (the loan to value ratio represents the relationship between the amount of the mortgage loan and the value of the real estate). The loan to value ratio must be determined using a Broker's Price Opinion (BPO) and the current unpaid principal balance of the mortgage loan.

4. The mortgagor must have a FICO score of less than 550 at the time of payment of the accelerated claim. (FICO stands for Fair, Issac and Company—the company that has developed the mathematical formulas used to derive FICO scores. FICO scores are commonly used by credit bureaus to evaluate the credit-worthiness of borrowers for a particular loan. The scores are continually updated to incorporate new information about the subject's credit history. FICO scores range from 300 to 850. The higher the score, the lower the credit risk of making the loan.)

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a. Grade F (and the mortgagee has been unable to contact the borrower);

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c. Grades D, E, or F (and the property is vacant).

6. Any additional criteria that HUD may establish regarding the eligibility of defaulted mortgage loans for an accelerated claim under the ACD Demonstration.

III. Demonstration Overview

A. Risk Scoring

As noted above, amended section 204 of the National Housing Act allows HUD to pay an accelerated claim if a mortgage is in default for not less than three full monthly installments or whenever the mortgagee is entitled to foreclosure for a nonmonetary default. At the 60th day of delinquency, mortgagees participating in the ACD Demonstration will be required to begin running scoring models using the Freddie Mac Early Indicator Risk Scoring System to confirm the eligibility of the mortgage for payment of an accelerated claim. Provided that the mortgage meets the eligibility criteria described in paragraph II.D. of this notice, participating mortgagees will have the option to receive payment of an accelerated claim. However, in the case of a monetary default, HUD may only pay an accelerated claim upon the conclusion of the statutorily required three month period.

B. Disposition Methods

HUD will use one or both of the following disposition methods under the ACD Demonstration. HUD, in its sole discretion, will determine which of the two disposition methods to use for particular mortgages under the demonstration.

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2. *Special servicing with whole loan or securitization.* HUD may also use the special servicing disposition method under the demonstration. The ACD Demonstration will not initially use this method, and HUD may decide not to use this disposition method at all during the course of the demonstration. Under this disposition method, servicing of the mortgage would be transferred to a default servicer. The default servicer will provide assistance to HUD in undertaking one or more of the following actions: (a) Foreclosing and selling the properties; (b) accumulating mortgages for a whole loan sale; and/or (c) accumulating mortgages for disposition in a securitization (with or without Federal credit enhancement).

C. Required Documents

Unless otherwise specified by HUD, all documents required to be submitted to HUD under the ACD Demonstration must be paper originals signed in ink.

IV. Evaluating the Success of the ACD Demonstration

At the conclusion of the ACD Demonstration, HUD will assess its success and determine whether to implement the ACD process on a permanent basis throughout the country. In conducting this evaluation, HUD will assess such factors as whether the use of the ACD process will: (1) Reduce loss rates; (2) reduce the cost and time associated with claim dispositions; and (3) enhance the ability

of HUD to assess risk and manage the FHA mortgage insurance fund. The ACD Demonstration will be designed to permit ongoing review of these and other factors that HUD considers necessary for an accurate evaluation of the demonstration's success. HUD invites public comment on what factors it should consider in evaluating the success of the ACD Demonstration, as well as on appropriate methods HUD should use to conduct the evaluation (for example, the use of a ''control group'' of mortgagees, or the conducting of interviews with lenders and other ACD Demonstration participants).

V. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 13132, Federalism

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Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. The proposed demonstration would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Dated: January 22, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–2655 Filed 2–4–02; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Tuesday,
February 5, 2002

Part IV

Department of the Treasury

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 178

Implementation of Public Law 105–277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Relating to Firearms Disabilities for Nonimmigrant Aliens, and Requirement for Import Permit for Nonimmigrant Aliens Bringing Firearms and Ammunition Into the United States (2001R–332P); Final and Proposed Rules

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF–471]

RIN 1512–AB93

Implementation of Public Law 105–277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Relating to Firearms Disabilities for Nonimmigrant Aliens, and Requirement for Import Permit for Nonimmigrant Aliens Bringing Firearms and Ammunition Into the United States (2001R–332P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: We are amending the regulations to implement the provision of Public Law 105–277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, relating to firearms disabilities for nonimmigrant aliens. These regulations implement the law by prohibiting, with certain exceptions, the transfer to and possession of firearms and ammunition by aliens in the United States in a nonimmigrant classification. In addition, we are amending the regulations to give the Secretary of the Treasury or his delegate the authority to require nonresidents bringing firearms and ammunition into the United States for hunting or sporting purposes to obtain an import permit. In the interest of national security and public safety, ATF will require nonimmigrant aliens to obtain import permits for all importations of firearms and ammunition into the United States (except for those exempt importations specified in the regulations) as of the effective date of this regulation. The temporary rule will remain in effect until superseded by final regulations.

In the same issue, but a separate part of this **Federal Register**, we are also issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 90-day comment period following the publication date of this temporary rule.

DATES: The temporary regulations are effective February 19, 2002.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

I. Public Law 105–277—Firearms Disabilities for Nonimmigrant Aliens

On October 21, 1998, Public Law 105–277 (112 Stat. 2681), Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (hereafter, ''the Act''), was enacted. The Act amended the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). One of the new statutory provisions prohibits, with certain exceptions, the transfer to and possession of firearms and ammunition by aliens in the United States in a nonimmigrant classification. While this prohibition became effective upon the date of enactment, we have not been able to effectively enforce the prohibition without implementing regulations. One reason for the delay was the fact that language in the Act did not correspond with existing immigration law. Numerous meetings with the Department of Justice, including the Immigration and Naturalization Service (INS), were required to determine how to interpret and apply the Act. This includes enabling the National Criminal Instant Background Check System to query INS data on nonimmigrant aliens.

On September 11, 2001, grave acts of terrorism were committed against the United States by foreign terrorists, at least some of whom were in the United States in a nonimmigrant classification. On September 23, 2001, in Executive Order 13224 (published in the **Federal Register** on September 25, 2001 (66 FR 49079)), President Bush found these acts of terrorism, together with the ''continuing and immediate threat of further acts on United States nationals or the United States constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.'' Immediate enhanced enforcement of the general prohibition on nonimmigrant aliens possessing and receiving firearms is necessary to counter this threat. The new statutory provision and the regulation changes necessitated by the law are as follows:

Firearms Disabilities for Nonimmigrant Aliens

Section 922(g)(5) of the GCA makes it unlawful for any person who is an alien illegally or unlawfully in the United States to ship or transport any firearm or ammunition in interstate or foreign commerce, or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, or possess any firearm or ammunition in or affecting commerce. Section 922(d)(5) makes it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient is an alien illegally or unlawfully in the United States.

The Act amended section 922(g)(5) and (d)(5) to expand the list of persons who may not lawfully ship, transfer, possess, or receive firearms or ammunition to include, with certain exceptions, aliens admitted to the United States under a nonimmigrant visa, as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)). A nonimmigrant visa does not itself provide nonimmigrant status. A visa simply facilitates travel, and expedites inspection and admission to the United States, by showing that the State Department does not believe the individual to be inadmissible and has authorized him or her to apply for admission at a U.S. port of entry. Moreover, just under fifty percent of nonimmigrant aliens need a nonimmigrant visa to enter the United States. All other nonimmigrant aliens fall within various categories which are exempt from needing a nonimmigrant visa (e.g., participation in the Visa Waiver Program; Canadian visitors). The legislative history of the Act demonstrates Congress intended the new prohibition to cover all aliens in the United States in a nonimmigrant classification (as defined by section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15))), not merely nonimmigrants who possess a visa. Therefore, we interpret the Act to apply to any alien in the United States in a nonimmigrant classification and have provided an applicable definition of ''nonimmigrant alien'' in this temporary rule. This definition includes, in large part, persons traveling temporarily in the United States for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain foreign workers.

Furthermore, the prohibition is based on an alien's present status. Therefore, for example, if an alien was admitted to the United States in a nonimmigrant classification, but has become a permanent resident alien by the time he or she tries to purchase a firearm, he or she is not a prohibited person. The fact he or she was admitted in the nonimmigrant classification is not determinative.

The prohibition does not apply to aliens lawfully admitted for permanent residence. It also does not apply to any other alien who is not a nonimmigrant alien, including an alien who (1) has been granted asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. 1158; (2) has been paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5); or (3) has been admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act, 8 U.S.C. 1157. However, the prohibition does apply to any alien in a nonimmigrant classification who has a pending asylum application. Note also that although the nonimmigrant prohibition does not apply to aliens who are illegally or unlawfully in the United States (including a nonimmigrant alien whose authorized period of stay has expired or who has violated the terms of the nonimmigrant category in which he or she was admitted) those aliens are subject to firearms and ammunition disabilities under the prohibition pertaining to aliens illegally or unlawfully in the United States, 18 U.S.C. 922(g)(5)(A).

As indicated, there are certain exceptions to the general rule. The prohibition does not apply if the nonimmigrant alien is:

(A) Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) An official representative of a foreign government who is—

(1) Accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or

(2) En route to or from another country to which that alien is accredited;

(C) An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

The temporary regulation provides that with respect to exception (A) above, ''admitted to the United States for lawful hunting or sporting purposes'' means: (1) Is entering the United States to participate in a competitive target shooting event sponsored by a national, State, or local organization, devoted to the competitive use or other sporting use of firearms; or (2) is entering the United States to display firearms at a sports or hunting trade show sponsored by a national, State, or local firearms trade organization, devoted to the competitive use or other sporting use of firearms. We do not interpret the ''admitted to'' prong to cover persons entering the United States to hunt, because it would be difficult to verify this justification. Moreover, such persons can take steps to fall within the hunting license or permit exception.

With respect to exceptions B and C, the exceptions only apply to officials who are shipping, transporting, receiving, or possessing firearms or ammunition in their official capacity. Therefore, exception B does not apply, for example, to a diplomat who wants to possess a firearm to go hunting for pleasure (although the diplomat would qualify under exception A if he or she possessed a hunting license or permit lawfully issued in the United States). This limitation will not apply to distinguished foreign visitors who are private citizens and therefore do not have an official capacity.

Finally, with regard to exception D, we interpret a ''friendly foreign government'' to be any government with whom the United States has diplomatic relations and whom the United States does not identify as a State sponsor of terrorism.

In addition, the law gives the Attorney General the authority to waive the prohibition upon approval of a petition filed by the nonimmigrant alien. The waiver provision will be addressed in regulations issued by the Department of Justice.

As with the nonimmigrant alien disability in general, these exceptions apply only to aliens in lawful nonimmigrant status. For example, an alien who has overstayed his or her period of lawful admission is prohibited from purchasing or possessing a firearm regardless of whether or not the alien has a hunting license.

Several amendments have been made to § 178.124 to reflect changes to the Firearms Transaction Record, ATF Form 4473, which have been made to ensure prohibited nonimmigrant aliens do not obtain firearms from Federal firearms licensees. Specifically, every person must list on Form 4473 their country of citizenship, rather than just answering if they are a United States citizen. Moreover, any person who is not a United States citizen must include his or her INS-issued alien number or admission number on the Form 4473. In addition, for any nonimmigrant alien relying on an exception or waiver from the prohibition, the nonimmigrant must present applicable documentation establishing the exception or waiver and the licensee must note the type of documentation on the Form 4473 and attach a copy of the documentation to the form. Significantly, even if a nonimmigrant alien falls within an exception to, or obtains a waiver from, the nonimmigrant alien prohibition contained in section 922(g)(5)(B), he or she cannot purchase a firearm from a Federal firearms licensee unless he or she satisfies the State of residency requirements. (See § 178.11, definition of ''State of residence.'')

We are also amending §§ 178.44 and 178.45 to require any nonimmigrant alien applying for a Federal firearms license or renewal of a Federal firearms license, including a collector's license, to provide applicable documentation that he or she falls within an exception to, or has obtained a waiver from, the nonimmigrant alien prohibition. This requirement will apply, in the case of a corporation, partnership, or association, to any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association. This amendment is necessary to ensure ATF does not issue a license to any person who is prohibited from possessing a firearm or ammunition. This is consistent with 18 U.S.C. 923(d)(1)(B), which allows ATF to deny an application for license to any applicant who is prohibited from receiving firearms or any applicant whose officers or directors are so prohibited.

Moreover, we are amending the regulations to require any nonimmigrant alien who completes a Form 6 (or any licensee who completes a Form 6 to import firearms or ammunition for a nonimmigrant alien) to attach applicable documentation to the Form 6 establishing that the alien falls within an exception to, or has obtained a waiver from, the nonimmigrant alien prohibition. This is necessary to ensure we do not issue import permits to prohibited nonimmigrant aliens. We are also amending the regulations to require nonimmigrant aliens who fall within an exception to, or have obtained a waiver from, the nonimmigrant alien prohibition to provide applicable documentation to the United States Customs Service establishing the exception or waiver, before importing or bringing a firearm or ammunition into the United States. This requirement applies whether or not the nonimmigrant is required to complete a Form 6. This is necessary to ensure prohibited nonimmigrant aliens do not possess firearms or ammunition in the United States.

Conforming changes to the regulations are prescribed in §§ 178.11, 178.32, 178.99, 178.120, and 178.124.

II. Public Law 105–277—Additional Provisions

The Act amended the GCA to require, with certain exceptions, applicants for dealer's licenses to certify that secure gun storage or safety devices will be available at any place where firearms are sold to nonlicensees. The law also amended certain definitions in the GCA, including ''antique firearm,'' ''rifle,'' and ''shotgun.'' Proposed regulations implementing these provisions of the Act will be addressed in a separate forthcoming rulemaking document.

III. Importation of Firearms and Ammunition by Nonresidents of the United States

This temporary rule amends section 178.115(d)(2)–(d)(5) and section 178.115(e). Section 178.115(d)(2)–(d)(5) states that the importation of firearms and ammunition by certain foreign military personnel, official representatives of foreign governments, distinguished foreign visitors, and foreign law enforcement officers of friendly foreign governments are considered exempt importations for which an ATF Form 6 (an application to import a firearm or ammunition) is not required. Section 178.115(e) states that notwithstanding section 178.115(d)(2)–(d)(5), the Secretary of the Treasury may in the interest of public safety and necessity require a permit for the importation of firearms and ammunition. This regulation adds those persons covered by section 178.115(d)(1) to those persons to which section 178.115(e) applies.

Section 178.115(d)(1) states that the importation of firearms and ammunition by nonresidents of the United States for legitimate hunting or lawful sporting purposes (if the firearms and ammunition are taken out of the United States when the shooting activity is concluded) is considered an exempt importation for which an ATF Form 6 is not required. As of the effective date of this regulation, ATF will require nonimmigrant aliens to obtain import permits for all importations of firearms and ammunition into the United States, except for those exempt importations listed in section 178.115(d)(2)–(d)(5). This will ensure these individuals do not fall within the nonimmigrant alien prohibition. It will also enable ATF to be aware of non-immigrant aliens who are bringing or attempting to bring firearms or ammunition into the United States. Finally, it will ensure nonimportable firearms and ammunition do not enter the United States.

ATF also is amending section 178.115(d)(2)–(d)(5). In the interest of national security and public safety, these provisions are being amended so that they only apply if the firearms and unexpended ammunition are taken back out of the territorial limits of the United States when the person who brought them in leaves the country.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

We have determined that this temporary rule is not a significant regulatory action as defined in Executive Order 12866, in part, because the economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

B. Administrative Procedure Act

In light of the recent terrorist attack on America by persons, at least some of whom were nonimmigrant aliens, and the continuing and immediate threat of further attacks on United States nationals or the United States, which the President has found constitute an ''unusual and extraordinary threat to the national security, foreign policy, and economy of the United States,'' we have found it to be impracticable and contrary to the public interest to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d). Moreover, the amendments are excluded from the rulemaking provisions of 5 U.S.C. 553 because they involve a foreign affairs function of the United States. Accordingly, it is not necessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b), or subject to the effective date limitations in 5 U.S.C. 553(d).

C. Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The paperwork burdens associated with compliance with the regulation are not significant. Accordingly, a regulatory flexibility analysis is not required.

D. Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this regulation have been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1512–0570. 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 collections of information in this regulation are in sections 27 CFR 178.44, 178.45, 178.120, and 178.124.

This information is required to ensure compliance with the provisions of Public Law 105–277. The collections of information are mandatory. The likely respondents are individuals and businesses.

For further information concerning the collections of information, and where to submit comments on the collections of information, refer to the preamble to the cross-referenced notice of proposed rulemaking published in the same separate part of this **Federal Register**.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the **Federal Register** in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Domestic violence, Exports, Imports, Law enforcement personnel, Military personnel, Nonimmigrant aliens, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

For the reasons discussed in the preamble, ATF amends 27 CFR Part 178 as follows:

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Paragraph 1. The authority citation for 27 CFR Part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

Par. 2. Section 178.1(a) is revised to read as follows:

§ 178.1 Scope of regulations.

(a) *General.* The regulations contained in this part relate to commerce in firearms and ammunition and are promulgated to implement Title I, State Firearms Control Assistance (18 U.S.C. Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213) as amended by Pub. L. 99–308 (100 Stat. 449), Pub. L. 99–360 (100 Stat. 766), Pub. L. 99–408 (100 Stat. 920), Pub. L. 103–159 (107 Stat. 1536), Pub. L. 103–322 (108 Stat. 1796), Pub. L. 104–208 (110 Stat. 3009), and Pub. L. 105–277 (112 Stat. 2681).

* * * * *

Par. 3. Section 178.11 is amended by adding definitions for ''Admitted to the United States for lawful hunting or sporting purposes,'' ''Alien,'' ''Friendly foreign government,'' ''Hunting license or permit lawfully issued in the United States,'' and ''Nonimmigrant alien'' to read as follows:

§ 178.11 Meaning of terms.

* * * * *

Admitted to the United States for lawful hunting or sporting purposes. (a) Is entering the United States to participate in a competitive target shooting event sponsored by a national, State, or local organization, devoted to the competitive use or other sporting use of firearms; or

(b) Is entering the United States to display firearms at a sports or hunting trade show sponsored by a national, State, or local firearms trade organization, devoted to the competitive use or other sporting use of firearms.

Alien. Any person not a citizen or national of the United States.

* * * * *

Friendly foreign government. Any government with whom the United States has diplomatic relations and whom the United States has not identified as a State sponsor of terrorism.

* * * * *

Hunting license or permit lawfully issued in the United States. A license or permit issued by a State for hunting which is valid and unexpired.

* * * * *

Nonimmigrant alien. An alien in the United States in a nonimmigrant classification as defined by section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).

* * * * *

Par. 4. Section 178.32 is amended by revising paragraphs (a)(5) and (d)(5), and by adding new paragraph (f) to read as follows:

§ 178.32 Prohibited shipment, transportation, possession, or receipt of firearms and ammunition by certain persons.

(a) * * *

(5) Being an alien—

(i) Is illegally or unlawfully in the United States; or

(ii) Except as provided in paragraph (f) of this section, is a nonimmigrant alien: *Provided,* That the provisions of this paragraph (a)(5)(ii) do not apply to any nonimmigrant alien if that alien is-

(A) Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) An official representative of a foreign government who is either accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States or is en route to or from another country to which that alien is accredited. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the representative's official capacity;

(C) An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the official's or visitor's official capacity, except if the visitor is a private individual who does not have an official capacity; or

(D) A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business,

* * * * *

(d) * * *

(5) Being an alien—

(i) Is illegally or unlawfully in the United States; or

(ii) Except as provided in paragraph (f) of this section, is a nonimmigrant alien: *Provided,* That the provisions of this paragraph (d)(5)(ii) do not apply to any nonimmigrant alien if that alien is-

(A) Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) An official representative of a foreign government who is either accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States or en route to or from another country to which that alien is accredited. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the representative's official capacity;

(C) An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the official's or visitor's official capacity, except if the visitor is a private individual who does not have an official capacity; or

(D) A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business,

* * * * *

(f) Pursuant to 18 U.S.C. 922(y)(3), any nonimmigrant alien may receive a waiver from the prohibition contained in paragraph (a)(5)(ii) of this section, if the Attorney General approves a petition for the waiver.

Par. 5. Section 178.44 is amended by revising paragraph (a), by adding a new sentence in paragraph (b) after the second sentence, and by adding a parenthetical text at the end of the section to read as follows:

§ 178.44 Original license.

(a)(1) Any person who intends to engage in business as a firearms or ammunition importer or manufacturer, or firearms dealer, or who has not previously been licensed under the provisions of this part to so engage in business, or who has not timely submitted an application for renewal of the previous license issued under this part, must file an application for license, ATF Form 7 (Firearms), in duplicate, with ATF in accordance with the instructions on the form. The application must:

(i) Be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 924;

(ii) Include a photograph and fingerprints as required in the instructions on the form;

(iii) If the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is a nonimmigrant alien, applicable documentation demonstrating that the nonimmigrant alien falls within an

exception to or has obtained a waiver from the nonimmigrant alien provision (e.g., a hunting license or permit lawfully issued in the United States; waiver);

(iv) Be accompanied by a completed ATF Form 5300.37 (Certification of Compliance with State and Local Law) and ATF Form 5300.36 (Notification of Intent to Apply for a Federal Firearms License); and

(v) Include the appropriate fee in the form of money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms.

(2) ATF Forms 7 (Firearms), ATF Forms 5300.37, and ATF Forms 5300.36 may be obtained by contacting any ATF office.

(b) * * * If the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is a nonimmigrant alien, the application must include applicable documentation demonstrating that the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien provision (e.g., a hunting license or permit lawfully issued in the United States; waiver). * * *

(Paragraphs (a) and (b) approved by the Office of Management and Budget under control number 1512–0570)

Par. 6. Section 178.45 is amended by adding a new sentence after the first sentence and by adding a parenthetical text at the end of the section to read as follows:

§ 178.45 Renewal of license.

* * * If the applicant is a nonimmigrant alien, the application must include applicable documentation demonstrating that the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien provision (e.g., a hunting license or permit lawfully issued in the United States; waiver). * * *

(Approved by the Office of Management and Budget under control number 1512–0570)

Par. 7. Section 178.99(c)(5) is revised to read as follows:

§ 178.99 Certain prohibited sales or deliveries.

* * * * *

(c) * * *

(5) Is an alien illegally or unlawfully in the United States or, except as provided in § 178.32(f), is a nonimmigrant alien: *Provided,* That the provisions of this paragraph (c)(5) do not apply to any nonimmigrant alien if that alien is—

(i) Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(ii) An official representative of a foreign government who is either accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States or en route to or from another country to which that alien is accredited. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the representative's official capacity;

(iii) An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the official's or visitor's official capacity, except if the visitor is a private individual who does not have an official capacity; or

(iv) A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business;

* * * * *

Par. 8. Section 178.115 is amended by revising paragraphs (d)(2) through (d)(5) and by removing ''(d)(2),'' in paragraph (e) and adding in its place ''(d)(1), (2),'' to read as follows:

§ 178.115 Exempt importation.

* * * * *

(d) * * *

(2) Foreign military personnel on official assignment to the United States who bring such firearms or ammunition into the United States for their exclusive use while on official duty in the United States, and such firearms and unexpended ammunition are taken back out of the territorial limits of the United States by such foreign military personnel when they leave the United States;

(3) Official representatives of foreign governments who are accredited to the U.S. Government or are en route to or from other countries to which accredited, and such firearms and unexpended ammunition are taken back out of the territorial limits of the United States by such official representatives of foreign governments when they leave the United States;

(4) Officials of foreign governments and distinguished foreign visitors who have been so designated by the Department of State, and such firearms and unexpended ammunition are taken back out of the territorial limits of the United States by such officials of foreign governments and distinguished foreign visitors when they leave the United States; and

(5) Foreign law enforcement officers of friendly foreign governments entering the United States on official law enforcement business, and such firearms and unexpended ammunition are taken back out of the territorial limits of the United States by such foreign law enforcement officers when they leave the United States.

* * * * *

Par. 9. Section 178.120 is added to Subpart G to read as follows:

§ 178.120 Firearms or ammunition imported by or for a nonimmigrant alien.

(a) Any nonimmigrant alien who completes an ATF Form 6 to import firearms or ammunition into the United States, or any licensee who completes an ATF Form 6 to import firearms or ammunition for a nonimmigrant alien, must attach applicable documentation to the Form 6 (e.g., a hunting license or permit lawfully issued in the United States; waiver) establishing the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien prohibition.

(b) Nonimmigrant aliens importing or bringing firearms or ammunition into the United States must provide the United States Customs Service with applicable documentation (e.g., a hunting license or permit lawfully issued in the United States; waiver) establishing the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien prohibition before the firearm or ammunition may be imported. This provision applies in all cases, whether or not a Form 6 is needed to bring the firearms or ammunition into the United States.

(Approved by the Office of Management and Budget under control number 1512–0570)

Par. 10. Section 178.124 is amended by removing ''whether the transferee is a citizen of the United States;'' in paragraph (c)(1) and adding in its place ''the transferee's country of citizenship; the transferee's INS-issued alien number or admission number;''; by removing ''and alien registration number (if applicable)'' in paragraph (c)(2); by redesignating paragraph (c)(3)(iii) as paragraph (c)(3)(iv); by adding new paragraph (c)(3)(iii); and by revising the parenthetical text at the end of the section to read as follows:

§ 178.124 Firearms transaction record.

* * * * *

(c) * * *

(3) * * *

(iii) Must, in the case of a transferee who is a nonimmigrant alien who states that he or she falls within an exception to, or has a waiver from, the nonimmigrant alien prohibition, have the transferee present applicable documentation establishing the exception or waiver, note on the Form 4473 the type of documentation provided, and attach a copy of the documentation to the Form 4473.

* * * * *

(Paragraph (c) approved by the Office of Management and Budget under control numbers 1512–0544, 1512–0129, and 1512–0570; paragraph (f) approved by the Office of Management and Budget under control number 1512–0130; all other recordkeeping approved by the Office of Management and Budget under control number 1512–0129)

Signed: January 15, 2002.

Bradley A. Buckles,

Director.

Approved: January 15, 2002.

Timonthy E. Skud,

Acting Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 02–2714 Filed 2–1–02; 8:45 am]

BILLING CODE 4810–31–P

Federal Register

Tuesday,
February 5, 2002

Part IV

Department of the Treasury

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 178

Implementation of Public Law 105–277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Relating to Firearms Disabilities for Nonimmigrant Aliens, and Requirement for Import Permit for Nonimmigrant Aliens Bringing Firearms and Ammunition Into the United States (2001R–332P); Final and Proposed Rules

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF–471]

RIN 1512–AB93

Implementation of Public Law 105–277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Relating to Firearms Disabilities for Nonimmigrant Aliens, and Requirement for Import Permit for Nonimmigrant Aliens Bringing Firearms and Ammunition Into the United States (2001R–332P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: We are amending the regulations to implement the provision of Public Law 105–277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, relating to firearms disabilities for nonimmigrant aliens. These regulations implement the law by prohibiting, with certain exceptions, the transfer to and possession of firearms and ammunition by aliens in the United States in a nonimmigrant classification. In addition, we are amending the regulations to give the Secretary of the Treasury or his delegate the authority to require nonresidents bringing firearms and ammunition into the United States for hunting or sporting purposes to obtain an import permit. In the interest of national security and public safety, ATF will require nonimmigrant aliens to obtain import permits for all importations of firearms and ammunition into the United States (except for those exempt importations specified in the regulations) as of the effective date of this regulation. The temporary rule will remain in effect until superseded by final regulations.

In the same issue, but a separate part of this **Federal Register**, we are also issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 90-day comment period following the publication date of this temporary rule.

DATES: The temporary regulations are effective February 19, 2002.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

I. Public Law 105–277—Firearms Disabilities for Nonimmigrant Aliens

On October 21, 1998, Public Law 105–277 (112 Stat. 2681), Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (hereafter, ''the Act''), was enacted. The Act amended the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). One of the new statutory provisions prohibits, with certain exceptions, the transfer to and possession of firearms and ammunition by aliens in the United States in a nonimmigrant classification. While this prohibition became effective upon the date of enactment, we have not been able to effectively enforce the prohibition without implementing regulations. One reason for the delay was the fact that language in the Act did not correspond with existing immigration law. Numerous meetings with the Department of Justice, including the Immigration and Naturalization Service (INS), were required to determine how to interpret and apply the Act. This includes enabling the National Criminal Instant Background Check System to query INS data on nonimmigrant aliens.

On September 11, 2001, grave acts of terrorism were committed against the United States by foreign terrorists, at least some of whom were in the United States in a nonimmigrant classification. On September 23, 2001, in Executive Order 13224 (published in the **Federal Register** on September 25, 2001 (66 FR 49079)), President Bush found these acts of terrorism, together with the ''continuing and immediate threat of further acts on United States nationals or the United States constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.'' Immediate enhanced enforcement of the general prohibition on nonimmigrant aliens possessing and receiving firearms is necessary to counter this threat. The new statutory provision and the regulation changes necessitated by the law are as follows:

Firearms Disabilities for Nonimmigrant Aliens

Section 922(g)(5) of the GCA makes it unlawful for any person who is an alien illegally or unlawfully in the United States to ship or transport any firearm or ammunition in interstate or foreign commerce, or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, or possess any firearm or ammunition in or affecting commerce. Section 922(d)(5) makes it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient is an alien illegally or unlawfully in the United States.

The Act amended section 922(g)(5) and (d)(5) to expand the list of persons who may not lawfully ship, transfer, possess, or receive firearms or ammunition to include, with certain exceptions, aliens admitted to the United States under a nonimmigrant visa, as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)). A nonimmigrant visa does not itself provide nonimmigrant status. A visa simply facilitates travel, and expedites inspection and admission to the United States, by showing that the State Department does not believe the individual to be inadmissible and has authorized him or her to apply for admission at a U.S. port of entry. Moreover, just under fifty percent of nonimmigrant aliens need a nonimmigrant visa to enter the United States. All other nonimmigrant aliens fall within various categories which are exempt from needing a nonimmigrant visa (e.g., participation in the Visa Waiver Program; Canadian visitors). The legislative history of the Act demonstrates Congress intended the new prohibition to cover all aliens in the United States in a nonimmigrant classification (as defined by section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15))), not merely nonimmigrants who possess a visa. Therefore, we interpret the Act to apply to any alien in the United States in a nonimmigrant classification and have provided an applicable definition of ''nonimmigrant alien'' in this temporary rule. This definition includes, in large part, persons traveling temporarily in the United States for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain foreign workers.

Furthermore, the prohibition is based on an alien's present status. Therefore, for example, if an alien was admitted to the United States in a nonimmigrant classification, but has become a permanent resident alien by the time he or she tries to purchase a firearm, he or she is not a prohibited person. The fact he or she was admitted in the nonimmigrant classification is not determinative.

The prohibition does not apply to aliens lawfully admitted for permanent residence. It also does not apply to any other alien who is not a nonimmigrant alien, including an alien who (1) has been granted asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. 1158; (2) has been paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5); or (3) has been admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act, 8 U.S.C. 1157. However, the prohibition does apply to any alien in a nonimmigrant classification who has a pending asylum application. Note also that although the nonimmigrant prohibition does not apply to aliens who are illegally or unlawfully in the United States (including a nonimmigrant alien whose authorized period of stay has expired or who has violated the terms of the nonimmigrant category in which he or she was admitted) those aliens are subject to firearms and ammunition disabilities under the prohibition pertaining to aliens illegally or unlawfully in the United States, 18 U.S.C. 922(g)(5)(A).

As indicated, there are certain exceptions to the general rule. The prohibition does not apply if the nonimmigrant alien is:

(A) Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) An official representative of a foreign government who is—

(1) Accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or

(2) En route to or from another country to which that alien is accredited;

(C) An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

The temporary regulation provides that with respect to exception (A) above, ''admitted to the United States for lawful hunting or sporting purposes'' means: (1) Is entering the United States to participate in a competitive target shooting event sponsored by a national, State, or local organization, devoted to the competitive use or other sporting use of firearms; or (2) is entering the United States to display firearms at a sports or hunting trade show sponsored by a national, State, or local firearms trade organization, devoted to the competitive use or other sporting use of firearms. We do not interpret the ''admitted to'' prong to cover persons entering the United States to hunt, because it would be difficult to verify this justification. Moreover, such persons can take steps to fall within the hunting license or permit exception.

With respect to exceptions B and C, the exceptions only apply to officials who are shipping, transporting, receiving, or possessing firearms or ammunition in their official capacity. Therefore, exception B does not apply, for example, to a diplomat who wants to possess a firearm to go hunting for pleasure (although the diplomat would qualify under exception A if he or she possessed a hunting license or permit lawfully issued in the United States). This limitation will not apply to distinguished foreign visitors who are private citizens and therefore do not have an official capacity.

Finally, with regard to exception D, we interpret a ''friendly foreign government'' to be any government with whom the United States has diplomatic relations and whom the United States does not identify as a State sponsor of terrorism.

In addition, the law gives the Attorney General the authority to waive the prohibition upon approval of a petition filed by the nonimmigrant alien. The waiver provision will be addressed in regulations issued by the Department of Justice.

As with the nonimmigrant alien disability in general, these exceptions apply only to aliens in lawful nonimmigrant status. For example, an alien who has overstayed his or her period of lawful admission is prohibited from purchasing or possessing a firearm regardless of whether or not the alien has a hunting license.

Several amendments have been made to § 178.124 to reflect changes to the Firearms Transaction Record, ATF Form 4473, which have been made to ensure prohibited nonimmigrant aliens do not obtain firearms from Federal firearms licensees. Specifically, every person must list on Form 4473 their country of citizenship, rather than just answering if they are a United States citizen. Moreover, any person who is not a United States citizen must include his or her INS-issued alien number or admission number on the Form 4473. In addition, for any nonimmigrant alien relying on an exception or waiver from the prohibition, the nonimmigrant must present applicable documentation establishing the exception or waiver and the licensee must note the type of documentation on the Form 4473 and attach a copy of the documentation to the form. Significantly, even if a nonimmigrant alien falls within an exception to, or obtains a waiver from, the nonimmigrant alien prohibition contained in section 922(g)(5)(B), he or she cannot purchase a firearm from a Federal firearms licensee unless he or she satisfies the State of residency requirements. (See § 178.11, definition of ''State of residence.'')

We are also amending §§ 178.44 and 178.45 to require any nonimmigrant alien applying for a Federal firearms license or renewal of a Federal firearms license, including a collector's license, to provide applicable documentation that he or she falls within an exception to, or has obtained a waiver from, the nonimmigrant alien prohibition. This requirement will apply, in the case of a corporation, partnership, or association, to any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association. This amendment is necessary to ensure ATF does not issue a license to any person who is prohibited from possessing a firearm or ammunition. This is consistent with 18 U.S.C. 923(d)(1)(B), which allows ATF to deny an application for license to any applicant who is prohibited from receiving firearms or any applicant whose officers or directors are so prohibited.

Moreover, we are amending the regulations to require any nonimmigrant alien who completes a Form 6 (or any licensee who completes a Form 6 to import firearms or ammunition for a nonimmigrant alien) to attach applicable documentation to the Form 6 establishing that the alien falls within an exception to, or has obtained a waiver from, the nonimmigrant alien prohibition. This is necessary to ensure we do not issue import permits to prohibited nonimmigrant aliens. We are also amending the regulations to require nonimmigrant aliens who fall within an exception to, or have obtained a waiver from, the nonimmigrant alien prohibition to provide applicable documentation to the United States Customs Service establishing the exception or waiver, before importing or bringing a firearm or ammunition into the United States. This requirement applies whether or not the nonimmigrant is required to complete a Form 6. This is necessary to ensure prohibited nonimmigrant aliens do not possess firearms or ammunition in the United States.

Conforming changes to the regulations are prescribed in §§ 178.11, 178.32, 178.99, 178.120, and 178.124.

II. Public Law 105–277—Additional Provisions

The Act amended the GCA to require, with certain exceptions, applicants for dealer's licenses to certify that secure gun storage or safety devices will be available at any place where firearms are sold to nonlicensees. The law also amended certain definitions in the GCA, including ''antique firearm,'' ''rifle,'' and ''shotgun.'' Proposed regulations implementing these provisions of the Act will be addressed in a separate forthcoming rulemaking document.

III. Importation of Firearms and Ammunition by Nonresidents of the United States

This temporary rule amends section 178.115(d)(2)–(d)(5) and section 178.115(e). Section 178.115(d)(2)–(d)(5) states that the importation of firearms and ammunition by certain foreign military personnel, official representatives of foreign governments, distinguished foreign visitors, and foreign law enforcement officers of friendly foreign governments are considered exempt importations for which an ATF Form 6 (an application to import a firearm or ammunition) is not required. Section 178.115(e) states that notwithstanding section 178.115(d)(2)–(d)(5), the Secretary of the Treasury may in the interest of public safety and necessity require a permit for the importation of firearms and ammunition. This regulation adds those persons covered by section 178.115(d)(1) to those persons to which section 178.115(e) applies.

Section 178.115(d)(1) states that the importation of firearms and ammunition by nonresidents of the United States for legitimate hunting or lawful sporting purposes (if the firearms and ammunition are taken out of the United States when the shooting activity is concluded) is considered an exempt importation for which an ATF Form 6 is not required. As of the effective date of this regulation, ATF will require nonimmigrant aliens to obtain import permits for all importations of firearms and ammunition into the United States, except for those exempt importations listed in section 178.115(d)(2)–(d)(5). This will ensure these individuals do not fall within the nonimmigrant alien prohibition. It will also enable ATF to be aware of non-immigrant aliens who are bringing or attempting to bring firearms or ammunition into the United States. Finally, it will ensure nonimportable firearms and ammunition do not enter the United States.

ATF also is amending section 178.115(d)(2)–(d)(5). In the interest of national security and public safety, these provisions are being amended so that they only apply if the firearms and unexpended ammunition are taken back out of the territorial limits of the United States when the person who brought them in leaves the country.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

We have determined that this temporary rule is not a significant regulatory action as defined in Executive Order 12866, in part, because the economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

B. Administrative Procedure Act

In light of the recent terrorist attack on America by persons, at least some of whom were nonimmigrant aliens, and the continuing and immediate threat of further attacks on United States nationals or the United States, which the President has found constitute an ''unusual and extraordinary threat to the national security, foreign policy, and economy of the United States,'' we have found it to be impracticable and contrary to the public interest to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d). Moreover, the amendments are excluded from the rulemaking provisions of 5 U.S.C. 553 because they involve a foreign affairs function of the United States. Accordingly, it is not necessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b), or subject to the effective date limitations in 5 U.S.C. 553(d).

C. Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The paperwork burdens associated with compliance with the regulation are not significant. Accordingly, a regulatory flexibility analysis is not required.

D. Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this regulation have been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1512–0570. 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 collections of information in this regulation are in sections 27 CFR 178.44, 178.45, 178.120, and 178.124.

This information is required to ensure compliance with the provisions of Public Law 105–277. The collections of information are mandatory. The likely respondents are individuals and businesses.

For further information concerning the collections of information, and where to submit comments on the collections of information, refer to the preamble to the cross-referenced notice of proposed rulemaking published in the same separate part of this **Federal Register**.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the **Federal Register** in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Domestic violence, Exports, Imports, Law enforcement personnel, Military personnel, Nonimmigrant aliens, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

For the reasons discussed in the preamble, ATF amends 27 CFR Part 178 as follows:

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Paragraph 1. The authority citation for 27 CFR Part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

Par. 2. Section 178.1(a) is revised to read as follows:

§ 178.1 Scope of regulations.

(a) *General.* The regulations contained in this part relate to commerce in firearms and ammunition and are promulgated to implement Title I, State Firearms Control Assistance (18 U.S.C. Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213) as amended by Pub. L. 99–308 (100 Stat. 449), Pub. L. 99–360 (100 Stat. 766), Pub. L. 99–408 (100 Stat. 920), Pub. L. 103–159 (107 Stat. 1536), Pub. L. 103–322 (108 Stat. 1796), Pub. L. 104–208 (110 Stat. 3009), and Pub. L. 105–277 (112 Stat. 2681).

* * * * *

Par. 3. Section 178.11 is amended by adding definitions for ''Admitted to the United States for lawful hunting or sporting purposes,'' ''Alien,'' ''Friendly foreign government,'' ''Hunting license or permit lawfully issued in the United States,'' and ''Nonimmigrant alien'' to read as follows:

§ 178.11 Meaning of terms.

* * * * *

Admitted to the United States for lawful hunting or sporting purposes. (a) Is entering the United States to participate in a competitive target shooting event sponsored by a national, State, or local organization, devoted to the competitive use or other sporting use of firearms; or

(b) Is entering the United States to display firearms at a sports or hunting trade show sponsored by a national, State, or local firearms trade organization, devoted to the competitive use or other sporting use of firearms.

Alien. Any person not a citizen or national of the United States.

* * * * *

Friendly foreign government. Any government with whom the United States has diplomatic relations and whom the United States has not identified as a State sponsor of terrorism.

* * * * *

Hunting license or permit lawfully issued in the United States. A license or permit issued by a State for hunting which is valid and unexpired.

* * * * *

Nonimmigrant alien. An alien in the United States in a nonimmigrant classification as defined by section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).

* * * * *

Par. 4. Section 178.32 is amended by revising paragraphs (a)(5) and (d)(5), and by adding new paragraph (f) to read as follows:

§ 178.32 Prohibited shipment, transportation, possession, or receipt of firearms and ammunition by certain persons.

(a) * * *

(5) Being an alien—

(i) Is illegally or unlawfully in the United States; or

(ii) Except as provided in paragraph (f) of this section, is a nonimmigrant alien: *Provided,* That the provisions of this paragraph (a)(5)(ii) do not apply to any nonimmigrant alien if that alien is-

(A) Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) An official representative of a foreign government who is either accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States or is en route to or from another country to which that alien is accredited. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the representative's official capacity;

(C) An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the official's or visitor's official capacity, except if the visitor is a private individual who does not have an official capacity; or

(D) A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business,

* * * * *

(d) * * *

(5) Being an alien—

(i) Is illegally or unlawfully in the United States; or

(ii) Except as provided in paragraph (f) of this section, is a nonimmigrant alien: *Provided,* That the provisions of this paragraph (d)(5)(ii) do not apply to any nonimmigrant alien if that alien is-

(A) Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) An official representative of a foreign government who is either accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States or en route to or from another country to which that alien is accredited. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the representative's official capacity;

(C) An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the official's or visitor's official capacity, except if the visitor is a private individual who does not have an official capacity; or

(D) A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business,

* * * * *

(f) Pursuant to 18 U.S.C. 922(y)(3), any nonimmigrant alien may receive a waiver from the prohibition contained in paragraph (a)(5)(ii) of this section, if the Attorney General approves a petition for the waiver.

Par. 5. Section 178.44 is amended by revising paragraph (a), by adding a new sentence in paragraph (b) after the second sentence, and by adding a parenthetical text at the end of the section to read as follows:

§ 178.44 Original license.

(a)(1) Any person who intends to engage in business as a firearms or ammunition importer or manufacturer, or firearms dealer, or who has not previously been licensed under the provisions of this part to so engage in business, or who has not timely submitted an application for renewal of the previous license issued under this part, must file an application for license, ATF Form 7 (Firearms), in duplicate, with ATF in accordance with the instructions on the form. The application must:

(i) Be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 924;

(ii) Include a photograph and fingerprints as required in the instructions on the form;

(iii) If the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is a nonimmigrant alien, applicable documentation demonstrating that the nonimmigrant alien falls within an

exception to or has obtained a waiver from the nonimmigrant alien provision (e.g., a hunting license or permit lawfully issued in the United States; waiver);

(iv) Be accompanied by a completed ATF Form 5300.37 (Certification of Compliance with State and Local Law) and ATF Form 5300.36 (Notification of Intent to Apply for a Federal Firearms License); and

(v) Include the appropriate fee in the form of money order or check made payable to the Bureau of Alcohol, Tobacco and Firearms.

(2) ATF Forms 7 (Firearms), ATF Forms 5300.37, and ATF Forms 5300.36 may be obtained by contacting any ATF office.

(b) * * * If the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is a nonimmigrant alien, the application must include applicable documentation demonstrating that the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien provision (e.g., a hunting license or permit lawfully issued in the United States; waiver). * * *

(Paragraphs (a) and (b) approved by the Office of Management and Budget under control number 1512–0570)

Par. 6. Section 178.45 is amended by adding a new sentence after the first sentence and by adding a parenthetical text at the end of the section to read as follows:

§ 178.45 Renewal of license.

* * * If the applicant is a nonimmigrant alien, the application must include applicable documentation demonstrating that the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien provision (e.g., a hunting license or permit lawfully issued in the United States; waiver). * * *

(Approved by the Office of Management and Budget under control number 1512–0570)

Par. 7. Section 178.99(c)(5) is revised to read as follows:

§ 178.99 Certain prohibited sales or deliveries.

* * * * *

(c) * * *

(5) Is an alien illegally or unlawfully in the United States or, except as provided in § 178.32(f), is a nonimmigrant alien: *Provided,* That the provisions of this paragraph (c)(5) do not apply to any nonimmigrant alien if that alien is—

(i) Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(ii) An official representative of a foreign government who is either accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States or en route to or from another country to which that alien is accredited. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the representative's official capacity;

(iii) An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State. This exception only applies if the firearm or ammunition is shipped, transported, possessed, or received in the official's or visitor's official capacity, except if the visitor is a private individual who does not have an official capacity; or

(iv) A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business;

* * * * *

Par. 8. Section 178.115 is amended by revising paragraphs (d)(2) through (d)(5) and by removing ''(d)(2),'' in paragraph (e) and adding in its place ''(d)(1), (2),'' to read as follows:

§ 178.115 Exempt importation.

* * * * *

(d) * * *

(2) Foreign military personnel on official assignment to the United States who bring such firearms or ammunition into the United States for their exclusive use while on official duty in the United States, and such firearms and unexpended ammunition are taken back out of the territorial limits of the United States by such foreign military personnel when they leave the United States;

(3) Official representatives of foreign governments who are accredited to the U.S. Government or are en route to or from other countries to which accredited, and such firearms and unexpended ammunition are taken back out of the territorial limits of the United States by such official representatives of foreign governments when they leave the United States;

(4) Officials of foreign governments and distinguished foreign visitors who have been so designated by the Department of State, and such firearms and unexpended ammunition are taken back out of the territorial limits of the United States by such officials of foreign governments and distinguished foreign visitors when they leave the United States; and

(5) Foreign law enforcement officers of friendly foreign governments entering the United States on official law enforcement business, and such firearms and unexpended ammunition are taken back out of the territorial limits of the United States by such foreign law enforcement officers when they leave the United States.

* * * * *

Par. 9. Section 178.120 is added to Subpart G to read as follows:

§ 178.120 Firearms or ammunition imported by or for a nonimmigrant alien.

(a) Any nonimmigrant alien who completes an ATF Form 6 to import firearms or ammunition into the United States, or any licensee who completes an ATF Form 6 to import firearms or ammunition for a nonimmigrant alien, must attach applicable documentation to the Form 6 (e.g., a hunting license or permit lawfully issued in the United States; waiver) establishing the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien prohibition.

(b) Nonimmigrant aliens importing or bringing firearms or ammunition into the United States must provide the United States Customs Service with applicable documentation (e.g., a hunting license or permit lawfully issued in the United States; waiver) establishing the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien prohibition before the firearm or ammunition may be imported. This provision applies in all cases, whether or not a Form 6 is needed to bring the firearms or ammunition into the United States.

(Approved by the Office of Management and Budget under control number 1512–0570)

Par. 10. Section 178.124 is amended by removing ''whether the transferee is a citizen of the United States;'' in paragraph (c)(1) and adding in its place ''the transferee's country of citizenship; the transferee's INS-issued alien number or admission number;''; by removing ''and alien registration number (if applicable)'' in paragraph (c)(2); by redesignating paragraph (c)(3)(iii) as paragraph (c)(3)(iv); by adding new paragraph (c)(3)(iii); and by revising the parenthetical text at the end of the section to read as follows:

§ 178.124 Firearms transaction record.

* * * * *

(c) * * *

(3) * * *

(iii) Must, in the case of a transferee who is a nonimmigrant alien who states that he or she falls within an exception to, or has a waiver from, the nonimmigrant alien prohibition, have the transferee present applicable documentation establishing the exception or waiver, note on the Form 4473 the type of documentation provided, and attach a copy of the documentation to the Form 4473.

* * * * *

(Paragraph (c) approved by the Office of Management and Budget under control numbers 1512–0544, 1512–0129, and 1512–0570; paragraph (f) approved by the Office of Management and Budget under control number 1512–0130; all other recordkeeping approved by the Office of Management and Budget under control number 1512–0129)

Signed: January 15, 2002.

Bradley A. Buckles,

Director.

Approved: January 15, 2002.

Timonthy E. Skud,

Acting Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 02–2714 Filed 2–1–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[Notice No. 935]

RIN: 1512–AB93

Implementation of Public Law 105–277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Relating to Firearms Disabilities for Nonimmigrant Aliens, and Requirement for Import Permit for Nonimmigrant Aliens Bringing Firearms and Ammunition Into the United States (2001R–332P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rulemaking cross-referenced to temporary regulations.

SUMMARY: In the same issue, but a separate part of this **Federal Register**, we are issuing a temporary rule amending the regulations to implement the provisions of Public Law 105–277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. These regulations implement the law by prohibiting, with certain exceptions, the transfer to and possession of firearms and ammunition by aliens in the United States in a nonimmigrant classification. In addition, we are amending the regulations to give the Secretary of the Treasury or his delegate the authority to require nonresidents to obtain an import permit in order to bring firearms and ammunition into the United States for hunting or sporting purposes. In the interest of national security and pubic safety, ATF will require nonimmigrant aliens to obtain import permits for all importations of firearms and ammunition into the United States (except for those exempt importations specified in the regulations) as of the effective date of the temporary rule. The temporary regulations also serve as the text of this notice of proposed rulemaking for final regulations.

DATES: Written comments must be received on or before May 6, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: Notice No. 935.* Written comments must be signed, and may be of any length.

E-mail comments may be submitted to: *nprm@atfhq.atf.treas.gov.* E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on not more than three pages 8½″ × 11″ in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See the Public Participation section at the end of this notice for requirements for submitting written comments by facsimile.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

We have determined that this proposed regulation is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required.

B. Regulatory Flexibility Act

We hereby certify that this proposed regulation, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities. The paperwork burdens associated with compliance with the proposed regulation are not significant. Accordingly, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the function of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced; and

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collections of information in this proposed regulation are in 27 CFR 178.44, 178.45, 178.120, and 178.124. This information is required to implement the provisions of Public Law 105–277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, relating to firearms disabilities for nonimmigrant aliens. The likely respondents are individuals and businesses.

Estimated total annual reporting and/or recordkeeping burden: 1,210 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .10 hour (6 minutes).

Estimated number of respondents and/or recordkeepers: 12,100.

Estimated annual frequency of responses: 12,100.

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.

Public Participation

We are requesting comments on the temporary regulations from all interested persons. We are also specifically requesting comments on the clarity of the temporary rule and how it may be made easier to understand.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

We will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

You may submit written comments by facsimile transmission to (202) 927–8602. Facsimile comments must:

- Be legible;
- Reference this notice number;

- Be 8½″ × 11″ in size;
- Contain a legible written signature; and
- Be not more than three pages long.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

The temporary regulations in this issue of the **Federal Register** amend the regulations in 27 CFR part 178. For the text of the temporary regulations, see T.D. ATF–471 published in the same separate part of this issue of the **Federal Register**.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

Signed: January 15, 2002.

Bradley A. Buckles,

Director.

Approved: January 15, 2002.

Timothy E. Skud,

Acting Deputy Assistant Secretary, Regulatory, Tariff and Trade Enforcement.

[FR Doc. 02–2715 Filed 2–1–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[Notice No. 935]

RIN: 1512–AB93

Implementation of Public Law 105–277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Relating to Firearms Disabilities for Nonimmigrant Aliens, and Requirement for Import Permit for Nonimmigrant Aliens Bringing Firearms and Ammunition Into the United States (2001R–332P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rulemaking cross-referenced to temporary regulations.

SUMMARY: In the same issue, but a separate part of this **Federal Register**, we are issuing a temporary rule amending the regulations to implement the provisions of Public Law 105–277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. These regulations implement the law by prohibiting, with certain exceptions, the transfer to and possession of firearms and ammunition by aliens in the United States in a nonimmigrant classification. In addition, we are amending the regulations to give the Secretary of the Treasury or his delegate the authority to require nonresidents to obtain an import permit in order to bring firearms and ammunition into the United States for hunting or sporting purposes. In the interest of national security and pubic safety, ATF will require nonimmigrant aliens to obtain import permits for all importations of firearms and ammunition into the United States (except for those exempt importations specified in the regulations) as of the effective date of the temporary rule. The temporary regulations also serve as the text of this notice of proposed rulemaking for final regulations.

DATES: Written comments must be received on or before May 6, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: Notice No. 935.* Written comments must be signed, and may be of any length.

E-mail comments may be submitted to: *nprm@atfhq.atf.treas.gov.* E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on not more than three pages 8½″ × 11″ in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See the Public Participation section at the end of this notice for requirements for submitting written comments by facsimile.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

We have determined that this proposed regulation is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required.

B. Regulatory Flexibility Act

We hereby certify that this proposed regulation, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities. The paperwork burdens associated with compliance with the proposed regulation are not significant. Accordingly, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the function of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced; and

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collections of information in this proposed regulation are in 27 CFR 178.44, 178.45, 178.120, and 178.124. This information is required to implement the provisions of Public Law 105–277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, relating to firearms disabilities for nonimmigrant aliens. The likely respondents are individuals and businesses.

Estimated total annual reporting and/or recordkeeping burden: 1,210 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .10 hour (6 minutes).

Estimated number of respondents and/or recordkeepers: 12,100.

Estimated annual frequency of responses: 12,100.

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Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

Signed: January 15, 2002.

Bradley A. Buckles,

Director.

Approved: January 15, 2002.

Timothy E. Skud,

Acting Deputy Assistant Secretary, Regulatory, Tariff and Trade Enforcement.

[FR Doc. 02–2715 Filed 2–1–02; 8:45 am]

BILLING CODE 4810–31–P

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Federal Register

Vol. 67, No. 24

Tuesday, February 5, 2002

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4869–5040 1
5041–5194 4
5195–5430 5

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
13254 4869

5 CFR

330 5195
332 5195
351 .....5195, 5196
353 5195

7 CFR

301 5041
319 4873
Proposed Rules:
29 4926

9 CFR

94 4877
Proposed Rules:
94 4927

14 CFR

23 5196
39 .....4878, 4895, 4896, 5042, 5043, 5148
71 .....4898, 5044, 5198
330 4899
Proposed Rules:
1 5368
21 5368
43 5368
45 5368
61 5368
65 5368
91 5368

16 CFR

303 4901

17 CFR

240 5199

19 CFR

Proposed Rules:
24 4930
123 4930
132 4930
142 4930

21 CFR

10 4904
201 4904
211 5046
226 5046
250 4904
290 4904
310 4904
329 4904
341 4904
361 4904
369 4904
510 5046
514 5046
606 4904
610 4904

26 CFR

1 .....4907, 5061, 5148, 5203
602 .....5061, 5203
Proposed Rules:
1 .....5074, 5076, 5148
31 5076
301 4938

27 CFR

178 5422
Proposed Rules:
178 5428

29 CFR

Proposed Rules:
2510 5245

30 CFR

724 5203
846 5203
901 5204
917 5207

33 CFR

117 .....4909, 5062, 5063, 5064
165 .....4909, 4911
Proposed Rules:
117 5076

37 CFR

259 5213

38 CFR

Proposed Rules:
20 4939

39 CFR

551 5215

40 CFR

52 .....5064, 5152, 5170
70 5216
180 4913
300 5218
Proposed Rules:
52 5078
300 5246

41 CFR

302–11 4923

43 CFR

Proposed Rules:
3809 4940

44 CFR

64 5221

65 .....5222, 5224, 5227, 5230
67.....5232, 5234
Proposed Rules:
67 .....5246, 5249, 5251, 5254

47 CFR

73 .....5069, 5070, 5241
Proposed Rules:
73.....4941, 5080
80.....5080

48 CFR

1501.....5070
1502.....5070
1515.....5070
1517.....5070
1536.....5070
1552.....5070

49 CFR

Proposed Rules:
107.....4941
171.....4941
172.....4941
173.....4941
177.....4941
178.....4941
180.....4941
567.....5084
571.....5084
574.....5084
575.....5084

50 CFR

648.....5241
679.....5148
Proposed Rules:
Ch. I 4940

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 5, 2002

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):

Equines; commercial transportation to slaughter facilities; published 12-7-01

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

California; published 2-5-02

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Alabama; published 2-5-02

Kentucky; published 2-5-02

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright Arbitration Royalty Panel rules and procedures:

Digital audio recording technology royalty funds; claims filing requirements; waiver; published 2-5-02

PERSONNEL MANAGEMENT OFFICE

Employment:

Placement assistance and reduction in force; published 2-5-02

Reduction in force retreat rights; published 2-5-02

POSTAL SERVICE

Postal programs:

Semipostal stamp program; published 2-5-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cherries (tart) grown in—

Michigan et al.; comments due by 2-13-02; published 1-24-02 [FR 02-01423]

Grapes grown in—

California; comments due by 2-11-02; published 1-10-02 [FR 02-00576]

Melons grown in—

Texas; comments due by 2-11-02; published 1-10-02 [FR 02-00577]

Onions grown in—

Texas; comments due by 2-11-02; published 1-10-02 [FR 02-00575]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Sea turtle conservation requirements; comments due by 2-15-02; published 12-14-01 [FR 01-30929]

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

Puerto Rico and U.S. Virgin Islands queen conch resources; comments due by 2-11-02; published 1-10-02 [FR 02-00645]

West Coast States and Western Pacific fisheries—

Pacific coast groundfish; comments due by 2-11-02; published 1-11-02 [FR 01-32262]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Pacific coast groundfish; comments due by 2-11-02; published 1-11-02 [FR 01-32261]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Marine mammals:

Incidental taking—

Atlantic Large Whale Take Reduction Plan; comments due by 2-11-02; published 1-10-02 [FR 02-00273]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

State operating permits programs—

Iowa; comments due by 2-11-02; published 1-11-02 [FR 02-00757]

Air programs; State authority delegations:

Various States; comments due by 2-13-02; published 1-14-02 [FR 02-00702]

Hazardous waste program authorizations:

Washington; comments due by 2-14-02; published 1-15-02 [FR 02-00626]

FEDERAL COMMUNICATIONS COMMISSION

Radio broadcasting:

Broadcast stations and newspapers; cross-ownership; comments due by 2-15-02; published 1-8-02 [FR 02-00372]

Multiple ownership of radio broadcast stations in local markets; rules and policies and radio markets definition; comments due by 2-11-02; published 12-11-01 [FR 01-30527]

Radio frequency devices:

Biennial review and update of rules; comments due by 2-11-02; published 11-27-01 [FR 01-29344]

Radio services, special:

Personal radio services—

Garmin International, Inc.; short-range two-way voice communication service; comments due by 2-13-02; published 1-14-02 [FR 02-00787]

Radio stations; table of assignments:

Arizona; comments due by 2-11-02; published 1-8-02 [FR 02-00376]

INTERIOR DEPARTMENT

Indian Affairs Bureau

Transportation Equity Act for 21st Century; implementation:

Indian Reservation Roads funds; 2002 FY funds distribution; comments due by 2-11-02; published 1-10-02 [FR 02-00268]

INTERIOR DEPARTMENT

Land Management Bureau

Rulemaking documents; opportunity to resubmit comments due to interruption of mail service; comments due by 2-15-02; published 2-1-02 [FR 02-01917]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Rulemaking documents; opportunity to resubmit comments due to interruption of mail service; comments due by 2-15-02; published 2-1-02 [FR 02-01917]

JUSTICE DEPARTMENT

Interstate Transportation of Dangerous Criminals Act; implementation:

Private companies that transport violent prisoners; minimum safety and security standards; comments due by 2-15-02; published 12-17-01 [FR 01-30937]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

Safety and health; comments due by 2-11-02; published 12-13-01 [FR 01-30772]

PERSONNEL MANAGEMENT OFFICE

Employment:

Agency vacancy announcements; reasonable accommodation statement requirement; comments due by 2-11-02; published 12-11-01 [FR 01-30531]

PERSONNEL MANAGEMENT OFFICE

Health benefits, Federal employees:

Health care providers; debarments and suspensions; administrative sanctions; comments due by 2-11-02; published 12-12-01 [FR 01-30529]

PERSONNEL MANAGEMENT OFFICE

Pay administration:

Administrative appeals judge positions; new pay system; comments due by 2-11-02; published 12-11-01 [FR 01-30530]

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:

Savannah River, GA; regulated navigation area; comments due by 2-12-02; published 12-14-01 [FR 01-30840]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Air Tractor, Inc.; comments due by 2-15-02; published 12-27-01 [FR 01-31555]

Boeing; comments due by 2-11-02; published 12-26-01 [FR 01-31558]

Cessna; comments due by 2-11-02; published 12-17-01 [FR 01-30954]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Israel Aircraft Industries, Ltd.; comments due by 2-14-02; published 1-15-02 [FR 02-00799]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

MD Helicopters Inc.; comments due by 2-15-02; published 12-17-01 [FR 01-31042]

Pratt & Whitney; comments due by 2-14-02; published 1-15-02 [FR 02-00905]

Class D and Class E airspace; comments due by 2-11-02; published 1-7-02 [FR 02-00252]

Class E airspace; comments due by 2-11-02; published 1-7-02 [FR 02-00251]

Class E airspace; correction; comments due by 2-11-02; published 1-23-02 [FR C2-00248]

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Alcohol and drug use control:

Random testing and other requirements application to employees of foreign railroad based outside U.S. and perform train or dispatching service in U.S.; comments due by 2-11-02; published 12-11-01 [FR 01-30184]

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

U.S. rail operations; U.S. locational requirement for dispatching; comments due by 2-11-02; published 12-11-01 [FR 01-30185]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Defect and noncompliance—

Manufacturer's remedy program; acceleration; comments due by 2-11-02; published 12-11-01 [FR 01-30488]

Reimbursement prior to recall; comments due by 2-11-02; published 12-11-01 [FR 01-30487]

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Firearms:

Commerce in explosives—

Arson and explosives; national repository for information; comments due by 2-13-02; published 11-15-01 [FR 01-28597]

TREASURY DEPARTMENT

Customs Service

Merchandise entry:

Single entry for split shipments; comments due by 2-14-02; published 1-23-02 [FR 02-01602]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes, etc.:

Statutory stock options; Federal Insurance Contributions Act, Federal Unemployment Tax Act, and income tax collection at source; application; comments due by 2-14-02; published 11-14-01 [FR 01-28535]

Procedure and administration:

Returns and return information disclosure by other agencies; cross-reference; comments due by 2-14-02; published 12-13-01 [FR 01-30620]

TREASURY DEPARTMENT

Counter money laundering requirements:

Bank Secrecy Act; implementation—

Foreign shell banks, correspondent accounts; and foreign banks, correspondent accounts recordkeeping and termination; comments due by 2-11-02; published 12-28-01 [FR 01-31849]

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

Independent medical opinions; comments due by 2-11-02; published 12-12-01 [FR 01-30612]

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 107th Congress has been completed. It will resume when bills are enacted into public law during the next session of Congress. A cumulative List of Public Laws for the first session of the 107th Congress can be found in Part II of the **Federal Register** issue of February 1, 2002.

Last List January 28, 2002

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