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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Parts 97 and 130

[Docket No. 00–087–2]

Fee Increases for Overtime Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are changing our hourly rates for Sunday, holiday, or other overtime work performed by employees of the Animal and Plant Health Inspection Service (APHIS) for any person, firm, or corporation having ownership, custody, or control of animals, poultry, animal byproducts, germ plasm, organisms, vectors, plants, plant products, or other regulated commodities or articles subject to inspection, laboratory testing, certification, or quarantine under the regulations. We are increasing these overtime rates for each of the fiscal years 2002 through 2006 to reflect the anticipated costs associated with providing these services during each year. Establishing the overtime rate changes in advance will allow users of APHIS' services to incorporate the rates into their budget planning. We are also making several nonsubstantive changes to the regulations that correct errors or inconsistencies.

EFFECTIVE DATE: August 11, 2002.

FOR FURTHER INFORMATION CONTACT: For information concerning Agricultural Quarantine and Inspection program operations, contact Mr. Colonel Locklear, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8372.

For information concerning Veterinary Services program operations, contact Dr. Karen James-Preston, Assistant Director, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1236; (301) 734–3261.

For information concerning user fee development, contact Ms. Kris Caraher, Accountant, User Fees Section, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1231; (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR chapter III and 9 CFR chapter I, subchapters D and G, require inspection, laboratory testing, certification, or quarantine of certain animals, poultry, animal byproducts, germ plasm, organisms, vectors, plants, plant products, or other regulated commodities or articles intended for importation into, or exportation from, the United States. With some exceptions, when these services must be provided by an Animal and Plant Health Inspection Service (APHIS) employee on a Sunday or on a holiday, or at any other time outside the APHIS employee's regular duty hours, the Government charges an hourly overtime fee for the services in accordance with 7 CFR part 354 and 9 CFR part 97.

Based on changes to the costs associated with providing inspection, laboratory testing, certification, and quarantine services outside of an employee's normal tour of duty, we determined that adjustments to the overtime rates in 7 CFR part 354 and 9 CFR part 97 were necessary in order for APHIS to recover the full cost of providing these services. Therefore, we proposed to set hourly overtime rates for inspection, laboratory testing, certification, and quarantine services provided outside of an employee's normal tour of duty for fiscal years 2002 through 2006. Our proposal was published in the **Federal Register** on April 22, 2002 (67 FR 19524–19534, Docket No. 00–087–1). The proposed overtime rates were based on our costs of providing the services, including direct labor costs, area delivery costs, billing and collection costs, program direction and support costs, agency/management support costs, central/departmental charges, and a reserve component, plus adjustments for inflation and anticipated annual increases in the salaries of employees who provide the services.

We also proposed to make the several nonsubstantive changes to the regulations to correct errors or inconsistencies.

We solicited comments concerning our proposal for 60 days ending June 21, 2002. We did not receive any comments by that date. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. This is a full cost recovery program. In order to allow for orderly implementation and maximum recovery of costs, the rule will be effective on August 11, 2002, which is the beginning of a pay period. This effective date will provide users of overtime services with more than 2 weeks time to take the new rates into account in their operational and budget planning.

Executive Order 12866 and Regulatory Flexibility Act

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

APHIS charges hourly overtime rates to individuals, firms, and corporations requesting inspection, testing, certification, or quarantine services at laboratories, border ports, ocean ports, rail ports, quarantine facilities, and airports outside of the regularly established hours of service. These overtime rates vary depending on what type of service is performed and whether the service is performed on Sundays or on Saturdays, holidays, or weekdays. There is one overtime rate schedule for inspection, laboratory testing, certification, or quarantine of animals and animal or agricultural products or articles and another schedule for commercial airline inspection services.

Prior to the effective date of this final rule, APHIS charged $39.36 per hour per employee for services provided to

owners and operators of aircraft outside of the regularly established hours of service on a Sunday, and $30.64 per hour per employee for services provided to owners and operators of aircraft outside the employee's regular tour of duty on a holiday or any other period. APHIS charged $47.96 per hour per employee for those services performed at the request of all users except owners and operators of aircraft on Sundays, and $37.84 per hour per employee for services performed at the request of all users except owners or operators of aircraft on a holiday or any other time outside the employee's regular tour of duty. Those rates were established in 1993.

This final rule establishes overtime rates for inspection, laboratory testing, certification, or quarantine services performed by an employee outside of his or her regularly scheduled tour of duty for fiscal years 2002 through 2006. Table 1 shows the hourly overtime rates for fiscal years 2002 through 2006.

TABLE 1.—OVERTIME RATES

[Per Hour]

	Outside employee's normal tour of duty	Aug. 11, 2002–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Inspection, testing, certification, or quarantine of animals and animal or agricultural products.	Monday–Saturday and holidays.	$45.00	$46.00	$48.00	$49.00	$51.00
	Sundays	59.00	61.00	63.00	65.00	67.00
Commercial airline inspection services.	Monday–Saturday and holidays.	36.00	37.00	39.00	40.00	41.00
	Sundays	48.00	49.00	51.00	53.00	55.00

The percentage increase in hourly overtime rates for fiscal year (FY) 2002 over the overtime rates established in 1993 is shown in table 2. Because the overtime rates for FY 2002 reflect cost increases incurred since 1993, the increase in overtime rates is highest for this year. Table 2 also lists the average annual percentage increase in the overtime rates from fiscal years 2002 through 2006.

TABLE 2.—PERCENTAGE INCREASE IN HOURLY OVERTIME RATES

Rate category	Outside of employee's normal tour of duty	Current hourly overtime rate*	FY 02 hourly overtime rate	Increase in FY 02 rate over current rate (%)	Average annual increase for FY 02–06 (%)
Inspection, testing, certification, or quarantine of animals and animal or agricultural products.	Monday–Saturday and holidays.	$37.84	$45.00	18.9	3.2
	Sundays	47.96	59.00	23.0	3.3
Commercial airline inspections services	Monday–Saturday and holidays.	30.64	36.00	17.5	3.3
	Sundays	39.36	48.00	22.0	3.5

* "Current hourly overtime rate" refers to those rates established in 1993.

Overtime services performed for all users, except owners and operators of aircraft, outside of regularly scheduled hours of operation on Monday through Saturday or on holidays account for three-fourths of all overtime hours. During fiscal years 1998 through 2000, overtime services performed for all users, except owners and operators of aircraft, outside of regularly scheduled hours of operation on Monday through Saturday or on holidays averaged 286,749 hours per year, or 76 percent of all overtime hours. The average hours of overtime services performed annually during fiscal years 1998 through 2000 for each overtime rate category are shown in table 3, along with each rate category's percentage of that total.

TABLE 3.—AVERAGE ANNUAL OVERTIME HOURS

[Fiscal Years 1998 Through 2000]

Rate category	Outside of employee's normal tour of duty	Average annual overtime hours (FY 98–00)	Percentage of total
Inspection, testing, certification, or quarantine of animals and animal or agricultural products.	Monday–Saturday and holidays	286,749	76
	Sundays	28,165	7
Commercial airline inspection services	Monday–Saturday and holidays	45,857	12
	Sundays	18,398	5
Total		379,169	100

Because the number of overtime hours in each rate category is unknown for FY 2002 and beyond, the impact of this rule on APHIS' revenues in those years is also unknown. Total overtime hours for all rate categories combined have shown a steady increase from 341,336 hours in FY 1998 to 390,600 hours in FY 1999 and 405,570 hours in FY 2000. This increase would suggest that the use of overtime services will continue to increase in the future, especially given that world trade is also likely to increase. In this regard, it is unlikely that demand for overtime services will lessen as a result of the rate increases.

Furthermore, we do not anticipate users of APHIS' services to alter their planned imports and exports in order to avoid the new overtime rates, given the low value in absolute dollar terms of the rate increases. In none of the four categories, for example, does the increase in rates exceed $11.04 in any one year. The average annual increase in overtime rates between the rate established in 1993 and the rate for FY 2006 is only $2.63 for all users of overtime services, except for commercial airline inspection services, that are performed outside of regularly scheduled hours of operation on Monday through Saturday or on holidays.[1] As shown in table 3, this overtime rate category accounts for 76 percent of all overtime hours. In many cases, the overtime rate increases for inspection, laboratory testing, certification, or quarantine services performed outside of an employee's normal tour of duty represent only a small portion of the dollar value of the plants, animals, or other commodities for which they are performed. For example, the cost of purchasing and importing a breeding-grade animal into the United States can range between $1,500 and $5,000 per head, an amount that would suggest that the overtime rate increases would be a relatively insignificant factor in an importer's decision regarding if and when an animal should be imported. Indeed, the average annual increase in overtime rates through FY 2006 of $2.63 for users of overtime services, except for commercial airline inspection services, that are performed on weekdays and Saturdays or on holidays is equivalent to less than 1 percent of the value of an animal worth $2,000.

Assuming that annual overtime hours in fiscal years 2002 through 2006 match those for fiscal year 2000, this rule will generate approximately $19 million more in revenues over that 5-year period than would be generated under the rates established in 1993 (see table 4).[2] The additional revenue generated by the changes in the hourly overtime rates corresponds to cost increases associated with providing inspection, laboratory testing, certification and quarantine services on Sundays, holidays, or at any other time outside an employee's normal tour of duty, and will allow APHIS to recover the full cost of providing these services.

TABLE 4.—ADDITIONAL REVENUES FROM NEW OVERTIME RATES—BASED ON FY 2000 OVERTIME HOURS

[In Millions]

Rate category	Outside of employee's normal tour of duty	Aug. 11, 2002–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Total
Inspection, testing, certification, or quarantine of animals and animal or agricultural products.	Monday–Saturday and holidays.	$1.13	$2.57	$3.20	$3.51	$4.14	$14.55
	Sundays	0.16	0.37	0.43	0.49	0.54	1.99
Commercial airline inspection services.	Monday–Saturday and holidays.	0.12	0.28	0.37	0.41	0.46	1.64
	Sundays	0.08	0.18	0.22	0.25	0.29	1.02
Total		1.49	3.40	4.22	4.66	5.43	19.20

This rule has the potential to affect any private individual or business entity dealing with plants, animals, poultry, germ plasm, animal products, organisms, vectors, aquaculture, or the testing of these items, including importers, exporters, brokers, dealers, animal exhibitors, laboratories, universities, and individuals who travel with their pets. Affected individuals and entities will incur higher costs. The number of individuals and businesses that could be adversely affected by this action depends on the ability of any one individual or business entity to absorb the increased costs or pass them on. This information is not available.[3] However, in many cases, some entities that pay overtime fees to APHIS, such as brokers, will be unaffected because they are able to pass those fees on to their clients. Furthermore, the amount of the overtime rate increases, both in absolute dollar terms and in percentage terms of the dollar value of the affected plants or animals, suggest that the economic impact on most individuals and entities will be minimal.

Small Entity Impact

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities, such as small businesses, organizations, and governmental jurisdictions. All entities affected by the overtime rate increases, both large and small, will incur higher costs.

It is reasonable to assume that most businesses affected by this rule are small in size. This is because most U.S. businesses in general are small, based on the standards of the U.S. Small

[1] Users of APHIS' services during overtime periods are typically charged for between 3 and 6 hours of overtime per service request. As a practical matter, therefore, the actual impact for users of each service request would typically be 3 to 6 times the rate increase for 1 hour of overtime service. However, the year-to-year hourly overtime rate increases are so low in absolute dollar terms that these rate increases should not cause most users to alter their planned imports and exports.

[2] Because this rule is being published after the start of FY 2002, the FY 2002 column of the table projects additional revenues for only one-half of that fiscal year, assuming that the number of overtime hours would be spread evenly throughout the year. For FY 2002, therefore, we used one-half the number of annual overtime hours worked during FY 2000 to calculate the additional revenue generated by the FY 2002 overtime rates over the current rates. Given that this rule becomes effective with less than 6 months remaining in FY 2002, the actual revenues generated in FY 2002 are expected to be less than those indicated in the table for FY 2002.

[3] Even if a list of the current users of APHIS' services during overtime hours were available, those users may be unwilling, for proprietary reasons, to provide the financial data needed to assess their ability to absorb the increased costs.

Business Administration (SBA). In 1997, for example, there were 5,769 U.S. firms in NAICS 541710, a classification comprised of firms primarily engaged in conducting research and experimental development in the physical, engineering, or life sciences, including agriculture and veterinary subjects. Of those 5,769 firms, 4,607 were in operation for all of 1997 and, of those, all but 28 had fewer than 500 employees, the SBA's small entity criterion for firms in that NAICS category.[4] Accordingly, most of the businesses potentially affected by this rule are likely to be small in size. However, for the reasons discussed above, the overtime rate increases will not have a significant economic impact on those businesses.

Alternatives

One alternative to this rule would be to make no changes to the current overtime rates for inspection, laboratory testing, certification, or quarantine services performed by an employee on a Sunday or holiday or any time outside of his or her regular tour of duty. We do not consider leaving the current overtime rates unchanged to be a reasonable alternative because we would not recover the full cost for providing these services during overtime periods. This alternative would place the burden of increased costs for overtime services on the general taxpayer instead of the users of those services.

Another alternative to this rule would be to either exempt small businesses from the overtime rate increases or establish a different overtime rate schedule for small businesses. Every business, including small businesses, using a Government service needs to pay the cost of that service, rather than having other businesses pay a disproportionate share or having those costs passed on to the general public. Therefore, we do not consider exempting small businesses from these overtime rates or establishing a different user fee schedule for small businesses a viable option because it would not allow for the full recovery of our costs from all users of the overtime services.

Cost-Benefit Analysis

The benefit of user fees is the shift in the payment for services from taxpayers as a whole to those persons who are receiving the Government service. While taxes may not change by the same amount as the change in user fee collections, there is a related shift in the appropriation of taxes to Government programs that allows those tax dollars to be applied to other programs that benefit the public. Therefore, there will be a relative savings to taxpayers as a result of the changes in the hourly overtime rates.

The administrative cost involved in obtaining these savings will be minimal. APHIS already has a user fee program and a mechanism for collecting user fees in place; this rule will simply update the existing fees in that system. Accordingly, increases in administrative costs will be small. Because the savings to taxpayers are sufficiently large and the administrative costs will be small, it is likely that the net gain in reducing the burden on taxpayers as a whole will outweigh the cost of administering the user fee program with the updated user fees contained in this rule.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects

7 CFR Part 354

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

9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we are amending 7 CFR part 354 and 9 CFR parts 97 and 130 as follows:

TITLE 7—[AMENDED]

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

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

Authority: 7 U.S.C. 8311; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

2. In § 354.1, paragraph (a) is amended as follows:

a. By revising the introductory text of paragraph (a)(1) to read as set forth below.

b. By revising paragraph (a)(1)(iii) to read as set forth below.

c. In paragraph (a)(2), by revising the first sentence to read as set forth below.

§ 354.1 Overtime work at border ports, sea ports, and airports.

(a)(1) Any person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine under this chapter and subchapter D of chapter I, title 9 CFR, who requires the services of an employee of the Animal and Plant Health Inspection Service on a Sunday or holiday, or at any other time outside the regular tour of duty of that employee, shall sufficiently in advance of the period of Sunday, holiday, or overtime service request the Animal and Plant Health Inspection Service inspector in charge to furnish the service during the overtime or Sunday or holiday period, and shall pay the Government at the rate listed in the following table, except as provided in paragraphs (a)(1)(i), (ii), and (iii) of this section:

[4] Source: SBA and U.S. Census Bureau.

OVERTIME FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF PLANTS, PLANT PRODUCTS, ANIMALS, ANIMAL PRODUCTS OR OTHER REGULATED COMMODITIES

Outside the employee's normal tour of duty	Overtime rates (per hour)				
	Aug. 11, 2002–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$45.00	$46.00	$48.00	$49.00	$51.00
Sundays	59.00	61.00	63.00	65.00	67.00

* * * * * * *

(iii) The overtime rate to be charged owners or operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of the aircraft, for work performed outside of the regularly established hours of service is listed in the following table:

OVERTIME FOR COMMERCIAL AIRLINE INSPECTION SERVICES [1]

Outside the employee's normal tour of duty	Overtime rates (per hour)				
	Aug. 11, 2002–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$36.00	$37.00	$39.00	$40.00	$41.00
Sundays	48.00	49.00	51.00	53.00	55.00

[1] These charges exclude administrative overhead costs.

(2) A minimum charge of 2 hours shall be made for any Sunday or holiday or unscheduled overtime duty performed by an employee on a day when no work was scheduled for him or her, or which is performed by an employee on his or her regular workday beginning either at least 1 hour before his or her scheduled tour of duty or which is not in direct continuation of the employee's regular tour of duty.

* * *

* * * * *

TITLE 9—[AMENDED]

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

3. The authority citation for part 97 is revised to read as follows:

Authority: 7 U.S.C. 8311; 49 U.S.C. 80503; 7 CFR 2.22, 280, and 371.4.

4. Section 97.1 is amended as follows:

a. By revising paragraph (a), introductory text, and paragraph (a)(3) to read as set forth below.

b. In paragraph (b), by revising the first sentence to read as set forth below.

§ 97.1 Overtime services relating to imports and exports.

(a) Any person, firm, or corporation having ownership, custody, or control of animals, animal byproducts, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine under this subchapter and subchapter G of this chapter, and who requires the services of an employee of the Animal and Plant Health Inspection Service on a Sunday or holiday, or at any other time outside the regular tour of duty of the employee, shall sufficiently in advance of the period of Sunday or holiday or overtime service request the Animal and Plant Health Inspection Service inspector in charge to furnish the service and shall pay the Government at the rate listed in the following table, except as provided in paragraphs (a)(1), (a)(2), and (a)(3) of this section:

OVERTIME FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF ANIMALS, ANIMAL PRODUCTS OR OTHER REGULATED COMMODITIES

Outside the employee's normal tour of duty	Overtime rates (per hour)				
	Aug. 11, 2002–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$45.00	$46.00	$48.00	$49.00	$51.00
Sundays	59.00	61.00	63.00	65.00	67.00

* * * * *

(3) The overtime rate to be charged owners or operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of the aircraft, for work performed outside of the regularly established hours of service is listed in the following table:

OVERTIME FOR COMMERCIAL AIRLINE INSPECTION SERVICES [1]

Outside the employee's normal tour of duty	Overtime rates (per hour)				
	Aug. 11, 2002–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$36.00	$37.00	$39.00	$40.00	$41.00
Sundays	48.00	49.00	51.00	53.00	55.00

[1] These charges exclude administrative overhead costs.

(b) A minimum charge of 2 hours shall be made for any Sunday or holiday or unscheduled overtime duty performed by an employee on a day when no work was scheduled for him or her, or which is performed by an employee on his or her regular workday beginning either at least 1 hour before his or her scheduled tour of duty or which is not in direct continuation of the employee's regular tour of duty.

* * *

* * * * *

PART 130—USER FEES

5. The authority citation for part 130 is revised to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622, 8303, 8304, 8306–8308, 8310, 8311, 8313, 8315, and 8316; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

6. In § 130.7, paragraph (a), the table is revised to read as follows:

§ 130.7 User fees for import or entry services for live animals at land border ports along the United States-Canada border.

(a) * * *

Type of live animal	Unit	User fee		
		Oct. 1, 2001–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Beginning Oct. 1, 2003
Animals being imported into the United States				
Breeding animals (Grade animals, except horses):				
Sheep and goats	per head	$0.50	$0.50	$0.50
Swine	per head	0.75	0.75	0.75
All others	per head	3.25	3.25	3.25
Feeder animals:				
Cattle (not including calves)	per head	1.50	1.50	1.50
Sheep and calves	per head	0.50	0.50	0.50
Swine	per head	0.25	0.25	0.25
Horses (including registered horses), other than slaughter and in-transit.	per head	27.00	28.00	29.00
Poultry (including eggs), imported for any purpose	per load	47.00	48.00	50.00
Registered animals (except horses)	per head	5.50	5.75	6.00
Slaughter animals (except poultry)	per load	24.00	24.00	25.00
Animals transiting [1] the United States				
Cattle	per head	1.50	1.50	1.50
Sheep and goats	per head	0.25	0.25	0.25
Swine	per head	0.25	0.25	0.25
Horses and all other animals	per head	6.50	6.75	6.75

[1] The user fee in this section will be charged for in-transit authorizations at the port where the authorization services are performed. For additional services provided by APHIS, at any port, the hourly user fee rate in § 130.30 will apply.

* * * * *

§ 130.20 [Amended]

7. In § 130.20, paragraph (b)(1) is amended by removing the citation ''§ 130.21(a)'' and adding the citation ''§ 130.30(a)'' in its place.

8. In § 130.50, paragraph (b)(3)(i), the table is revised to read as follows:

§ 130.50 Payment of user fees.

* * * * *

(b) * * *

(3) * * *

(i) * * *

OVERTIME FOR FLAT RATE USER FEES [1] [2]

	Outside of the employee's normal tour of duty	Overtime rates (per hour)				
		Aug. 11, 2002–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Rate for inspection, testing, certification or quarantine of animals, animal products or other commodities. [3]	Monday–Saturday and holidays.	$45.00	$46.00	$48.00	$49.00	$51.00
	Sundays	59.00	61.00	63.00	65.00	67.00
Rate for commercial airline inspection services. [4]	Monday–Saturday and holidays.	36.00	37.00	39.00	40.00	41.00

OVERTIME FOR FLAT RATE USER FEES [1] [2]—Continued

	Outside of the employee's normal tour of duty	Overtime rates (per hour)				
		Aug. 11, 2002–Sept. 30, 2002	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
	Sundays	48.00	49.00	51.00	53.00	55.00

[1] Minimum charge of 2 hours, unless performed on the employee's regular workday and performed in direct continuation of the regular workday or begun within an hour of the regular workday.
[2] When the 2-hour minimum applies, you may need to pay commuted travel time. (See § 97.1(b) of this chapter for specific information about commuted travel time.)
[3] See § 97.1(a) of this chapter or 7 CFR 354.3 for details.
[4] See § 97.1(a)(3) of this chapter for details.

* * * * *

Done in Washington, DC, this 19th day of July, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–18844 Filed 7–24–02; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 313

RIN 3064–AC40

Procedures for Corporate Debt Collection

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is issuing a new regulation governing procedures for corporate debt collection. The Debt Collection Improvement Act of 1996 requires agencies to promulgate regulations on this subject. The regulation sets forth the procedures the FDIC will follow in collecting debts owed to the United States. These procedures include collection of debts through administrative offset, salary offset, administrative wage garnishment and tax refund offset.

EFFECTIVE DATE: August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Manuel A. Palau (202) 898–8829 of the Legal Division; Connie Brindle (202) 416–7224 of the Division of Finance; or David Harrington (202) 942–3396 of the Division of Administration. The FDIC's main office is located at 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

This rule implements changes to the law made by the Debt Collection Improvement Act of 1996 (DCIA). The DCIA requires federal agencies to collect debts owed to the United States under regulations prescribed by the head of the agency, and standards prescribed by the Department of Justice and the Department of the Treasury. 31 U.S.C. 3711. These standards, known as the Federal Claims Collection Standards (FCCS), became effective on December 22, 2000. 31 CFR chapter IX and parts 900 through 904.

The DCIA also requires agencies, prior to collecting debts owed to the United States by administrative offset, to: (1) adopt without change regulations on collecting debts by administrative offset promulgated by the Department of Justice or Department of the Treasury (FCCS); or (2) prescribe agency regulations for collecting such debts by administrative offset, which are consistent with the FCCS. 31 U.S.C. 3716. The agency regulations protect the minimum due process rights that must be afforded to the debtor when an agency seeks to collect a debt by administrative offset, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the United States.

The FDIC has decided to issue its own agency regulations for debt collection and administrative offset, in part to account for the FDIC's status as an independent regulatory agency. The regulations are, however, consistent with the FCCS, as required by the DCIA. The salary offset portion of the regulations has been submitted to and approved by the Office of Personnel Management (OPM), as required by 5 U.S.C. 5514. In addition, the tax refund offset provisions of the regulations satisfy the requirement in 31 CFR 285.2(c) that the FDIC adopt agency regulations authorizing its collection of debts by administrative offset in general and tax refund offset in particular. The administrative wage garnishment provisions of the regulations satisfy the requirement in 31 CFR 285.11(f) that the FDIC adopt regulations for the conduct of administrative wage garnishment hearings consistent with 31 CFR 285.11.

In addition to these legal authorities, the FDIC is issuing these regulations pursuant to 12 U.S.C. 1819(a), which authorizes the FDIC to adopt such reasonable regulations as it deems necessary to carry out its corporate functions and duties.

II. Discussion of the Rule

A. Subpart A—Scope, Purpose, Definitions and Delegations of Authority

The regulations apply only to debts owed to the United States which arise out of FDIC transactions and functions in its corporate capacity, including, but not limited to: employee or former employee matters such as travel-related claims, claims arising out of the travel card program, and erroneous overpayments; agency contracting activities involving corporate operations; and debts related to requests for documents under the Freedom of Information Act (FOIA). These regulations do not apply to debts owed to or payments made by the FDIC in connection with the FDIC's receivership, liquidation, supervision, enforcement, or insurance responsibilities, nor do they limit or affect the FDIC's authority pursuant to 12 U.S.C. 1819(a) and 1820(a).

When the FDIC Director of the Division of Administration (DOA) or Director of the Division of Finance (DOF) determines that it is appropriate to initiate debt collection or seek administrative offset to collect that debt, the Director shall conform to the procedural standards for collecting debts set forth in the FCCS. 31 CFR parts 900 through 904. The FCCS establish standards governing the following areas of the debt collection process: prompt demand of payment of the claim from the debtor; review of the existence or amount of a debt claimed, upon the debtor's demand for a final agency determination; standards for collecting debts in installment payments; the required assessment of

interest, penalties and administrative costs on debts claimed; standards for compromise of claims due; standards to be followed in determining whether to suspend or terminate collection action; the required referral of delinquent debts to the Secretary of the Treasury, for collection by means of centralized administrative offset under the Treasury Offset Program; the reporting of debts to consumer reporting agencies and the use of credit reports; and the sale of delinquent debts. In addition, when the Director elects to pursue a specific debt collection remedy such as salary offset, administrative wage garnishment, offset against Civil Service Retirement and Disability Fund payments or offset against tax refunds, the Director shall follow the applicable procedures for that debt collection remedy set forth in the regulations.

B. Subpart B—Administrative Offset

Pursuant to 31 U.S.C. 3716, the FDIC may collect debts owed to the United States through administrative offset. Under the administrative offset regulations, the FDIC is authorized to collect debts owed to the United States by: (1) withholding money payable by the FDIC to the debtor, or held by the FDIC for the debtor; or (2) by requesting that another federal agency withhold money payable to the debtor, or held by the agency for the debtor. Subpart B of the regulations meets the requirement under 31 U.S.C. 3716(b) that the FDIC promulgate regulations for administrative offset procedures and provide minimum due process rights to the debtor, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the FDIC. Subpart B of the regulations also meets the requirement under 4 CFR 901.3 that the FDIC prescribe administrative offset regulations consistent with the FCCS prior to referring delinquent debts to the Secretary of the Treasury for collection by centralized administrative offset.

C. Subpart C—Salary Offset

Subpart C of the regulations provides that when the FDIC determines it is appropriate to collect a debt by means of deductions from the current pay account of an FDIC employee, or any individual employed by the federal government (including a former FDIC employee), the FDIC shall initiate salary offset under 5 U.S.C. 5514(a)(1). Salary offset is a form of administrative offset governed by statute (5 U.S.C. 5514) and by regulations issued by the OPM (5 CFR part 550, subpart K). Salary offset may only be used to collect debts owed by persons currently employed by the federal government. As noted above, the statute requires agencies to promulgate regulations to carry out salary offset subject to OPM approval. 5 U.S.C. 5514(b)(1). Subpart C implements those statutory requirements.

D. Subpart D—Administrative Wage Garnishment

Subpart D of the regulations sets forth procedures that may be used by the FDIC to collect debts by garnishing the wages of individuals employed outside the federal government. This includes persons employed by the private sector, as well as state and local governments. The administrative wage garnishment regulations are issued in compliance with 31 U.S.C. 3720D and 31 CFR 285.11(f). Administrative wage garnishment regulations do not apply to the collection of delinquent debts from the wages of federal employees. Federal pay is subject to the federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

E. Subpart E—Tax Refund Offset

Where collection by salary offset or administrative offset is not feasible, the FDIC may also seek to recover a legally enforceable, past-due debt owed the United States by requesting that the Financial Management Service of the Department of the Treasury offset all or part of a tax refund to a debtor by the amount of the debt and pay such money to the FDIC. 31 U.S.C. 3720A; 26 CFR 301.6402 through 6406. In order to collect a debt by means of tax refund offset, the FDIC is required to promulgate its own regulations on salary offset, administrative offset, and tax refund offset. 31 U.S.C. 3720A(b)(4); 31 CFR 285.2. Subpart E of the regulations implements this requirement.

F. Subpart F—Civil Service Retirement and Disability Fund Offset

Under certain circumstances, the FDIC may also request that money payable from the Civil Service Retirement and Disability Fund be offset by the OPM to recover a valid debt due to the United States. 5 CFR 831.1801 through 831.1808. The regulations governing such offsets provide that creditor agencies may make such requests to OPM upon compliance with the administrative offset procedures required under 31 U.S.C. 3716, or the salary offset procedures required under 5 U.S.C. 5514, and the corresponding regulations. Subpart F of the regulations provides a process for such offset.

G. Subpart G—Mandatory Centralized Administrative Offset

When the FDIC is the creditor agency, it is required to refer all legally enforceable, non-tax debts that are delinquent (over 180 days past due), as defined in the FCCS, to the Secretary of the Treasury, to enable the Secretary to seek collection by centralized administrative offset. 31 U.S.C. 3716. Subpart G of the regulations implements this requirement.

III. Administrative Procedure Act

No notice of proposed rulemaking is required under the Administrative Procedure Act (APA) because these rules relate solely to agency procedure and practice. 5 U.S.C. 553(b)(3)(A). Furthermore, notice and an opportunity for public comment are not necessary prior to issuance of this final rule because it implements a definitive statutory scheme mandated by the DCIA.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, the FDIC hereby certifies that the rules set forth in this notice do not have a significant economic impact on a substantial number of small business entities. The rule applies primarily to federal agencies and employees and a limited number of business entities. 5 U.S.C. 605(b).

V. Paperwork Reduction Act

These rules are not subject to the Paperwork Reduction Act (44 U.S.C. 3501), since they do not contain any new information collection requirements.

VI. Assessment of Impact of Federal Regulation on Families

The FDIC has determined that the rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681).

VII. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when the FDIC issues a final rule as defined by the APA at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA. The Office of

Management and Budget has determined that this final rule does not constitute a ''major rule'' as defined by SBREFA.

List of Subjects in 12 CFR Part 313

Administrative practice and procedure, Claims, Debt collection, Government employees, Hearing procedures, Wages.

For the reasons set forth in the preamble, 12 CFR part 313 is added as follows:

PART 313—PROCEDURES FOR CORPORATE DEBT COLLECTION

Subpart A—Scope, Purpose, Definitions and Delegations of Authority

Sec.
313.1 Scope.
313.2 Purpose.
313.3 Definitions.
313.4 Delegations of authority.
313.5—313.19

Subpart B—Administrative Offset

313.20 Applicability and scope.
313.21 Definitions.
313.22 Collection.
313.23 Offset prior to completion of procedures.
313.24 Omission of procedures.
313.25 Debtor's rights.
313.26 Interest.
313.27 Refunds.
313.28 No requirement for duplicate notice.
313.29 Requests for offset to other federal agencies.
313.30 Requests for offset from other federal agencies.
313.31—313.39 [Reserved]

Subpart C—Salary Offset

313.40 Scope.
313.41 Notice requirement where FDIC is creditor agency.
313.42 Procedures to request a hearing.
313.43 Failure to timely submit request for hearing.
313.44 Procedure for hearing.
313.45 Certification of debt by FDIC as creditor agency.
313.46 Notice of salary offset where FDIC is the paying agency.
313.47 Voluntary repayment agreements as alternative to salary offset where the FDIC is the creditor agency.
313.48 Special review of repayment agreement or salary offset due to changed circumstances.
313.49 Coordinating salary offset with other agencies.
313.50 Interest, penalties, and administrative costs.
313.51 Refunds.
313.52 Request from a creditor agency for services of a hearing official.
313.53 Non-waiver of rights by payments.
313.54 Exception to due process procedures.
313.55 Salary adjustments.
313.56–313.79 [Reserved]

Subpart D—Administrative Wage Garnishment

313.80 Scope and purpose.
313.81 Notice.
313.82 Debtor's rights.
313.83 Form of hearing.
313.84 Effect of timely request.
313.85 Failure to timely request a hearing.
313.86 Hearing official.
313.87 Procedure.
313.88 Format of hearing.
313.89 Date of decision.
313.90 Content of decision.
313.91 Finality of agency action.
313.92 Failure to appear.
313.93 Wage garnishment order.
313.94 Certification by employer.
313.95 Amounts withheld.
313.96 Exclusions from garnishment.
313.97 Financial hardship.
313.98 Ending garnishment.
313.99 Prohibited actions by employer.
313.100 Refunds.
313.101 Right of action.
313.102–313.119 [Reserved]

Subpart E—Tax Refund Offset

313.120 Scope.
313.121 Definitions.
313.122 Notification of debt to FMS.
313.123 Certification and referral of debt.
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Authority: 12 U.S.C. 1819(a); 5 U.S.C. 5514; Pub. L. 104–143, 110 Stat. 1321 (31 U.S.C. 3711, 3716).

Subpart A—Scope, Purpose, Definitions and Delegations of Authority

§ 313.1 Scope.

This part establishes FDIC procedures for the collection of certain debts owed to the United States.

(a) This part applies to collections by the FDIC from:

(1) Federal employees who are indebted to the FDIC;

(2) Employees of the FDIC who are indebted to other agencies; and

(3) Other persons, organizations, or entities that are indebted to the FDIC, except those excluded in paragraph (b)(3) of this section.

(b) This part does not apply:

(1) To debts or claims arising under the Internal Revenue Code of 1986 (Title 26, U.S. Code), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States;

(2) To a situation to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies; or

(3) In any case where collection of a debt is explicitly provided for or prohibited by another statute.

(c) This part applies only to debts owed to and payments made by the FDIC acting in its corporate capacity; that is, in connection with employee matters such as travel-related claims and erroneous overpayments, contracting activities involving corporate operations, debts related to requests to the FDIC for documents under the Freedom of Information Act (FOIA) or where a request for an offset is received by the FDIC from another federal agency. It does not apply to debts owed to or payments made by the FDIC in connection with the FDIC's liquidation, supervision, enforcement, or insurance responsibilities, nor does it limit or affect the FDIC's authority with respect to debts and/or claims pursuant to 12 U.S.C. 1819(a) and 1820(a).

(d) Nothing in this part 313 precludes the compromise, suspension, or termination of collection actions, where appropriate, under: standards implementing the Debt Collection Improvement Act (DCIA) (31 U.S.C. 3711 *et seq.*), the Federal Claims Collection Standards (FCCS) (31 CFR chapter IX and parts 900 through 904); or any other applicable law.

§ 313.2 Purpose.

(a) The purpose of this part is to implement federal statutes and regulatory standards authorizing the FDIC to collect debts owed to the United States. This part is consistent with the following federal statutes and regulations:

(1) DCIA at 31 U.S.C. 3711 (collection and compromise of claims); section 3716 (administrative offset), section 3717 (interest and penalty on claims), and section 3718 (contracts for collection services);

(2) 5 U.S.C. 5514 (salary offset);

(3) 5 U.S.C. 5584 (waiver of claims for overpayment);

(4) 31 CFR chapter IX and parts 900 through 904 (Federal Claims Collection Standards);

(5) 5 CFR part 550, subpart K (salary offset);

(6) 31 U.S.C. 3720D, 31 CFR 285.11 (administrative wage garnishment);

(7) 26 U.S.C. 6402(d), 31 U.S.C. 3720A and 31 CFR 285.2 (tax refund offset); and

(8) 5 CFR 831.1801 through 1808 (U. S. Office of Personnel Management (OPM) offset).

(b) Collectively, these statutes and regulations prescribe the manner in which federal agencies should proceed to establish the existence and validity of debts owed to the federal government and describe the remedies available to agencies to offset valid debts.

§ 313.3 Definitions.

Except where the context clearly indicates otherwise or where the term is defined elsewhere in this subpart, the following definitions shall apply to this subpart.

(a) *Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of government, including government corporations.

(b) *Board* means the Board of Directors of the FDIC.

(c) *Centralized administrative offset* means the mandatory referral to the Secretary of the Treasury by a creditor agency of a past due debt which is more than 180 days delinquent, for the purpose of collection under the Treasury's centralized offset program.

(d) *Certification* means a written statement transmitted from a creditor agency to a paying agency for purposes of administrative or salary offset, or to the Secretary of the Treasury for centralized administrative offset. The certification confirms the existence and amount of the debt and verifies that required procedural protections have been afforded the employee. Where the debtor requests a hearing on a claimed debt, the decision by a hearing official or administrative law judge constitutes a certification.

(e) *Chairman* means the Chairman of the FDIC.

(f) *Compromise* means the settlement or forgiveness of a debt under 31 U.S.C. 3711, in accordance with standards set forth in the FCCS and applicable federal law.

(g) *Creditor agency* means an agency of the federal government to which the debt is owed, or a debt collection center when acting on behalf of a creditor agency to collect a debt.

(h) *Debt* means an amount owed to the United States from loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures, and all other similar sources. For purposes of this part, a debt owed to the FDIC constitutes a debt owed to the United States.

(i) *Debt collection center* means the Department of the Treasury or other government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

(j) *Director* means the Director of the Division of Finance (DOF) or the Director of the Division of Administration (DOA), as applicable, or the applicable Director's delegate.

(k) *Disposable pay* means that part of current adjusted basic pay, special pay, incentive pay, retired pay, retainer pay, and, in the case of an employee not entitled to adjusted basic pay, other authorized pay, remaining for each pay period after the deduction of any amount required by law to be withheld. The FDIC shall allow the following deductions in determining the amount of disposable pay that is subject to salary offset:

(1) Federal employment taxes;

(2) Federal, state, or local income taxes to the extent authorized or required by law, but no greater than would be the case if the employee claimed all dependents to which he or she is entitled and such additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

(3) Medicare deductions;

(4) Health insurance premiums;

(5) Normal retirement contributions, including employee contributions to the Thrift Savings Plan or the FDIC 401(k) Plan;

(6) Normal life insurance premiums (*e.g.,* Serviceman's Group Life Insurance and ''Basic Life'' Federal Employee's Group Life Insurance premiums), not including amounts deducted for supplementary coverage;

(7) Amounts mandatorily withheld for the United States Soldiers' and Airmen's Home;

(8) Fines and forfeiture ordered by a court-martial or by a commanding officer.

(l) *Division of Administration* (DOA) means the Division of Administration of the FDIC.

(m) *Division of Finance* (DOF) means the Division of Finance of the FDIC.

(n) *Federal Claims Collection Standards* (FCCS) means standards published at 31 CFR chapter IX and parts 900 through 904.

(o) *Garnishment* means the process of withholding amounts from the disposable pay of a person employed outside the federal government, and the paying of those amounts to a creditor in satisfaction of a withholding order.

(p) *Hearing official* means an administrative law judge or other individual authorized to conduct a hearing and issue a final decision in response to a debtor's request for hearing. A hearing official may not be under the supervision or control of the Chairman or FDIC Board when the FDIC is the creditor agency.

(q) *Notice of Intent to Offset or Notice of Intent* means a written notice from a creditor agency to an employee, organization, or entity that claims a debt and informs the debtor that the creditor agency intends to collect the debt by administrative offset. The notice also informs the debtor of certain procedural rights with respect to the claimed debt and offset.

(r) *Notice of Salary Offset* means a written notice from a paying agency to its employee informing the employee that salary offset to collect a debt due to the creditor agency will begin at the next officially established pay interval. The paying agency transmits this notice to its employee after receiving a certification from the creditor agency.

(s) *Paying agency* means the agency of the federal government that employs the individual who owes a debt to an agency of the federal government. The same agency may be both the creditor agency and the paying agency.

(t) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(u) *Waiver* means the cancellation, remission, forgiveness or non-recovery of a debt allegedly owed by an employee to an agency, as authorized or required by 5 U.S.C. 5584 or any other law.

(v) *Withholding order* means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of administrative wage garnishment, the terms ''wage garnishment order'' and ''garnishment order'' have the same meaning as ''withholding order.''

§ 313.4 Delegations of authority.

Authority to conduct the following activities is delegated to the Director of DOA or Director of DOF, as applicable, or the applicable Director's delegate, to:

(a) Initiate and carry out the debt collection process on behalf of the FDIC, in accordance with the FCCS;

(b) Accept or reject compromise offers and suspend or terminate collection actions to the full extent of the FDIC's legal authority under 12 U.S.C. 1819(a)

and 1820(a), 31 U.S.C. 3711(a)(2), and any other applicable statute or regulation, provided, however, that no such claim shall be compromised or collection action terminated, except upon the concurrence of the FDIC General Counsel or his or her designee;

(c) Report to consumer reporting agencies certain data pertaining to delinquent debts, where appropriate;

(d) Use administrative offset procedures, including salary offset, to collect debts; and

(e) Take any other action necessary to promptly and effectively collect debts owed to the United States in accordance with the policies contained herein and as otherwise provided by law.

§§ 313.5–313.19 [Reserved]

Subpart B—Administrative Offset

§ 313.20 Applicability and scope.

The provisions of this subpart apply to the collection of debts owed to the United States arising from transactions with the FDIC. Administrative offset is authorized under the DCIA. This subpart is consistent with the FCCS on administrative offset issued by the Department of Justice.

§ 313.21 Definitions.

(a) *Administrative offset* means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt.

(b) *Person* includes a natural person or persons, profit or nonprofit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or any state or local government shall be excluded.

§ 313.22 Collection.

(a) The Director may collect a claim from a person by administrative offset of monies payable by the Government only after:

(1) Providing the debtor with due process required under this part; and

(2) Providing the paying agency with written certification that the debtor owes the debt in the amount stated and that the FDIC, as creditor agency, has complied with this part.

(b) Prior to initiating collection by administrative offset, the Director should determine that the proposed offset is within the scope of this remedy, as set forth in 31 CFR 901.3(a). Administrative offset under 31 U.S.C. 3716 may not be used to collect debts more than 10 years after the federal government's right to collect the debt first accrued, except as otherwise provided by law. In addition, administrative offset may not be used when a statute explicitly prohibits its use to collect the claim or type of claim involved.

(c) Unless otherwise provided, debts or payments not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under common law, or any other applicable statutory authority.

§ 313.23 Offset prior to completion of procedures.

The FDIC may collect a debt by administrative offset prior to the completion of the procedures described in § 313.25, if:

(a) Failure to offset a payment would substantially prejudice the FDIC's ability to collect the debt; and

(b) The time before the payment is to be made does not reasonably permit completion of the procedures described in § 313.25. Such prior offsetting shall be followed promptly by the completion of the procedures described in § 313.25.

§ 313.24 Omission of procedures.

The FDIC shall not be required to follow the procedures described in § 313.25 where:

(a) The offset is in the nature of a recoupment (*i.e.,* the FDIC may offset a payment due to the debtor when both the payment due to the debtor and the debt owed to the FDIC arose from the same transaction); or

(b) The debt arises under a contract as set forth in *Cecile Industries, Inc.* v. *Cheney,* 995 F.2d 1052 (Fed. Cir. 1993), which provides that procedural protections under administrative offset do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act; or

(c) In the case of non-centralized administrative offsets, the FDIC first learns of the existence of a debt due when there would be insufficient time to afford the debtor due process under these procedures before the paying agency makes payment to the debtor; in such cases, the Director shall give the debtor notice and an opportunity for review as soon as practical and shall refund any money ultimately found not to be due to the U.S. Government.

§ 313.25 Debtor's rights.

Unless the procedures described in § 313.23 are used, prior to collecting any claim by administrative offset or referring such claim to another agency for collection through administrative offset, the Director shall provide the debtor with the following:

(a) Written notification of the nature and amount of the claim, the intention of the Director to collect the claim through administrative offset, and a statement of the rights of the debtor under this paragraph;

(b) An opportunity to inspect and copy the records of the FDIC with respect to the claim, unless such records are exempt from disclosure;

(c) An opportunity to have the FDIC's determination of indebtedness reviewed by the Director:

(1) Any request by the debtor for such review shall be in writing and shall be submitted to the FDIC within 30 calendar days of the date of the notice of the offset. The Director may waive the time limit for requesting review for good cause shown by the debtor;

(2) Upon acceptance of a request for review by the debtor, the FDIC shall provide the debtor with a reasonable opportunity for an oral hearing when the determination turns on an issue of credibility or veracity, or the Director determines that the question of the indebtedness cannot be resolved by review of the documentary evidence alone. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the Director shall document all significant matters discussed at the hearing. In cases where an oral hearing is not required by this section, the Director shall make his determination based on a documentary hearing consisting of a review of the written record; and

(d) An opportunity to enter into a written agreement for the voluntary repayment of the amount of the claim at the discretion of the Director.

§ 313.26 Interest.

Pursuant to 31 U.S.C. 3717, the FDIC shall assess interest, penalties and administrative costs on debts owed to the United States. The FDIC is authorized to assess interest and related charges on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§ 313.27 Refunds.

Amounts recovered by administrative offset but later found not to be owed to the Government shall be promptly refunded. Unless required by law or contract, such refunds shall not bear interest.

§ 313.28 No requirement for duplicate notice.

Where the Director has previously given a debtor any of the required notice and review opportunities with respect to a particular debt, the Director is not required to duplicate such notice and

review opportunities prior to initiating administrative offset.

§ 313.29 Requests for offset to other federal agencies.

The Director may request that a debt owed to the FDIC be administratively offset against funds due and payable to a debtor by another federal agency. In requesting administrative offset, the FDIC, as the creditor agency, will certify in writing to the federal agency holding funds payable to the debtor:

(a) That the debtor owes the debt;

(b) The amount and basis of the debt; and

(c) That the FDIC has complied with the requirements of its own administrative offset regulations and the applicable provisions of 31 U.S.C. 3716 with respect to providing the debtor with due process, unless otherwise provided.

§ 313.30 Requests for offset from other federal agencies.

Any federal agency may request that funds due and payable to its debtor by the FDIC be administratively offset by the FDIC in order to collect a debt owed to such agency by the debtor. The FDIC shall initiate the requested offset only upon:

(a) Receipt of written certification from the creditor agency stating:

(1) That the debtor owes the debt;

(2) The amount and basis of the debt; and

(3) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 31 CFR 901.3, including providing any required hearing or review.

(b) A determination by the creditor agency that collection by offset against funds payable by the FDIC would be in the best interest of the United States and that such offset would not otherwise be contrary to law.

§§ 313.31—313.39 [Reserved]

Subpart C—Salary Offset

§ 313.40 Scope.

These salary offset regulations are issued in compliance with 5 U.S.C. 5514 and 5 CFR part 550, subpart K, and apply to the collection of debts owed by employees of the FDIC or other federal agencies. These salary offset procedures do not apply where an employee consents to the recovery of a debt from his current pay account. These procedures do not apply to debts arising under the Internal Revenue Code, the tariff laws of the United States or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.,* travel advances under 5 U.S.C. 5705 and employee training expenses under 5 U.S.C. 4108). These procedures do not preclude an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, or in any way questioning the amount or validity of a debt, in the manner specified by law or these agency regulations. This section also does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority. When possible, salary offset through centralized administrative offset procedures should be attempted before seeking salary offset from a paying agency different than the creditor agency.

§ 313.41 Notice requirement where FDIC is creditor agency.

Where the FDIC seeks salary offset under 5 U.S.C. 5514 as the creditor agency, the FDIC shall first provide the employee with a written Notice of Intent to Offset at least 30 calendar days before salary offset is to commence. The Notice of Intent to Offset shall include the following information and statements:

(a) That the Director has determined that a debt is owed to the FDIC and intends to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full or otherwise resolved;

(b) The amount of the debt and the factual basis for the debt;

(c) A salary offset schedule stating the frequency and amount of each deduction, stated as a fixed dollar amount or percentage of disposable pay (not to exceed 15%);

(d) That in lieu of salary offset, the employee may propose a voluntary repayment plan to satisfy the debt on terms acceptable to the FDIC, which must be documented in writing, signed by the employee and the Director or the Director's designee, and documented in the FDIC's files;

(e) The FDIC's policy concerning interest, penalties, and administrative costs, and a statement that such assessments must be made, unless excused in accordance with the FCCS;

(f) That the employee has the right to inspect and copy FDIC records not exempt from disclosure relating to the debt claimed, or to receive copies of such records if the employee or the employee's representative is unable personally to inspect the records, due to geographical or other constraints:

(1) That such requests be made in writing, and identify by name and address the Director or other designated individual to whom the request should be sent; and

(2) That upon receipt of such a request, the Director or the Director's designee shall notify the employee of the time and location where the records may be inspected and copied;

(g) That the employee has a right to request a hearing regarding the existence and amount of the debt claimed or the salary offset schedule proposed by the FDIC, provided that the employee files a request for such a hearing with the FDIC in accordance with § 313.42 that such a hearing will be conducted by an impartial official who is an administrative law judge or other hearing official not under the supervision or control of the Board;

(h) The procedure and deadline for requesting a hearing, including the name, address, and telephone number of the Director or other designated individual to whom a request for hearing must be sent;

(i) That a request for hearing must be received by the FDIC on or before the 30th calendar day following receipt of the Notice of Intent, and that filing of a request for hearing will stay the collection proceedings;

(j) That the FDIC will initiate salary offset procedures not less than 30 days from the date of the employee's receipt of the Notice of Intent to Offset, unless the employee files a timely request for a hearing;

(k) That if a hearing is held, the administrative law judge or other hearing official will issue a decision at the earliest practical date, but not later than 60 days after the filing of the request for the hearing, unless the employee requests a delay in the proceedings which is granted by the hearing official;

(l) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729 through 3731, or under any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or under any other applicable statutory authority;

(m) That the employee also has the right to request waiver of overpayment pursuant to 5 U.S.C. 5584, and may exercise any other rights and remedies available under statutes or regulations governing the program for which the collection is being made; and

(n) That amounts paid on or deducted from debts that are later waived or found not to be owed to the United States will be promptly refunded to the

employee, unless there are applicable contractual or statutory provisions to the contrary.

§ 313.42 Procedures to request a hearing.

(a) To request a hearing, an employee must send a written request to the Director. The request must be received by the Director within 30 calendar days after the employee's receipt of the Notice of Intent.

(b) The request must be signed by the employee and must fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position. The request for hearing must state whether the employee is requesting an oral or documentary hearing. If an oral hearing is requested, the request shall explain why the matter cannot be resolved by a review of documentary evidence alone.

§ 313.43 Failure to timely submit request for hearing.

If the Director does not receive an employee's request for hearing within the 30-day period set forth in § 313.42(a), the employee shall not be entitled to a hearing. However, the Director may accept an untimely request for hearing if the employee can show that the delay was the result of circumstances beyond his or her control or that he or she failed to receive actual notice of the filing deadline.

§ 313.44 Procedure for hearing.

(a) *Obtaining the services of a hearing official*. When the FDIC is the creditor agency and the debtor is an FDIC employee, the FDIC shall designate an administrative law judge or contact any agent of another agency designated in appendix A to 5 CFR part 581 to arrange for a hearing official. When the FDIC is the creditor agency and the debtor is not an FDIC employee (*i.e.,* the debtor is employed by another federal agency, also known as the paying agency), and the FDIC cannot provide a prompt and appropriate hearing before an administrative law judge or a hearing official furnished pursuant to a lawful arrangement, the FDIC may contact an agent of the paying agency designated in appendix A to 5 CFR part 581 to arrange for a hearing official. The paying agency must cooperate with the FDIC to provide a hearing official, as required by the FCCS.

(b) *Notice and format of hearing*. (1) *Notice.* The hearing official shall determine whether the hearing shall be oral or documentary and shall notify the employee of the form of the hearing. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing, which must be held within 30 calendar days after the request is received, unless the employee requests that the hearing be delayed. If the hearing will be documentary, the employee shall be notified to submit evidence and written arguments in support of his or her case to the hearing official within 30 calendar days.

(2) *Oral hearing*. The hearing official may grant a request for an oral hearing if he or she determines that the issues raised by the employee cannot be resolved by review of documentary evidence alone (*e.g.*, where credibility or veracity are at issue). An oral hearing is not required to be an adversarial adjudication, and the hearing official is not required to apply rules of evidence. Witnesses who testify in oral hearings shall do so under oath or affirmation. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official in which the employee and agency representative are given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings in which the hearing examiner interviews the employee; or

(iii) Formal written submissions followed by an opportunity for oral presentation.

(3) *Documentary hearing*. If the hearing official determines that an oral hearing is not necessary, he or she shall decide the issues raised by the employee based upon a review of the written record.

(4) *Record*. The hearing official shall maintain a summary record of any hearing conducted under this section.

(c) *Rescheduling of the hearing date*. The hearing official shall reschedule a hearing if requested to do so by both parties, who shall be given reasonable notice of the time and place of this new hearing.

(d) *Failure to appear*. In the absence of good cause, an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the Notice of Intent. If the representative of the creditor agency fails to appear, the hearing official shall proceed with the hearing as scheduled, and issue a decision based upon the oral testimony presented and the documentation submitted by both parties.

(e) *Date of decision*. The hearing official shall issue a written decision based upon the evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 calendar days after the date on which the request for hearing was received by the FDIC, unless the hearing was delayed at the request of the employee. In the event of such a delay, the 60-day decision period shall be extended by the number of days by which the hearing was postponed. The decision of the hearing official shall be final.

(f) *Content of decision*. The written decision shall include:

(1) A summary of the facts concerning the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of the repayment schedule, if applicable.

(g) *Official certification of debt*. The hearing official's decision shall constitute an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. Where the FDIC is the creditor agency but not the current paying agency, the FDIC may make a certification regarding the existence and amount of the debt owed to the FDIC, based on the hearing official's certification. The FDIC may make this certification to: the Secretary of the Treasury so that Treasury may offset the employee's current pay account by means of centralized administrative offset (5 CFR 550.1108); or to the current paying agency (5 CFR 550.1109). If the hearing official determines that a debt may not be collected through salary offset but the FDIC as the creditor agency determines that the debt is still valid, the FDIC may seek collection of the debt through other means, including administrative offset of other federal payments or litigation.

§ 313.45 Certification of debt by FDIC as creditor agency.

The Director may also issue a certification of the debt where there has not been a hearing, if the employee has admitted the debt, or failed to contest the existence and amount of the debt in a timely manner (*e.g.*, by failing to request a hearing). The certification shall be in writing and shall state:

(a) The amount and basis of the debt owed by the employee;

(b) The date the FDIC's right to collect the debt first accrued;

(c) That the FDIC's debt collection regulations have been approved by OPM pursuant to 5 CFR part 550, subpart K;

(d) If the collection is to be made by lump-sum payment, the amount and date such payment will be collected;

(e) If the collection is to be made in installments through salary offset, the number of installments to be collected, the amount of each installment, and the date of the first installment, if a date

other than the next officially established pay period; and

(f) The date the employee was notified of the debt, the action(s) taken pursuant to the FDIC's regulations, and the dates such actions were taken.

§ 313.46 Notice of salary offset where FDIC is the paying agency.

(a) Upon issuance of a proper certification by the Director for debts owed to the FDIC, or upon receipt of a proper certification from a creditor agency, the Director shall send the employee a written notice of salary offset. Such notice shall advise the employee:

(1) That certification has been issued by the Director or received from another creditor agency;

(2) Of the amount of the debt and of the deductions to be made; and

(3) Of the initiation of salary offset at the next officially established pay interval or as otherwise provided for in the certification.

(b) Where appropriate, the Director shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

§ 313.47 Voluntary repayment agreements as alternative to salary offset where the FDIC is the creditor agency.

(a) In response to a Notice of Intent, an employee may propose to voluntarily repay the debt through scheduled voluntary payments, in lieu of salary offset. An employee who wishes to repay a debt in this manner shall submit to the Director a written agreement proposing a repayment schedule. This proposal must be received by the Director within 30 calendar days after receipt of the Notice of Intent.

(b) The Director shall notify the employee whether the employee's proposed voluntary repayment agreement is acceptable. It is within the discretion of the Director whether to accept or reject the debtor's proposal, or whether to propose to the debtor a modification of the proposed repayment agreement:

(1) If the Director decides that the proposed repayment agreement is unacceptable, he or she shall notify the employee and the employee shall have 30 calendar days from the date he or she received notice of the decision in which to file a request for a hearing on the proposed repayment agreement, as provided in § 313.42; or

(2) If the Director decides that the proposed repayment agreement is acceptable or the debtor agrees to a modification proposed by the Director, the agreement shall be put in writing and signed by both the employee and the Director.

§ 313.48 Special review of repayment agreement or salary offset due to changed circumstances.

(a) An employee subject to a voluntary repayment agreement or salary offset payable to the FDIC as creditor agency may request a special review by the Director of the amount of the salary offset or voluntary repayment, based on materially changed circumstances, including, but not limited to, catastrophic illness, divorce, death, or disability. A request for special review may be made at any time.

(b) In support of a request for special review, the employee shall submit to the Director a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Monthly expenses for food, housing, clothing, and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

(c) The employee shall also file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in extreme financial hardship to the employee.

(d) The Director shall evaluate the statement and supporting documents and determine whether the original salary offset or repayment schedule imposes extreme financial hardship on the employee, for example, by preventing the employee from meeting essential subsistence expenses such as food, housing, clothing, transportation, and medical care. The Director shall notify the employee in writing within 30 calendar days of his or her determination.

(e) If the special review results in a revised salary offset or repayment schedule, the Director shall provide a new certification to the paying agency.

§ 313.49 Coordinating salary offset with other agencies.

(a) *Responsibility of the FDIC as the creditor agency.* Upon completion of the procedures established in § 313.40 through § 313.45, the Director shall take the following actions:

(1) Submit a debt claim to the paying agency, containing the information described in paragraphs (a)(2) and (a)(3) of this section, together with the certification of debt or an installment agreement (or other instruction regarding the payment schedule, if applicable).

(2) If the collection must be made in installments, inform the paying agency of the amount or percentage of disposable pay to be collected in each installment. The Director may also inform the paying agency of the commencement date and number of installments to be paid, if a date other than the next officially established pay period is required.

(3) Unless the employee has consented to the salary offset in writing or has signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency, the Director must also advise the paying agency of the actions the FDIC has taken under 5 U.S.C. 5514 and state the dates such action was taken.

(4) If the employee is in the process of separating from employment, the Director shall submit the debt claim to the employee's paying agency for collection by lump-sum deduction from the employee's final check. The paying agency shall certify the total amount of its collection and furnish a copy of the certification to the FDIC and to the employee.

(5) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Director may, unless otherwise prohibited, request that money due and payable to the employee from the federal government, including payments from the Civil Service Retirement and Disability Fund (5 CFR 831.1801), be administratively offset to collect the debt.

(6) In the event an employee transfers to another paying agency, the Director shall not repeat the procedures described in § 313.40 through § 313.45 in order to resume collecting the debt. Instead, the FDIC shall review the debt upon receiving the former paying agency's notice of the employee's transfer and shall ensure that collection is resumed by the new paying agency. The FDIC must submit a properly certified claim to the new paying agency before collection can be resumed.

(b) *Responsibility of the FDIC as the paying agency.* (1) *Complete claim.* When the FDIC receives a properly certified claim from a creditor agency, the employee shall be given written notice of the certification, the date salary offset will begin, and the amount of the periodic deductions. The FDIC shall schedule deductions to begin at the next officially established pay interval or as otherwise provided for in the certification.

(2) *Incomplete claim.* When the FDIC receives an incomplete certification of debt from a creditor agency, the FDIC shall return the debt claim with notice that procedures under 5 U.S.C. 5514 and 5 CFR 550.1104 must be followed and that a properly certified debt claim must be received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The FDIC is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another agency.* If, after the creditor agency has submitted the debt claim to the FDIC, the employee transfers to a different paying agency before the debt is collected in full, the FDIC must certify the total amount collected on the debt. One copy of the certification shall be furnished to the employee, and one copy shall be sent to the creditor agency along with notice of the employee's transfer. If the FDIC is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the requirements set forth herein and in the OPM's regulation (5 CFR part 550, subpart K) have been fully met.

§ 313.50 Interest, penalties, and administrative costs.

Where the FDIC is the creditor agency, it shall assess interest, penalties, and administrative costs pursuant to 31 U.S.C. 3717 and 31 CFR parts 900 through 904.

§ 313.51 Refunds.

(a) Where the FDIC is the creditor agency, it shall promptly refund any amount deducted under the authority of 5 U.S.C. 5514 when the debt is compromised or otherwise found not to be owing to the United States, or when an administrative or judicial order directs the FDIC to make a refund.

(b) Unless required by law or contract, such refunds shall not bear interest.

§ 313.52 Request from a creditor agency for services of a hearing official.

(a) The FDIC may provide a hearing official upon request of the creditor agency when the debtor is employed by the FDIC and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(b) The FDIC may provide a hearing official upon request of a creditor agency when the debtor works for the creditor agency and that agency cannot arrange for a hearing official.

(c) The Director shall arrange for qualified personnel to serve as hearing officials.

(d) Services rendered under paragraph (a) of this section shall be provided on a fully reimbursable basis pursuant to 31 U.S.C. 1535.

§ 313.53 Non-waiver of rights by payments.

A debtor's payment, whether voluntary or involuntary, of all or any portion of a debt being collected pursuant to this section shall not be construed as a waiver of any rights that the debtor may have under any statute, regulation, or contract except as otherwise provided by law or contract.

§ 313.54 Exception to due process procedures.

(a) The procedures set forth in this subpart shall not apply to routine intra-agency salary adjustments of pay, including the following:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine adjustment of pay that is made to correct an overpayment attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment or as soon thereafter as is practical, the individual is provided written notice of the nature and amount of the adjustment and the point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amount to $50 or less, if, at the time of such adjustment, or as soon thereafter as is practical, the individual is provided written notice of the nature and amount of the adjustment and the point of contact for contesting such adjustment.

(b) The procedure for notice to the employee and collection of such adjustments is set forth in § 313.55.

§ 313.55 Salary adjustments.

Any negative adjustment to pay arising out of an employee's election of coverage, or a change in coverage, under a federal benefits program requiring periodic deductions from pay shall not be considered collection of a ''debt'' for the purposes of this section if the amount to be recovered was accumulated over four pay periods or less. In such cases, the FDIC shall not apply this subpart C, but will provide a clear and concise statement in the employee's earnings statement advising the employee of the previous overpayment at the time the adjustment is made.

§§ 313.56—313.79 [Reserved]

Subpart D—Administrative Wage Garnishment

§ 313.80 Scope and purpose.

(a) These administrative wage garnishment regulations are issued in compliance with 31 U.S.C. 3720D and 31 CFR 285.11(f). The subpart provides procedures for the FDIC to collect money from a debtor's disposable pay by means of administrative wage garnishment. The receipt of payments pursuant to this subpart does not preclude the FDIC from pursuing other debt collection remedies, including the offset of federal payments. The FDIC may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment. This subpart does not apply to the collection of delinquent debts from the wages of federal employees from their federal employment. Federal pay is subject to the federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

§ 313.81 Notice.

At least 30 days before the initiation of garnishment proceedings, the Director will send, by first class mail to the debtor's last known address, a written notice informing the debtor of:

(a) The nature and amount of the debt;

(b) The FDIC's intention to initiate proceedings to collect the debt through deductions from the debtor's pay until the debt and all accumulated interest penalties and administrative costs are paid in full;

(c) An explanation of the debtor's rights as set forth in § 313.82(c); and

(d) The time frame within which the debtor may exercise these rights. The FDIC shall retain a stamped copy of the notice indicating the date the notice was mailed.

§ 313.82 Debtor's rights.

The FDIC shall afford the debtor the opportunity:

(a) To inspect and copy records related to the debt;

(b) To enter into a written repayment agreement with the FDIC, under terms agreeable to the FDIC; and

(c) To the extent that a debt owed has not been established by judicial or

administrative order, to request a hearing concerning the existence or amount of the debt or the terms of the repayment schedule. With respect to debts established by a judicial or administrative order, a debtor may request a hearing concerning the payment or other discharge of the debt. The debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement.

§ 313.83 Form of hearing.

(a) If the debtor submits a timely written request for a hearing as provided in § 313.82(c), the FDIC will afford the debtor a hearing, which at the FDIC's option may be oral or written. The FDIC will provide the debtor with a reasonable opportunity for an oral hearing when the Director determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(b) If the FDIC determines that an oral hearing is appropriate, the time and location of the hearing shall be established by the FDIC. An oral hearing may, at the debtor's option, be conducted either in person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(c) In cases when it is determined that an oral hearing is not required by this section, the FDIC will accord the debtor a ''paper hearing,'' that is, the FDIC will decide the issues in dispute based upon a review of the written record.

§ 313.84 Effect of timely request.

If the FDIC receives a debtor's written request for hearing within 15 business days of the date the FDIC mailed its notice of intent to seek garnishment, the FDIC shall not issue a withholding order until the debtor has been provided the requested hearing, and a decision in accordance with § 313.88 and § 313.89 has been rendered.

§ 313.85 Failure to timely request a hearing.

If the FDIC receives a debtor's written request for hearing after 15 business days of the date the FDIC mailed its notice of intent to seek garnishment, the FDIC shall provide a hearing to the debtor. However, the FDIC will not delay issuance of a withholding order unless it determines that the untimely filing of the request was caused by factors over which the debtor had no control, or the FDIC receives information that the FDIC believes justifies a delay or cancellation of the withholding order.

§ 313.86 Hearing official.

A hearing official may be any qualified individual, as determined by the FDIC, including an administrative law judge.

§ 313.87 Procedure.

After the debtor requests a hearing, the hearing official shall notify the debtor of:

(a) The date and time of a telephonic hearing;

(b) The date, time, and location of an in-person oral hearing; or

(c) The deadline for the submission of evidence for a written hearing.

§ 313.88 Format of hearing.

The FDIC will have the burden of proof to establish the existence or amount of the debt. Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists, or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law. The hearing official shall maintain a record of any hearing held under this section. Hearings are not required to be formal, and evidence may be offered without regard to formal rules of evidence. Witnesses who testify in oral hearings shall do so under oath or affirmation.

§ 313.89 Date of decision.

The hearing official shall issue a written opinion stating his or her decision as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by the FDIC. If the FDIC is unable to provide the debtor with a hearing and decision within sixty (60) days after the receipt of the request for such hearing:

(a) The FDIC may not issue a withholding order until the hearing is held and a decision rendered; or

(b) If the FDIC had previously issued a withholding order to the debtor's employer, the withholding order will be suspended beginning on the 61st day after the date the FDIC received the hearing request and continuing until a hearing is held and a decision is rendered.

§ 313.90 Content of decision.

The written decision shall include:

(a) A summary of the facts presented;

(b) The hearing official's findings, analysis and conclusions; and

(c) The terms of any repayment schedule, if applicable.

§ 313.91 Finality of agency action.

Unless the FDIC on its own initiative orders review of a decision by a hearing official pursuant to 17 CFR 201.431(c), a decision by a hearing official shall become the final decision of the FDIC for the purpose of judicial review under the Administrative Procedure Act.

§ 313.92 Failure to appear.

In the absence of good cause shown, a debtor who fails to appear at a scheduled hearing will be deemed as not having timely filed a request for a hearing.

§ 313.93 Wage garnishment order.

(a) Unless the FDIC receives information that it believes justifies a delay or cancellation of the withholding order, the FDIC will send by first class mail a withholding order to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing (*i.e.,* within 15 business days after the mailing of the notice of the FDIC's intent to seek garnishment) or, if a timely request for a hearing is made by the debtor, within 30 days after a decision to issue a withholding order becomes final.

(b) The withholding order sent to the employer will be in the form prescribed by the Secretary of the Treasury, on the FDIC's letterhead, and signed by the head of the agency or delegate. The order will contain all information necessary for the employer to comply with the withholding order, including the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(c) The FDIC will keep a stamped copy of the order indicating the date it was mailed.

§ 313.94 Certification by employer.

Along with the withholding order, the FDIC will send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the FDIC within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

§ 313.95 Amounts withheld.

(a) Upon receipt of the garnishment order issued under this section, the employer shall deduct from all disposable pay paid to the debtor during each pay period the amount of garnishment described in paragraphs (b) through (d) of this section.

(b) Subject to the provisions of paragraphs (c) and (d) of this section, the amount of garnishment shall be the lesser of:

(1) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(2) The amount set forth in 15 U.S.C. 1673(a)(2). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which the debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. See 29 CFR 870.10.

(c) When a debtor's pay is subject to withholding orders with priority, the following shall apply:

(1) Unless otherwise provided by federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (b) of this section and shall have priority over other withholding orders which are served later in time. However, withholding orders for family support shall have priority over withholding orders issued under this section.

(2) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this section, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(i) The amount calculated under paragraph (b) of this section; or

(ii) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(3) If a debtor owes more than one debt to the FDIC, the FDIC may issue multiple withholding orders. The total amount garnished from the debtor's pay for such orders will not exceed the amount set forth in paragraph (b) of this section.

(d) An amount greater than that set forth in paragraphs (b) and (c) of this section may be withheld upon the written consent of the debtor.

(e) The employer shall promptly pay to the FDIC all amounts withheld in accordance with the withholding order issued pursuant to this section.

(f) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(g) Any assignment or allotment by the employee of the employee's earnings shall be void to the extent it interferes with or prohibits execution of the withholding order under this section, except for any assignment or allotment made pursuant to a family support judgment or order.

(h) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the FDIC to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

§ 313.96 Exclusions from garnishment.

The FDIC will not garnish the wages of a debtor it knows has been involuntarily separated from employment until the debtor has been re-employed continuously for at least 12 months. The debtor has the burden of informing the FDIC of the circumstances surrounding an involuntary separation from employment.

§ 313.97 Financial hardship.

(a) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the FDIC of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(b) A debtor requesting a review under this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation.

(c) If a financial hardship is found, the FDIC will downwardly adjust, by an amount and for a period of time agreeable to the FDIC, the amount garnished to reflect the debtor's financial condition. The FDIC will notify the employer of any adjustments to the amounts to be withheld.

§ 313.98 Ending garnishment.

(a) Once the FDIC has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the FDIC will send the debtor's employer notification to discontinue wage withholding.

(b) At least annually, the FDIC will review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

§ 313.99 Prohibited actions by employer.

The DCIA prohibits an employer from discharging, refusing to employ, or taking disciplinary action against the debtor due to the issuance of a withholding order under this subpart.

§ 313.100 Refunds.

(a) If a hearing official determines that a debt is not legally due and owing to the United States, the FDIC shall promptly refund any amount collected by means of administrative wage garnishment.

(b) Unless required by federal law or contract, refunds under this section shall not bear interest.

§ 313.101 Right of action.

The FDIC may sue any employer for any amount that the employer fails to withhold from wages owed and payable to its employee in accordance with this subpart. However, a suit will not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations. For purposes of this subpart, ''termination of the collection action'' occurs when the agency has terminated collection action in accordance with the FCCS (31 CFR 903.1 through 903.5) or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the FDIC has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

§§ 313.102—313.119 [Reserved]

Subpart E—Tax Refund Offset

§ 313.120 Scope.

The provisions of 26 U.S.C. 6402(d) and 31 U.S.C. 3720A authorize the Secretary of the Treasury to offset a delinquent debt owed to the United States Government from the tax refund due a taxpayer when other collection efforts have failed to recover the amount due. In addition, the FDIC is authorized to collect debts by means of administrative offset under 31 U.S.C. 3716 and, as part of the debt collection process, to notify the Financial Management Service (FMS), a bureau of the Department of the Treasury, of the amount of such debt for collection by tax refund offset.

§ 313.121 Definitions.

For purposes of this subpart E:

(a) *Debt* or *claim* means an amount of money, funds or property which has been determined by the FDIC to be due

to the United States from any person, organization, or entity, except another federal agency.

(b) *Debtor* means a person who owes a debt or a claim. The term ''person'' includes any individual, organization or entity, except another federal agency.

(c) *Tax refund offset* means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment.

(d) T*ax refund payment* means any overpayment of federal taxes to be refunded to the person making the overpayment after the Internal Revenue Service (IRS) makes the appropriate credits.

§ 313.122 Notification of debt to FMS.

The FDIC shall notify FMS of the amount of any past due, legally enforceable non-tax debt owed to it by a person, for the purpose of collecting such debt by tax refund offset. Notification and referral to FMS of such debts does not preclude FDIC's use of any other debt collection procedures, such as wage garnishment, either separately or in conjunction with tax refund offset.

§ 313.123 Certification and referral of debt.

When the FDIC refers a past-due, legally enforceable debt to FMS for tax refund offset, it will certify to FMS that:

(a) The debt is past due and legally enforceable in the amount submitted to FMS and that the FDIC will ensure that collections are properly credited to the debt;

(b) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within ten years after the FDIC's right of action accrues;

(c) The FDIC has made reasonable efforts to obtain payment of the debt, in that it has:

(1) Submitted the debt to FMS for collection by administrative offset and complied with the provisions of 31 U.S.C. 3716(a) and related regulations;

(2) Notified, or has made a reasonable attempt to notify, the debtor that the debt is past-due, and unless repaid within 60 days after the date of the notice, will be referred to FMS for tax refund offset;

(3) Given the debtor at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, considered any evidence presented by the debtor, and determined that the debt is past-due and legally enforceable; and

(4) Provided the debtor with an opportunity to make a written agreement to repay the debt; and

(d) The debt is at least $25.

§ 313.124 Pre-offset notice and consideration of evidence.

(a) For purposes of § 313.123(c)(2), the FDIC has made a reasonable effort to notify the debtor if it uses the current address information contained in its records related to the debt. The FDIC may, but is not required to, obtain address information from the IRS pursuant to 26 U.S.C. 6103(m)(2), (4), (5).

(b) For purposes of § 313.123(c)(3), if evidence presented by a debtor is considered by an agent of the FDIC, or other entities or persons acting on behalf of the FDIC, the debtor must be accorded at least 30 days from the date the agent or other entity or person determines that all or part of the debt is past-due and legally enforceable to request review by an officer or employee of the FDIC of any unresolved dispute. The FDIC must then notify the debtor of its decision.

§ 313.125 Referral of past-due, legally enforceable debt.

The FDIC shall submit past-due, legally enforceable debt information for tax refund offset to FMS, as prescribed by FMS. For each debt, the FDIC will include the following information:

(a) The name and taxpayer identification number (as defined in 26 U.S.C. 6109) of the debtor;

(b) The amount of the past-due and legally enforceable debt;

(c) The date on which the debt became past-due; and

(d) The designation of FDIC as the agency referring the debt.

§ 313.126 Correcting and updating referral.

If, after referring a past-due legally enforceable debt to FMS as provided in § 313.125, the FDIC determines that an error has been made with respect to the information transmitted to FMS, or if the FDIC receives a payment or credits a payment to the account of the debtor referred to FMS for offset, or if the debt amount is otherwise incorrect, the FDIC shall promptly notify FMS and make the appropriate correction of the FDIC's records. FDIC will provide certification as required under § 313.123 for any increases to amounts owed. In the event FMS rejects an FDIC certification for failure to comply with § 323.123, the FDIC may resubmit the debt with a corrected certification.

§ 313.127 Disposition of amounts collected.

FMS will transmit amounts collected for past-due, legally enforceable debts, less fees charged under this section, to the FDIC's account. The FDIC will reimburse FMS and the IRS for the cost of administering the tax refund offset program. FMS will deduct the fees from amounts collected prior to disposition and transmit a portion of the fees deducted to reimburse the IRS for its share of the cost of administering the tax refund offset program. To the extent allowed by law, the FDIC may add the offset fees to the debt.

§§ 313.128—313.139 [Reserved]

Subpart F—Civil Service Retirement and Disability Fund Offset

§ 313.140 Future benefits.

Unless otherwise prohibited by law, the FDIC may request that a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) be administratively offset in accordance with regulations at 5 CFR 831.1801 through 831.1808.

§ 313.141 Notification to OPM.

When making a request for administrative offset under § 313.140, the FDIC shall provide OPM with a written certification that:

(a) The debtor owes the FDIC a debt, including the amount of the debt;

(b) The FDIC has complied with the applicable statutes, regulations, and procedures of OPM; and

(c) The FDIC has complied with the requirements of 31 CFR parts 900 through 904, including any required hearing or review.

§ 313.142 Request for administrative offset.

The Director shall request administrative offset under § 313.140, as soon as practical after completion of the applicable procedures in order to help ensure that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor shall be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

§ 313.143 Cancellation of deduction.

If the FDIC collects part or all of the debt by other means before deductions are made or completed pursuant to § 313.140, the FDIC shall act promptly to modify or terminate its request for such offset.

Subpart G—Mandatory Centralized Administrative Offset

§ 313.160 Treasury notification.

(a) In accordance with 31 U.S.C. 3716, the FDIC as a creditor agency must notify the Secretary of the Treasury of all debts that are delinquent (over 180 days past due), as defined in the FCCS, to enable the Secretary to seek collection by centralized administrative offset. This includes debts the FDIC seeks to recover from the pay account of an employee of another agency by means of salary offset.

(b) For purposes of centralized administrative offset, a claim or debt is not delinquent if:

(1) It is in litigation or foreclosure;

(2) It will be disposed of under an asset sale program within one year after becoming eligible for sale;

(3) It has been referred to a private collection contractor for collection;

(4) It has been referred to a debt collection center;

(5) It will be collected under internal offset, if such offset is sufficient to collect the claim within three years after the date the debt or claim is first delinquent; and

(6) It is within a specific class of claims or debts which the Secretary of the Treasury has determined to be exempt, at the request of an agency.

§ 313.161 Certification of debt.

Prior to referring a delinquent debt to the Secretary of the Treasury, the Director must have complied with the requirements of 5 U.S.C. 5514, and 5 CFR part 550, subpart K, governing salary offset, and the FDIC regulations. The Director shall certify, in a form acceptable to the Secretary, that:

(a) The debt is past due and legally enforceable; and

(b) The FDIC has complied with all due process requirements under 31 U.S.C. 3716 and the FDIC's administrative offset regulations.

§ 313.162 Compliance with 31 CFR part 285.

The Director shall also comply with applicable procedures for referring a delinquent debt for purposes of centralized offset which are set forth at 31 CFR part 285 and the FCCS.

§ 313.163 Notification of debts of 180 days or less.

The Director, in his discretion, may also notify the Secretary of the Treasury of debts that have been delinquent for 180 days or less, including debts the FDIC seeks to recover by means of salary offset.

§§ 313.164—313.180 [Reserved]

Dated at Washington, DC, this 12th day of July, 2002.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary/Supervisory Counsel.

[FR Doc. 02–18656 Filed 7–24–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–02–AD; Amendment 39–12831; AD 2002–15–03]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Corporation Model 568F–1 Propellers.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment supersedes an emergency airworthiness directive (AD) 2002–05–51 that was sent previously to all known U.S. owners and operators of Hamilton Sundstrand Corporation (formerly Hamilton Standard Division) model 568F–1 propellers. That AD requires replacement of propeller blades, part numbers (P/N's) R815505–2 and R815505–3, that have a serial number (SN) of FR1698 or lower, with serviceable propeller blades, a prohibition against installing any propeller blades, P/N's R815505–2 and R815505–3, that have a SN of FR428 or lower, that were previously installed on an ATR–42–400 or an ATR–72 airplane, on any other airplane, and initial and repetitive ultrasonic shear wave inspection of the blade tulip on installed blades P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower. This amendment requires those same actions, and also requires replacing certain SN blades before further flight. This amendment also requires initial and repetitive ultrasonic shear wave inspections of the blade tulip on installed blades, P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower until they are replaced. This amendment is prompted by a report of a blade failure that resulted in damage to the airplane. The actions specified in this AD are intended to prevent blade failure due to corrosion-induced fatigue, which could result in blade separation and possible loss of airplane control.

DATES: Effective August 9, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 9, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–02–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *''9-ane-adcomment@faa.gov''.* Comments sent via the Internet must contain the docket number in the subject line.

The applicable service information may be obtained from Hamilton Sundstrand Propeller Technical Team, One Hamilton Road, Mail Stop 1–3–AB43, Windsor Locks, CT 06096–1010, U.S.A.; Fax 1–860–654–5107. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: On March 7, 2002, the FAA issued emergency AD 2002–05–51, applicable to Hamilton Sundstrand Corporation (formerly Hamilton Standard Division) model 568F–1 propellers installed with blades, P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower. That AD requires:

- Replacement of propeller blades, P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, with serviceable propeller blades.
- A prohibition against installing any propeller blades, P/N's R815505–2 and R815505–3, that have a SN of FR428 or lower, that were previously installed on an ATR–42–400 or an ATR–72 airplane, on any other airplane.
- Ultrasonic shear wave inspection of the blade tulip on installed blades P/N's

R815505–2 and R815505–3, that have a SN of FR1698 or lower, within 50 hours after receipt to that emergency AD.

• Repetitive ultrasonic shear wave inspection of the blade tulip on installed blades, P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, within 50 flight hours since-last-inspection.

That action was prompted by a report that a Hamilton Sundstrand propeller blade failed on an Aerospatiale ATR42–500 airplane. The failure occurred shortly after takeoff. The airplane was able to return safely to the point of departure. The position 5 blade failed outboard of the counterweight mounting flange. Additional damage to the propeller, engine, and nacelle was found. Root cause investigation has determined that the fracture began at an area of corrosion on the metallic portion of the blade just above and opposite the counterweight mounting flange. Engineering evaluation of the blade population that is susceptible to corrosion-induced fatigue has determined that the affected blades must be replaced to prevent blade failure. Subsequent investigation has determined that the suspect blade population must be inspected for fatigue cracks, due to corrosion pitting, using a repetitive ultrasonic shear wave inspection. This condition, if not corrected, could result in blade failure due to corrosion-induced fatigue, which could result in blade separation and possible loss of airplane control.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Hamilton Sundstrand Alert Service Bulletin No. 568F–61-A35, Revision 2, dated March 21, 2002, which provides procedures to perform the ultrasonic shear wave inspection of the blade tulip.

FAA's Determination of an Unsafe Condition and Required Actions

Since the unsafe condition described is likely to exist or develop on other propellers of the same type design, the FAA issued emergency AD 2002–05–51 to prevent blade failure due to corrosion-induced fatigue, which could result in blade separation and possible loss of airplane control. This AD requires:

• Replacement of propeller blades, P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, that are installed on ATR 42–400 and ATR 72 airplanes, with serviceable propeller blades before further flight.

• A prohibition against installing any propeller blades, P/N's R815505–2 and R815505–3, that have a SN of FR428 or lower, that were previously installed on an ATR 42–400 or an ATR 72 airplane, on any other airplane after the effective date of this AD.

• Ultrasonic shear wave inspection of the blade tulip on installed blades P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, within 50 hours after the effective date of this AD.

• Repetitive ultrasonic shear wave inspection of the blade tulip on installed blades, P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, within 50 flight hours since-last-inspection.

The actions must be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002-NE–02-AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–15–03 Hamilton Sundstrand Corporation: Amendment 39–12831. Docket No. 2002–NE–02–AD. Supersedes AD 2002–05–51.

Applicability: This airworthiness directive (AD) is applicable to Hamilton Sundstrand

Corporation (formerly Hamilton Standard Division) model 568F–1 propellers installed with blades, part numbers (P/N's) R815505–2 and R815505–3, that have a serial number (SN) of FR1698 or lower. These propellers are installed on, but not limited to, Aerospatiale ATR 42–400 and –500 and ATR 72 airplanes.

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

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent blade failure due to corrosion-induced fatigue, which could result in blade separation and possible loss of airplane control, do the following:

(a) For propeller blades P/N's R815505–2 and R815505–3, replace propeller blades SN FR265 or lower before further flight.

(b) Before further flight, replace propeller blades P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, installed on ATR 72 and ATR 42–400 airplanes.

(c) After the effective date of this AD, do not install any propeller blade that was removed in accordance with paragraph (b) of this AD on any airplane.

(d) Replace propeller blades P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, installed on ATR 42–500 airplanes, before December 31, 2002.

(e) After the effective date of this AD, do not install any propeller blades, P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, on any airplane unless an ultrasonic shear wave inspection of the blade tulip is done in accordance with the Accomplishment Instructions of Hamilton Sundstrand ASB 568F–61–A35, Revision 2, dated March 21, 2002, before installation of the propeller blade.

(f) Procedures for removing the propeller blade and installing a serviceable blade can be found in Hamilton Sundstrand Maintenance Manual P5206.

(g) Within 50 FH since-last-inspection, for propeller blades, P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, perform an ultrasonic shear wave inspection of the blade tulip in accordance with the Accomplishment Instructions of Hamilton Sundstrand ASB 568F–61–A35, Revision 2, dated March 21, 2002, and remove blades with unacceptable indications in accordance with the ASB.

(h) Thereafter, within 50 FH since-last-inspection, for propellers blades P/N's R815505–2 and R815505–3, that have a SN of FR1698 or lower, perform an ultrasonic shear wave inspection of the blade tulip in accordance with the Accomplishment Instructions of Hamilton Sundstrand ASB 568F–61–A35, Revision 2, dated March 21, 2002, and remove blades with unacceptable indications in accordance with the ASB.

Optional Terminating Action

(i) Replacement of propeller blades, P/N R815505–2, with propeller blades, P/N R81505R2; or propeller blades, P/N R815505–3, with propeller blades, P/N R815505R3, constitutes terminating action for the repetitive inspection requirements specified in paragraph (h) of this AD.

Alternative Methods of Compliance

(j) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office (ACO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston ACO.

Special Flight Permits

(k) Special limited flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) for a nonrevenue flight to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(l) The actions required by this AD must be done in accordance with Hamilton Sundstrand Alert Service Bulletin No. 568F–61–A35, Revision 2, dated March 21, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hamilton Sundstrand Propeller Technical Team, One Hamilton Road, Mail Stop 1–3–AB43, Windsor Locks, CT 06096–1010, U.S.A.; Fax 1–860–654–5107. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(m) This amendment becomes effective August 9, 2002.

Issued in Burlington, Massachusetts, on July 15, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–18481 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–224–AD; Amendment 39–12827; AD 2002–14–27]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) that prohibits takeoff in certain icing conditions unless either a tactile inspection is performed or specific takeoff procedures are followed. This amendment requires adding a requirement, for certain airplanes, for modification of the wing leading edge ice protection system to include on-ground wing ice protection, and a new revision to the AFM. This amendment is prompted by the development of a modification that introduces a wing anti-icing system that will operate on the ground as well as in flight. The actions specified by this AD are intended to prevent takeoff with snow, ice, or frost on the critical surfaces of the airplane, which could result in reduced controllability of the airplane.

DATES: Effective August 29, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 29, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–25–03, amendment 39–9087 (59 FR 62563, December 6, 1994), which is applicable to all Fokker Model F.28 Mark series airplanes, was published in the **Federal Register** on November 8, 1999 (64 FR 60745). The action proposed to continue to require a revision to the Airplane Flight Manual (AFM) that prohibits takeoff in certain icing conditions unless either a tactile inspection is performed or specific takeoff procedures are followed. The action also proposed to add a requirement, for certain airplanes, for modification of the wing leading edge ice protection system to include on-ground wing ice protection, and a new revision to the AFM.

Since the Issuance of the Notice of Proposed Rulemaking (NPRM)

Fokker Services has issued Proforma Service Bulletin F28/30–032, including Appendix 1, dated December 1, 1999, applicable to Fokker Model F.28 Mark 4000 series airplanes. That proforma service bulletin describes certain corrections regarding the instructions and schematics for the modification of the wiring of the on-ground wing leading edge heating described in Fokker Proforma Service Bulletin F28/30–31 (which was referenced in the NPRM as the appropriate source of service information). Since Proforma Service Bulletin F28/30–032 only provides correction for certain procedures of 1 the modification of the wiring, the FAA has revised paragraph (b) of the final rule to also reference Proforma Service Bulletin F28/30–032. That proforma service bulletin was approved by the The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands.

Clarification of Applicability

The applicability of the NPRM affects all Model F.28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 series airplanes. However, paragraph (b) of the NPRM specifies that only airplanes identified in Appendix I, Revision 1, dated August 14, 1999, of Fokker Service Bulletin SBF100–30–018, and Appendix I, Revision 1, dated May 4, 1998, of Fokker SB F28/30–031; are subject to the requirements of paragraph (b) of the NPRM. The FAA notes that the effectivity of the proforma service bulletins assigns different operators the actual performance instructions based on a number designated in the Appendix. For example, one airline may be assigned the specific instructions for Appendix I. Therefore, we have revised the applicability of paragraph (b) of the final rule to clarify that Model F.28 Mark 0070 and 0100 series airplanes identified in Appendix I, Revision 1, dated August 14, 1999, of Fokker Proforma Service Bulletin SBF100–30–018; and Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes identified in Appendix I, Revision 1, dated May 4, 1998, of Fokker Proforma Service Bulletin F28/30–031, Revision 1, dated May 4, 1998; and in Fokker Proforma F28/30–032, including Appendix 1, dated December 1, 1999; are subject to the requirements specified in paragraphs (b)(1) and (b)(2) of this AD, in accordance with the appropriate proforma service bulletin, as applicable.

Public Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

1. Conditional Concurrence

One commenter expresses conditional concurrence with the proposed language of the NPRM. The commenter's concerns regarding certain issues are included in the discussions of other comments below.

2. Requests To Provide an Optional Method of Compliance

Several commenters identified certain concerns with an on-ground wing leading edge heating system. One of these commenters states that the ground wing leading edge anti-ice heating system will not accomplish the intent of the NPRM (i.e., to prevent degradation of aerodynamic lift during takeoff when icing conditions exist). Other commenters point out problem areas that could result, such as:

- Only partial surfaces (i.e., the leading edges) of the wings are heated. The rest of the wing remains unprotected.
- Deicing/anti-icing fluid flow-off may occur, and heating may change the effective holdover time of the fluid.
- Adverse aerodynamic effects from refreezing of runback water (runback ice).
- Risk of leading edge structural damage due to overheating caused by a ground wing leading edge heating system.

The commenters state that other means exist that are equal to or superior to the system proposed in the NPRM, and request that the FAA provide such methods of compliance as alternatives to requiring installation of a ground wing leading edge anti-ice heating system.

The FAA does not agree that the issues specified by the commenters are sufficient to justify not mandating a ground wing leading edge anti-ice heating system. Our specific responses to each of the concerns above are as follows:

- We acknowledge that only the leading edges of the wing are heated. However, we do not agree that heating some of the wing surfaces (i.e., leading edges) will not accomplish the intent of the NPRM. The intent of the NPRM is to ensure that the critical surfaces of the airplane are free from frost, ice, and snow at takeoff. This is accomplished by compliance with the operating rules of §§ 91.527 and 121.629 of the Federal Aviation Regulations (14 CFR 91.527 and 121.629), in combination with the operation of the wing leading edge heating system on the ground.
- We do not agree that operating the wing leading edge heat while on the ground will result in flow-off of fluid. The deicing fluid is typically heated to 60-degrees Centigrade (C) at the spray nozzle and would not be affected by 25-degree-C temperatures of the wing leading edge while being heated on the ground. We acknowledge that there may be some thinning of undiluted anti-icing fluids at the wing leading edge. However, there will be an offsetting benefit of having the wing leading edge heat on, which should delay the failure of the anti-icing fluid by keeping the water component above freezing.
- We do not agree that there is a reason to be concerned over runback ice. For instance, ice melting on the leading edge and water consequently running to another area of the wing and refreezing should not occur, since the on-ground wing leading edge heating system is not intended for deicing purposes. The system should be used in addition to approved deicing or anti-icing procedures. Likewise, turning on the wing leading edge heat to melt ice and not performing deicing procedures is unlikely to occur, since regulations are already in place that prohibit such actions. Therefore, for the purposes of this AD, runback ice and refreezing are not issues of concern.
- We do not agree that there is increased risk of structural damage to the leading edge due to overheating caused by the required heating system. We consider that, since the on-ground leading edge heating system complies with the requirements of § 25.1309 (14 CFR 25.1309), any failures of the heating system, such as overheating of the structure, have been accounted for and substantiated in accordance with the

hazard classification of a particular failure.

Based on the FAA's responses above to the commenter's concerns, no change to the final rule is necessary. However, we have revised the final rule to add a specific method acceptable for compliance based on another commenter's request. See the next comment and response below.

3. Request To Approve an Acceptable Method of Compliance

Two commenters request that the FAA approve the AlliedSignal ''Contaminants—Fluid Integrity Measuring System,'' as an acceptable method of compliance with the requirements of the NPRM. The commenters present the following points in support of their request:

- C/FIMS™ is a FAA-approved system via the Supplemental Type Certification (STC) process.
- C/FIMS™ offers documented evidence as to its capabilities as an ice detector and as a fluid monitoring system, both in laboratory and in-service environments.
- More than 4 years of in-service evaluations have occurred on the Midway Airlines fleet of Fokker Model F.28 Mark 0100 series airplanes.
- Recorded documented performance is available for all weather conditions, including snow, freezing rain, and weather conditions specified as cautionary in AD 94–25–03.
- With the system validated against existing approved procedures including tactile checks and the use of holdover timetables, C/FIMS™ produced absolutely no false annunciations.
- C/FIMS™ installed on Fokker Model F.28 Mark 0100 series airplanes provides effective monitoring of the same surfaces addressed by the service bulletins specified in the NPRM.
- The commenters state that even Fokker Services has recommended that the FAA give serious consideration to certifying C/FIMS™ as an alternative solution, since the leading edge heating system is not universally favored by Model F.28 Mark 0100 series airplanes operators.

We acknowledge that STC ST291CH (applicable to Fokker Model F.28 Mark 0100 series airplanes) approves the installation of the C/FIMS™ as an advisory system that informs the flightcrew if specific anti-icing fluids have failed or if ice or snow has accumulated on one of the ice detectors. That STC also contains instructions to insert Allied Signal Aerospace Canada, Airplane Flight Manual Supplement, Document Number 6C–486, Revision 2, dated August 4, 1999, into the AFM. The AFM Supplement describes how the C/FIMS™ operates when the modification is installed. Certification as an advisory system means that the system cannot be used as the prime means of determining if the airplane must be initially deiced or anti-iced, or if the airplane must be deiced or anti-iced again because a fluid has failed.

However, we have determined that, in combination with a revision to the Limitations Section of the AFM to install the AFM Supplement described above, installation of STC ST291CH on Fokker Model F.28 Mark 0100 series airplanes is acceptable for compliance with the requirement to install an on-ground wing leading edge heating system. Although C/FIMS™ is approved as an advisory system, we find that it will provide additional assurance that the airplane will take off free of snow, ice, or frost on the critical surfaces. This finding is contingent upon using C/FIMS™ in combination with approved procedures for complying with Federal Aviation Regulations 14 CFR 91.527 and 14 CFR 121.629.

Therefore, the FAA has revised the final rule to add a new paragraph (d) of the final rule to specify that installation of a C/FIMS™ in accordance with STC ST291CH and certain AFM revisions required by paragraph (d) of the final rule are acceptable for compliance with the requirements of paragraph (b) of this AD, and constitute terminating actions for the requirements of this final rule.

In addition, we have added a new Note 5 to the final rule to remind operators that accomplishment of the actions specified in paragraph (d) of the final rule does not relieve the requirement that airplane surfaces are free of ice, frost, and snow accumulation as required by §§ 91.527 and 121.629 of the Federal Aviation Regulations (14 CFR 91.527 and 121.629).

4. Request To Withdraw the Proposal

One commenter states that, even with the on-ground wing thermal anti-icing system, operators will have to continue to rely upon using deicing or anti-icing fluids and performing the visual and tactile inspections for icing as the primary procedure for on-ground wing ice protection. Therefore, the commenter argues that there is insufficient improvement provided by the proposed heating system to warrant mandating the on-ground wing ice protection system. The FAA infers that the commenter is requesting that the NPRM be withdrawn.

The FAA does not agree. We acknowledge that operators will still have to rely on fluids and procedures that are necessary for compliance with §§ 91.527 (14 CFR 91.527) and 121.629 (14 CFR 121.629). However, the mandatory tactile inspection required by this AD will be terminated when the on-ground wing anti-ice system is installed. Because of the accident and incident history of these airplanes, we have determined that, although the operations rules (cited above) require that the critical surfaces of the airplane be free from frost, ice, and snow at takeoff, these airplanes require additional measures to ensure safety of flight. Operation of the wing anti-ice system while on the ground is a method to ensure that the critical surfaces of the airplane are free of snow, ice, and frost at takeoff. No change is necessary to the AD in this regard.

5. Request To Allow Credit for Accomplishment of New Service Information

One commenter states that it has accomplished the modification of the wing anti-ice system for operation on the ground, in accordance with Fokker Service Bulletin SBF100–30–018, Appendix I, Revision 1, dated August 14, 1999, rather than the original issuance of the service information as specified in the NPRM. The commenter requests that Revision 1 be specified as an alternative method of compliance.

The FAA agrees that accomplishment of Fokker Service Bulletin SBF100–30–018, Appendix I, Revision 1, dated August 14, 1999, provides an acceptable means of compliance with paragraph (b) of this AD. We have revised paragraph (b) of this AD to include Revision 1 of that service bulletin appendix.

6. Request To Revise Certain Modification Procedures

One commenter states that it is concerned about a safety issue if Fokker Service Bulletin F28/30–031, Appendix I, Revision 1, dated May 4, 1998 (which was specified in the NPRM as an appropriate service information), is accomplished. The commenter explains that accomplishment of that service bulletin would result in the engine anti-ice system being shut off from the operating engine should there be an engine failure during takeoff when the engine anti-ice system has been selected to the ''on'' position. This same commenter states that, although the commenter has accomplished the modification in accordance with Fokker Service Bulletin F28/30–031, Appendix I, the identified problem was corrected in accordance with additional service information received from Fokker. The commenter requests that the NPRM be

revised to reference the corrected modification instructions.

The FAA agrees with the commenter's request for the reasons given by the commenter. As discussed under the header entitled ''Since the Issuance of the Proposed Rule,'' Fokker Services has issued a new Proforma Service Bulletin F28/30–032, dated December 1, 1999, that describes certain corrective procedures for modifying the wiring for the on-ground wing anti-ice system. Therefore, those corrected procedures have been required in the final rule to clarify the procedures for the modification.

7. Request To Clarify Operating Procedures If the Heating System Is Inoperative

One operator requests that the FAA confirm that current relief specified in the Minimum Equipment List (MEL) for the on-ground heated leading edge system (OGHLES) will remain in effect. Specifically, the operator requests that the FAA clarify that, when the airplane is operated with the OGHLES inoperative, the operating limitations required by AD 94–25–03 should again govern the airplane operation.

The FAA agrees that clarification is needed in this regard. First, as part of that clarification, paragraph (b)(2) of the NPRM, which requires incorporation of Fokker Manual Change Notifications (MCNOs) into the AFM, has been relettered as paragraph (c) of the final rule. Second, we point out that, incorporation of the MCNOs required by paragraph (c) of the final rule allow for alternative takeoff procedures or tactile inspections in the event the on-ground heating system is inoperative. Therefore, no change to the final rule is necessary in this regard.

8. Request To Specify the Modification as Terminating Action

One commenter notes that paragraph (b) of AD 94–25–03 specifies that modification of the thermal anti-ice system, so that it can be operated on the ground in accordance with a method approved by the FAA, constitutes terminating action for the requirements of that AD. However, the commenter also notes that the NPRM proposing to supersede AD 94–25–03 does not contain reference to the terminating action. The commenter suggests adding such reference to Note 3 of the NPRM.

The FAA agrees with the commenter, and has revised this AD to add a statement in paragraph (c) of this AD specifying that accomplishment of the actions required by paragraph (b) and (c) of the AD constitutes terminating action for the requirements of paragraph (a) of the AD.

9. Request To Revise the Cost Estimate

One commenter states that its experience in accomplishing the heating system modification reveals that it takes approximately 400 work hours per airplane to accomplish, as opposed to the estimate of 274 work hours provided in the NPRM.

The FAA acknowledges that the actual work hours necessary to accomplish the required modification exceeds the estimated work hours provided by the NPRM. That estimate of work hours was provided to the FAA by the manufacturer based on the best data available to date. As explained in the NPRM, that estimate is intended to represent the time necessary to perform only the modification required by this AD. We recognize that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs. However, the cost analysis in AD rulemaking actions typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. However, after considering the information presented by the commenter, we agree that the number of work hours required is higher than previously estimated. Therefore, the cost impact information provided in this final rule has been revised to estimate 400 work hours for accomplishment of the required modification.

10. Request To Revise the Unsafe Condition

One commenter states that it takes exception to the statement of the unsafe condition as presented in the NPRM. The commenter states that, contrary to the statement in the NPRM, no ice protection system (IPS) can ''* * * prevent degradation of aerodynamic lift * * *'' The commenter further states that, at best, the proposed modification represents only slight improvements over the present system and procedures. The FAA infers that the commenter is requesting that the statement of the unsafe condition be revised.

The FAA acknowledges that the statement of the unsafe condition should be revised. We agree that deicing and anti-icing fluid will minimally affect the aerodynamic lift and have revised the wording for the unsafe condition to more accurately reflect the description of the unsafe condition. For those sections in the final rule that discuss the unsafe condition, we have eliminated reference to aerodynamic lift and specified that the unsafe condition is to prevent takeoff with snow, ice, or frost on the critical surfaces of the airplane.

11. Request To Revise Icing Related Language

One commenter requests that any icing related language must be accompanied by a specific warning to the flightcrew that no ice protection system can keep an airplane as clean as it was on the day it was certified, and that keeping it clean is the ultimate objective of deicing or anti-icing.

The FAA does not agree that additional warning to the flightcrew is necessary. Although we acknowledge that no ice protection system can keep an airplane absolutely ''clean'' (i.e., free of ice, snow, and frost), the flightcrew is required by existing operational rules to keep the airplane's critical surfaces free from ice, snow, and frost at takeoff even though a wing leading edge heating system is being operated on the ground. No change to the final rule is necessary in this regard.

12. Request To Emphasize Flightcrew Actions and Procedures

One commenter states that, until technological improvements such as airplane design changes are able to ''remove the source of the problem'' (e.g., performance degradations due to airframe ice accretions and in-flight encounters with icing conditions), emphasis must be placed on the flightcrew actions, and procedures must be identified to preclude icing encounters that may cause degraded airplane performance.

The FAA does not agree. The intent of this final rule is to prevent airplane takeoff with snow, ice, or frost on critical surfaces, and not to address in-flight icing encounters. Certain other regulations and procedures exist that address in-flight icing encounters. Therefore, no change to this final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 191 Fokker Model F.28 series airplanes of U.S. registry that will be affected by this AD.

The currently required AFM revisions required by this AD take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required AFM revisions of this AD on U.S. operators is estimated to be $60 per airplane.

The modification that is required by this new AD action for certain airplanes will take approximately 400 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $26,585 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $50,585 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9087 (59 FR 62563, December 6, 1994), and by adding a new airworthiness directive (AD), amendment 39–12827, to read as follows:

2002–14–27 Fokker Services B.V.: Amendment 39–12827. Docket 98–NM–224–AD. Supersedes AD 94–25–03, Amendment 39–9087.

Applicability: All Model F.28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent takeoff with snow, ice, or frost on the critical surfaces of the airplane, which could result in reduced controllability of the airplane; accomplish the following:

Restatement of Requirements of AD 94–25–03, Amendment 39–9087

(a) Within 10 days after December 21, 1994 (the effective date of AD 94–25–03, amendment 39–9087), incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) (this may be accomplished by inserting a copy of this AD in the AFM):

''Wing De-Icing/Anti-Icing Prior To Takeoff

Caution

The Model F.28 series airplane has a wing design with no leading edge high lift devices, such as slats. Wings without leading edge high lift devices are particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contamination (equivalent to medium grit sandpaper) on the leading edges or upper wing surfaces can cause significant reduction in the stall angle-of-attack. This can increase stall speed up to 30 knots. The increased stall speed can be well above the stall warning (stick shaker) activation speed.

Takeoff shall not be attempted unless the pilot-in-command has ensured that the aircraft surfaces are free of ice, frost, and snow accumulation, as required by §§ 91.527 and 121.629 of the Federal Aviation Regulations (FAR).

In addition, takeoff shall not be attempted when the Outside Air Temperature (OAT) is below 6 degrees C (Centigrade) [42 degrees F (Fahrenheit)]; and either the difference between the dew point temperature and OAT is less than 3 degrees C (5 degrees F), or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present, unless the operator complies with either Option 1 or Option 2 below:

Option 1

The leading edge and upper wing surfaces have been physically checked for ice/frost/snow and the flight crew verifies that a visual check and a physical (hands-on) check of the leading edge and upper wing surfaces has been accomplished and that the wing is clear of ice/frost/snow accumulation; or

Option 2

The following takeoff procedure is used:

Warning

The following technique cannot be used unless the pilot-in-command has ensured that the aircraft surfaces are free of ice, frost, and snow, as required by §§ 91.527 and 121.629 of the FAR.

- (All Marks, except Mark 0100 and Mark 0070) When using flight director for takeoff, select HDG mode and 10 degrees pitch attitude.
- Select the largest flap setting that is permissible for the takeoff weight/altitude/temperature conditions.
- (All Marks, except Mark 0100 and Mark 0070) Use rated takeoff thrust.
- (Mark 0100 and Mark 0070) Use takeoff/go-around (TOGA) thrust.
- Do not use flexible thrust.
- At V_R rotate slowly (less than 3 degrees per second) to 10 degrees pitch attitude.
- When positively climbing, select gear UP.
- Do not exceed 10 degrees pitch until airspeed is above V_2 + 20 KTS.
- When above V_2 + 20 KTS, slowly increase the pitch attitude, keeping the speed above V_2 + 20 KTS.
- Retract the flaps at or above V_{FR} + 20 KTS.

Notes to Option 2

1. The available field length must be greater than or equal to 120 percent of the takeoff distance required by regulation for the actual gross weight. Also, the 20 percent increase in takeoff distance must be

accounted for in the obstacle clearance analysis. Weight must be off-loaded, if necessary, to meet these conditions.

2. (Mark 0100 and Mark 0070) Do not follow the Flight Director pitch command during rotation for takeoff and initial climb, as this will result in exceeding the recommended maximum pitch angle of 10 degrees before reaching the speed of V_2 + 20 KTS.

3. (Mark 0100 and Mark 0070) Do not engage the autopilot until leaving the Automated Flight Control and Augmentation System (AFCAS) takeoff (TO) mode.

4. For the case of an engine failure, refer to the applicable procedure in Section 4.17.01 Single Engine Operation of the F.28 Mark 0100 (Fokker 100) and F.28 Mark 0070 (Fokker 70) AFM, or Section 1.7.4 Operation Under Abnormal Conditions of the F.28 FHB, as applicable.

5. During takeoff, the first indication of wing contamination will probably be airframe buffet when the pitch angle is increased above 10 degrees, followed by wing drop and insufficient climb rate. Do not exceed 10 degrees pitch until airspeed is above V_2 + 20 KTS.''

This action is required until the requirements of paragraph (c) of this AD are accomplished, or the actions specified in paragraphs (d) and (e) of this AD are accomplished.

Note 2: If an operator elects to implement in its fleet only one of the two options specified in this paragraph, the other OPTION does not have to be included in the Limitations Section of the AFM. However, the OPTION that is implemented must be incorporated in the AFM verbatim as it appears in this paragraph.

New Requirements of This AD

Modification

(b) Except as provided in paragraph (d) of this AD: Within 18 months after the effective date of this AD, modify the wing anti-ice system for operation on the ground as specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For Model F.28 Mark 0070 and 0100 series airplanes, modify in accordance with Fokker Service Bulletin SBF100–30–018, Revision 1, Appendix I, Appendix 1, dated August 14, 1999.

(2) For Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, modify in accordance with Fokker Service Bulletin F28/30–031, Appendix I, Revision 1, dated May 4, 1998; and Fokker Proforma Service Bulletin F.28/30–032, including Appendix 1, dated December 1, 1999; as applicable.

Manual Change Notification (MCNO)

(c) Prior to further flight after accomplishing the modification required by paragraph (b) of this AD, remove the AFM revisions required by paragraph (a) of this AD, and incorporate the flight manual changes specified in Fokker MCNO F100–003, dated September 19, 1997 (for Fokker Model F.28 Mark 070 and 0100 series airplanes); and Fokker MCNO F28–003, dated September 5, 1997 (for Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes); as applicable. Accomplishment of the actions specified in paragraphs (b) and (c) of this AD constitute terminating action for the requirements of this AD.

Note 3: Incorporation of the leading edge thermal anti-ice modification and associated operating instructions does not relieve the requirement that airplane surfaces are free of ice, frost, and snow accumulation as required by §§ 91.527 and 121.629 of the Federal Aviation Regulations (14 CFR 91.527 and 121.629).

Acceptable Method of Compliance With the Requirements of Paragraphs (b) and (c) of This AD

(d) For Fokker Model F.28 Mark 0100 series airplanes on which a ''Contaminant/Fluid Integrity Measuring System'' (C/FIMS'') has been installed in accordance with Supplemental Type Certification ST291CH, as amended on August 20, 1998: Prior to further flight after accomplishment of STC ST291CH, as amended on August 20, 1998, remove the AFM revisions required by paragraph (a) of this AD, and incorporate the following into the Limitations Section of the FAA-approved AFM (This may be accomplished by inserting a copy of this AD in the AFM):

''Wing De-Icing/Anti-Icing Prior To Takeoff

Caution

The Model F.28 series airplane has a wing design with no leading edge high lift devices, such as slats. Wings without leading edge high lift devices are particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contamination (equivalent to medium grit sandpaper) on the leading edges or upper wing surfaces can cause significant reduction in the stall angle-of-attack. This can increase stall speed up to 30 knots. The increased stall speed can be well above the stall warning (stick shaker) activation speed.

Takeoff shall not be attempted unless the pilot-in-command has ensured that the aircraft surfaces are free of ice, frost, and snow accumulation, as required by §§ 91.527 and 121.629 of the Federal Aviation Regulations (FAR).

In addition, takeoff shall not be attempted when the Outside Air Temperature (OAT) is below 6 degrees C (Centigrade) [42 degrees F (Fahrenheit)]; and either the difference between the dew point temperature and OAT is less than 3 degrees C (5 degrees F), or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present; unless the operator complies with Option 1, Option 2, or Option 3.

Option 1

(i) Operate the C/FIMS'' in accordance with AFM Supplement AlliedSignal Aerospace Canada Document Number 6C–486, Revision 2, dated August 4, 1999.

(ii) C/FIMS'' is an advisory system that must not be used as the primary means of determining whether the airplane should be initially deiced or anti-iced or used as the primary means of determining that the fluid has failed.

(iii) C/FIMS'' may be used only for the time periods covered by the dicing/anti-icing holdover time tables. C/FIMS'' may not be used when the holdover time tables have been exceeded; or

If the C/FIMS™ is not operational:

Option 2

The leading edge and upper wing surfaces have been physically checked for ice/frost/snow and the flight crew verifies that a visual check and a physical (hands-on) check of the leading edge and upper wing surfaces has been accomplished and that the wing is clear of ice/frost/snow accumulation; or

If the C/FIMS™ is not operational:

Option 3

The following takeoff procedure is used:

Warning

The following technique cannot be used unless the pilot-in-command has ensured that the aircraft surfaces are free of ice, frost, and snow, as required by §§ 91.527 and 121.629 of the FAR.

- Select the largest flap setting that is permissible for the takeoff weight/altitude/temperature conditions.
- Use takeoff/go-around (TOGA) thrust.
- Do not use flexible thrust.
- At VR rotate slowly (less than 3 degrees per second) to 10 degrees pitch attitude.
- When positively climbing, select gear UP.
- Do not exceed 10 degrees pitch until airspeed is above V_2 + 20 KTS.
- When above V_2 + 20 KTS, slowly increase the pitch attitude, keeping the speed above V_2 + 20 KTS.
- Retract the flaps at or above V_{FR} + 20 KTS.

Notes to Option 3

1. The available field length must be greater than or equal to 120 percent of the takeoff distance required by regulation for the actual gross weight. Also, the 20 percent increase in takeoff distance must be accounted for in the obstacle clearance analysis. Weight must be off-loaded, if necessary, to meet these conditions.

2. Do not follow the Flight Director pitch command during rotation for takeoff and initial climb, as this will result in exceeding the recommended maximum pitch angle of 10 degrees before reaching the speed of V_2 + 20 KTS.

3. Do not engage the autopilot until leaving the Automated Flight Control and Augmentation System (AFCAS) takeoff (TO) mode.

4. For the case of an engine failure, refer to the applicable procedure in Section 4.17.01 Single Engine Operation of the F.28 Mark 0100 (Fokker 100) AFM.

5. During takeoff, the first indication of wing contamination will probably be airframe buffet when the pitch angle is increased above 10 degrees, followed by wing drop and insufficient climb rate. Do not exceed 10 degrees pitch until airspeed is above V_2 + 20 KTS.''

Accomplishment of the actions specified in this paragraph after the installation of STC ST291CH, as amended on August 20, 1998, constitute terminating action for the requirements of this AD.

Note 4: Operators should note that, while Option 1 specified in paragraph (d) of this AD must be incorporated into the Limitations Section of the AFM, operators may elect to incorporate either both or only one of the other two options specified in paragraph (d) of this AD. Only Option 1 and the elected option(s) need to be incorporated into the AFM. However, any option that is incorporated into the AFM must be identical to the option wording specified in paragraph (d) of this AD.

Note 5: Installation of the Contaminant/Fluid Integrity Measuring System (C/FIMS ™) in accordance with Supplemental Type Certification ST291CH, as amended on August 20, 1998, and accomplishment of the actions specified in paragraph (d) of this AD, do not relieve the requirement that airplane surfaces are free of ice, frost, and snow accumulation as required by §§ 91.527 and 121.629 of the Federal Aviation Regulations (14 CFR 91.527 and 121.629).

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions required by paragraphs (b) and (c) of this AD shall be done in accordance with Fokker Service Bulletin SBF100–30–018, Appendix I, Revision 1, dated August 14, 1999; Fokker Service Bulletin F28/30–031, Appendix I, Revision 1, dated May 4, 1998; Fokker Proforma Service Bulletin F28/30–032, including Appendix 1, dated December 1, 1999; Fokker Manual Change Notification MCNO F100–003, dated September 19, 1997; and Fokker Manual Change Notification MCNO F28–003, dated September 5, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on August 29, 2002.

Issued in Renton, Washington, on July 12, 2002.

Lirio Liu-Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–18624 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AAL–1]

Revision of Class E Airspace; Cordova, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action revises Class E airspace at Cordova, AK. It was determined that additional Class E surface area airspace is needed to protect instrument flight rules (IFR) operations at Cordova, AK. The additional Class E surface area airspace will ensure that aircraft executing straight-in standard instrument approach procedures to Runway 27 remain within controlled airspace. This rule provides adequate controlled airspace for aircraft flying instrument (IFR) procedures at Cordova, AK.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.CTR.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

SUPPLEMENTARY INFORMATION:

History

On February 6, 2002, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Cordova, AK, was published in the **Federal Register** (67 FR 5531). An extension to Class E surface area airspace was proposed to ensure that aircraft flying instrument approach procedures aligned with Runway 27 at the Merle K. (Mudhole) Smith airport are entirely contained within controlled airspace. The Notice of Proposed Rulemaking (NPRM) also proposed to re-designate some E2 airspace to E4 airspace. This proposal was made to comply with the current definition of Class E4 airspace as stated in paragraph 6004 of FAA Order 7400.9J, *Airspace Designations and Reporting Points,* dated September 1, 2001 and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. Paragraph 6004 defines Class E4 airspace as ''*Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.*'' Subsequently, it has been determined by the FAA Airspace Management Branch, ATA–400, in Washington DC that this definition is incorrect. Paragraph 6004 is being amended to read: ''*Class E Airspace Areas Designated as an Extension to a Class D Surface Area.*'' Therefore, all Cordova Merle K. (Mudhole) Smith airport surface area airspace is designated as Class E2 airspace. Coordinates were also changed, to correctly define the intersection of the line that constitutes the north boundary of the Class E2 surface area airspace, with the 4.1 mile radius circle around the airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas are published in paragraph 6002 of FAA Order 7400.9J, *Airspace Designations and Reporting Points,* dated September 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises the Class E airspace at Cordova, Alaska. An addition to Class E controlled airspace is necessary to contain IFR operations at Cordova, AK. The intended effect of this proposal is to provide adequate controlled airspace for instrument (IFR) operations at Merle K. (Mudhole) Smith airport, Cordova, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a

''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6002 Class E airspace designated as a surface area for an airport.

* * * * *

AAL AK E2 Cordova, AK [Revised]

Cordova, Merle K. (MUDHOLE) Smith Airport, AK
(Lat. 60°29′31″ N., long. 145°28′39″ W.)
Glacier River NDB
(Lat. 60°29′56″ N., long. 145°28′28″ W.)

Within a 4.1 mile radius of the Merle K. (Mudhole) Smith airport and within 2.1 miles each side of the 222° bearing from the Glacier River NDB extending from the 4.1 mile radius to 10 miles southwest of the airport and within 2 miles either side of the 060° bearing from the Glacier River NDB extending from the 4.1-mile radius to 6 miles northeast of the airport and within 2.2 miles each side of the 142° bearing from the NDB extending from the 4.1-mile radius to 10.4 miles southeast of the airport, excluding that airspace north of a line from lat. 60°31′00″ N, long. 145°20′00″ W; to lat. 60°31′03″ N, long. 145°20′59″ W.

* * * * *

Issued in Anchorage, AK, on July 1, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–18620 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AAL–2]

Revision of Class E Airspace; Cold Bay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action revises Class E airspace at Cold Bay, AK. Due to the development of an Area Navigation (RNAV) Global Positioning System (GPS) Runway (Rwy) 26 Instrument Approach Procedure for the Cold Bay airport, additional Class E airspace to protect Instrument Flight Rules (IFR) operations is needed. The additional Class E surface area airspace ensures that aircraft executing the RNAV (GPS) Rwy 26 standard instrument approach procedure remain within controlled airspace. This rule results in additional Class E airspace at Cold Bay, AK.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.CTR.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

SUPPLEMENTARY INFORMATION:

History

On February 6, 2002, a proposal to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to add to the Class E airspace at Cold Bay, AK, was published in the **Federal Register** (67 FR 5529). Due to the development of a standard instrument approach procedure, RNAV (GPS) Runway 26, additional Class E controlled airspace is necessary to contain IFR operations at Cold Bay, AK Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9J, *Airspace Designations and Reporting Points,* dated September 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 adds to the Class E airspace at Cold Bay, Alaska. Additional Class E airspace is being created to contain aircraft executing the RNAV (GPS) Runway 26 Approach and will be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Cold Bay Airport, Cold Bay, Alaska.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Cold Bay, AK [New]

Cold Bay Airport, AK
(Lat. 55°12′20″ N., long. 162°43′27″ W.)
Cold Bay VORTAC
(Lat. 55°16′03″ N., long. 162°46′27″ W.)
Elfee NDB
(Lat. 55°17′46″ N., long. 162°47′21″ W.)
Cold Bay Localizer
(Lat. 55°11′41″ N., long. 162°43′07″ W.)

That airspace extending upward from 700 feet above the surface within a 14-mile radius of Cold Bay VORTAC extending clockwise from the 253° radial to the 041° radial of the VORTAC and within 4 miles south of the 253° radial Cold Bay VORTAC extending from the VORTAC to 7.2 miles west of the Cold Bay Airport and within 4 miles south of the 041° radial extending from the VORTAC to 7.2 miles east of the airport and within 4.5 miles west and 8 miles east of the Elfee NDB 318° bearing extending from the NDB to 21.7 northwest of the airport and that airspace within 3 miles each side of the Cold Bay VORTAC 150° radial extending from the VORTAC to 18.2 miles south of the airport and within 2.8 miles west of the Cold Bay Localizer back course extending from the airport to 15.7 miles south of the airport; excluding that airspace more than 12 miles from the shoreline; and that airspace extending from 1,200 feet above the surface within 18.3 miles from the Cold Bay VORTAC extending clockwise from the Cold Bay VORTAC 085° radial to the Cold Bay VORTAC 142° radial.

* * * * *

Issued in Anchorage, AK, on July 1, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–18621 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 191

[T.D. 02—39]

RIN 1515–AC67

Merhcandise Processing Fee Eligible To Be Claimed as Unused Merchandise Drawback

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, the interim rule amending the Customs Regulations that was published in the **Federal Register** on February 9, 2001, as T.D. 01–18. The interim rule amended the regulations to indicate that merchandise processing fees are eligible to be claimed as unused merchandise drawback. The change was made to reflect a recent court decision in which merchandise processing fees were found to be assessed under Federal law and imposed by reason of importation and therefore eligible to be claimed as unused merchandise drawback pursuant to 19 U.S.C. 1313(j). The amendment requires a drawback claimant to apportion the merchandise processing fee to that merchandise that provides the basis for drawback.

EFFECTIVE DATE: July 25, 2002.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Chief, Duty and Refund Determinations Branch, Office of Regulations and Rulings, U.S. Customs Service, Tel. (202) 572–8807.

SUPPLEMENTARY INFORMATION:

Background

Merchandise Processing Fees—19 U.S.C. 58c(a)(9)(A)

Merchandise processing fees are fees the Secretary of the Treasury charges and collects for the processing of merchandise that is formally entered or released into the United States. *See* 19 U.S.C. 58c(a)(9)(A). A merchandise processing fee is assessed as a percentage of the value of the imported merchandise, as determined under 19 U.S.C. 1401a. The *ad valorem* rate is currently 0.21 percent. (*See* 19 CFR 24.23). Section 58c(b)(8)(A)(i) provides that the fee charged under subsection (a)(9) may not be less than $25, unless adjusted pursuant to subsection (a)(9)(B) of this section.

Merchandise processing fees are subject to two monetary limits:

(1) A cap of $485 is imposed by 19 U.S.C. 58c(a)(9)(B)(i) for any release or entry, including weekly Free Trade Zone entries (*see* section 410 of the Trade and Development Act of 2000, Pub. L. 106–200, 114 Stat. 251, enacted on May 18, 2000), for which the value of merchandise subject to the fee exceeds $230,952.38 ($485 ÷ .0021 = $230,952.38), and;

(2) For certain monthly entries, as prescribed by Pub. L. 101–382, section 111(f), as amended, and implemented by § 24.23(d) of the Customs Regulations (19 CFR 24.23(d)), the merchandise processing fee is limited to the lesser of the following:

(i) A cap of $400 where the value of the merchandise subject to the fee exceeds $190,476.19 ($400 ÷ .0021 = $190,476.19); or

(ii) The amount determined by applying the *ad valorem* rate under paragraph (b)(1)(i)(A) of § 24.23 to the total value of such daily importations.

Drawback—19 U.S.C. 1313

Section 313 of the Tariff Act of 1930, as amended, (19 U.S.C. 1313), concerns drawback and refunds. Drawback is a refund of certain duties, taxes and fees paid by the importer of record and granted to a drawback claimant under specific conditions. There are several types of drawback. Section 1313(j) concerns drawback for ''unused merchandise,'' and provides, pursuant to specific conditions set forth therein, that a refund of 99 percent of each duty, tax, or fee ''imposed under Federal law because of [an article's] importation'' will be refunded as drawback.

Merchandise Processing Fees Eligible To Be Claimed as Unused Merchandise Drawback

The issue of whether a merchandise processing fee is ''imposed under Federal law because of [an article's] importation,'' and therefore eligible to be claimed as unused merchandise drawback pursuant to the terms of section 1313(j), was recently examined by the Court of Appeals for the Federal Circuit (CAFC) in *Texport Oil* v. *United States,* 185 F.3d 1291 (Fed. Cir. 1999). In that case, the court held that as merchandise processing fees are ''assessed under Federal law'' (pursuant to 19 U.S.C. 58c(a)(9)) and ''explicitly linked to import activities,'' they are imposed by reason of importation and therefore subject to unused merchandise drawback by application of the statute.

On February 9, 2001, Customs published in the **Federal Register** (66 FR 9647), as T.D. 01–18, an interim rule amending §§ 191.2, 191.3 and 191.51 to reflect the CAFC's decision in *Texport Oil.* In that document, the Customs Regulations were amended to allow

merchandise processing fees to be claimed as unused merchandise drawback, and to provide specific information as to how a drawback claimant is to correctly calculate that portion of a merchandise processing fee that is eligible to be claimed as unused merchandise drawback.

Discussion of Comments

Two commenters responded to the solicitation of public comment published in T.D. 01–18. A description of the comments received, together withCustoms analyses, is set forth below.

Comment

One commenter noted that the illustration presented in Example 2, as set forth in the amendments to § 191.51, is inaccurate and inconsistent with the provisions of § 191.51(b)(2)(iii). Pursuant to § 191.51(b)(2)(iii), ''the amount of merchandise processing fee apportioned to each line item is multiplied by 99 percent to calculate that portion of the fee attributable to each line item that is eligible for drawback.'' It is noted that although Example 1 in § 191.51 illustrates the amount of merchandise processing fee eligible for drawback per line item by multiplying by 99 percent (0.99), Example 2 does not. As a result, some of the figures used in Example 2 are incorrect.

Customs Response

Customs agrees with the comment submitted regarding Example 2. Consequently, this document amends § 191.51, Example 2, to insert language that illustrates the amount of merchandise processing fee eligible for drawback per line item by multiplying the amount by 99 percent (0.99). As a result of this amendment, the figures in Example 2 will be revised. It is also noted that this document corrects a clerical error in Example 2, Line Item 1, and the figure $70,000 will be replaced by the figure $7,000.

Comment

One commenter opposed the apportionment formula set forth in T.D. 01–18 and proposed that the merchandise processing fees not be apportioned across the entire entry, but be allowed to be allocated to individual items. The commenter also notes that as drawback for merchandise processing fees is allowed pursuant to section 1313(p)(4)(B), the Customs Regulations should be amended to reflect this fact.

Customs Response

Customs does not agree with the commenter's proposal. It is noted that pursuant to 19 U.S.C. 58c(a)(9)(B)(i), a merchandise processing fee cap of $485 is applicable to each entry. For this reason, it is necessary that the merchandise processing fee be apportioned and refunded as a percentage of the entire entry.

The commenter's statement that the Customs Regulations should be amended to include reference to the fact that section 1313(p)(4)(B) authorizes drawback for merchandise processing fees has merit. Customs will prepare another document for publication in the **Federal Register** that amends the regulations in this regard.

Conclusion

After review of the comments and further consideration, Customs has decided to adopt as a final rule the interim rule published in the **Federal Register** (66 FR 6647) on February 9, 2001, as T.D.01–18, with changes, discussed above, regarding amendment to § 191.51, Example 2, to insert language that illustrates the amount of merchandise processing fee eligible for drawback per line item by multiplying the amount by 99 percent (0.99). As a result of this amendment, the figures in Example 2 will be revised. This document also corrects a clerical error in Example 2, Line Item 1, whereby the figure $70,000 will be replaced by the figure $7,000.

Inapplicability of Delayed Effective Date

These regulations serve to conform the Customs Regulations to reflect a recent decision by the Court of Appeals for the Federal Circuit and to finalize an interim rule that is already effective. In addition, the regulatory changes benefit the public by allowing merchandise processing fees to be claimed as unused merchandise drawback, and by providing specific information as to how a drawback claimant is to correctly calculate that portion of a merchandise processing fee that is eligible to be claimed as unused merchandise drawback. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date.

The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Further, these amendments do not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Drafting Information

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

List of Subjects in 19 CFR Part 191

Claims, Commerce, Customs duties and inspection, Drawback.

Amendment to the Regulations

For the reasons stated above, the interim rule amending §§ 191.2, 191.3 and 191.51 of the Customs Regulations (19 CFR 191.2, 191.3 and 191.51), which was published at 66 FR 9647–9650 on February 9, 2001, is adopted as a final rule with the changes set forth below.

PART 191—DRAWBACK

1. The general authority citation for part 191 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1313, 1624.

2. In § 191.51(b)(2), Example 2 is revised to read as follows:

§ 191.51 Completion of drawback claims.

* * * * *

(b) *Drawback due.*—* * *

(2) *Merchandise processing fee apportionment calculation.* * * *

Example 2: This example illustrates the treatment of dutiable merchandise that is exempt from the merchandise processing fee and duty-free merchandise that is subject to the merchandise processing fee.

Line item 1—700 meters of printed cloth valued at $10 per meter (total value $7,000) that is exempt from the merchandise processing fee under 19 U.S.C. 58c(b)(8)(B)(iii)

Line item 2—15,000 articles valued at $100 each (total value $1,500,000)

Line item 3—10,000 duty-free articles valued at $50 each (total value $500,000)

The relative value ratios are calculated using line items 2 and 3 only, as there is no merchandise processing fee imposed by reason of importation on line item 1.

Line item 2—1,500,000 ÷ 2,000,000 = .75 (line items 2 and 3 form the total value of the merchandise subject to the merchandise processing fee).

Line item 3—500,000 ÷ 2,000,000 = .25.

If the total merchandise processing fee paid was $485, the amount of the fee attributable to line item 2 is $363.75 (.75 × $485 = $363.75). The amount of the

fee attributable to line item 3 is $121.25 (.25 × $485 = $121.25).

The amount of merchandise processing fee eligible for drawback for line item 2 is $360.1125 (.99 × $363.75). The amount of fee eligible for line item 3 is $120.0375 (.99 × $121.25).

The amount of drawback on the merchandise processing fee attributable to each unit of line item 2 is $.0240 ($360.1125 ÷ 15,000 = $.0240). The amount of drawback on the merchandise processing fee attributable to each unit of line item 3 is $.0120 ($120.0375 ÷ 10,000 = $.0120).

If 1,000 units of line item 2 were exported, the drawback attributable to the merchandise processing fee is $24.00 ($.0240 × 1,000 = $24.00).

* * * * *

Robert C. Bonner,

Commissioner of Customs.

Approved: July 19, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–18664 Filed 7–24–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Diclazuril and Bambermycins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The NADA provides for use of approved single-ingredient diclazuril and bambermycins Type A medicated articles to make two-way combination drug Type C medicated feeds for growing turkeys.

DATES: This rule is effective July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600, e-mail: candres@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., P.O. Box 3182, Union, NJ 07083, filed NADA 141–195 that provides for use of CLINACOX (0.2 percent diclazuril) and FLAVOMYCIN (2, 4, or 10 grams per pound (g/lb) of bambermycins activity) Type A medicated articles to make two-way combination drug Type C medicated feeds containing 0.91 g/ton diclazuril and 1 to 2 or 2 g/ton bambermycins for growing turkeys. The Type C feeds containing 0.91 g/ton diclazuril and 1 to 2 g/ton bambermycins are used for the prevention of coccidiosis caused by *E. adenoeides*, *E. gallopavonis*, and *E. meleagrimitis* and improved feed efficiency. The Type C feeds containing 0.91 g/ton diclazuril and 2 g/ton bambermycins are used for the prevention of coccidiosis caused by *E. adenoeides*, *E. gallopavonis*, and *E. meleagrimitis*, and for increased rate of weight gain and improved feed efficiency. The NADA is approved as of April 2, 2002, and the regulations are being amended in 21 CFR 558.198 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.198 is amended by adding paragraphs (d)(2)(iii) and (d)(2)(iv) to read as follows:

§ 558.198 Diclazuril.

* * * * *

(d) * * *

(2) * * *

Diclazuril grams/ton	Combination grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(iii) 0.91 (1 ppm).	Bambermycins 1 to 2	Growing turkeys: As in paragraph (d)(2)(i) of this section; for improved feed efficiency.	As in paragraph (d)(2)(i) of this section. Bambermycins provided by No. 057926 in § 510.600(c) of this chapter.	000061
(iv) 0.91 (1 ppm).	Bambermycins 2	Growing turkeys: As in paragraph (d)(2)(i) of this section; for increased rate of weight gain and improved feed efficiency.	As in paragraph (d)(2)(i) of this section. Bambermycins provided by No. 057926 in § 510.600(c) of this chapter.	000061

Dated: July 8, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–18877 Filed 7–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 252

[T.D. ATF–477]

RIN 1512–AC44

Delegation of Authority; Correction

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule; correction.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms published a final rule in the April 15, 2002, **Federal Register** concerning the delegation of the Director's authorities in its exportation of liquors regulations. This document corrects the amendatory instructions in one paragraph of that final rule.

DATES: This rule is effective July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226; telephone 202–927–8210.

SUPPLEMENTARY INFORMATION: We published a final rule in the **Federal Register** on April 15, 2002, (67 FR18086) relating to the delegation of the Director's authorities in Part 252 of Title 27 of the Code of Federal Regulations, Exportation of Liquors. Paragraph 44 of that final rule contained incorrect amendatory instructions for § 252.250. This document provides the correct instructions for amending that section.

Correction

Rule document FR Doc. 02—8869, published on April 15, 2002, (67 FR 18086) is corrected as follows:

§ 252.250 [Corrected]

On page 18090, in the second column, paragraph 44 should read as follows:

Par. 44. Amend § 252.250 by:

a. Removing the words ''regional director (compliance) with whom the application, notice, or notice and claim is filed'' each place they appear and adding, in substitution, the words ''appropriate ATF officer''.

b. Removing the words ''regional director (compliance) with whom the notice and claim is filed'' in the second sentence of the introductory text and adding, in substitution, the words ''appropriate ATF officer''.

Signed: July 12, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02–18553 Filed 7–24–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD08–02–015]

RIN 2115—AE84

Regulated Navigation Area; Lower Mississippi River Mile 529.8 to 537.0, Greenville, MS

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a regulated navigation area for all waters of the Lower Mississippi River beginning at mile 529.8 and ending at mile 537.0 in Greenville, Mississippi. This regulated navigation area is needed to protect construction personnel, equipment, and vessels from potential safety hazards associated with two construction projects in this area. Deviation from this rule is prohibited unless specifically authorized by the Captain of the Port Memphis, or his designated representative.

DATES: This rule is effective from 12 a.m. on July 11, 2002 to 12 a.m. on November 30, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD8–02–015] and are available for inspection or copying at Marine Safety Office Memphis, 200 Jefferson Avenue, Memphis, TN 38103–2300 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Malcolm McLellan, Marine Safety Detachment Greenville, at (662) 332–0964.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Information was made available to the Coast Guard in insufficient time to publish an NPRM or for Publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect construction personnel, equipment, and vessels from potential safety hazards associated with vessels transiting in this area.

Request for Comments

Although the Coast Guard has good cause in implementing this rule without engaging in the notice of proposed rule making process, we want to afford the maritime community the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of the regulated navigation area in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking, CCGD8–02–015, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Background and Purpose

This regulated navigation area (RNA) is being established as a result of two simultaneous construction projects. This regulated navigation area is needed to protect construction personnel, equipment, and vessels from potential safety hazards associated with two construction projects in this area.

The Army Corps of Engineers has requested a closure of the Lower Mississippi River from mile 530.0 to 537.0, to protect construction personnel, equipment, and vessels from potential safety hazards associated with vessels transiting in the vicinity of three, bendway weir construction sites on the right descending bank, in the vicinity of Vaucluse Trenchfill at mile 533.0. Construction of the bendway weirs is needed to maintain the integrity of the right descending bank.

Since 1972, the Greenville Bridge (Highway 82), mile 531.3 on the Lower Mississippi River, Greenville,

Mississippi, has been struck more times than any other bridge on the Mississippi River. As a result, a new bridge, the US 82 Benjamin G. Humphreys, is currently being constructed further from the river bend at mile 530.8 on the Lower Mississippi River.

Since bridge construction began, broadcasts to mariners have been made requesting mariners to navigate in the channel to avoid hazarding bridge construction activities, and to maintain contact with the on-scene work vessel when passing the bridge construction site. These broadcasts have not been effective.

As a result of both projects, the Eighth Coast Guard District Commander is establishing a regulated navigation area for all waters of the Lower Mississippi River from mile 529.8 to 537.0, extending the entire width of the river. All vessels other than construction vessels are prohibited from transiting through this area from 6 a.m. to 6 p.m. unless authorized by the Captain of the Port Memphis or his designated representative. Construction vessels are defined as those vessels contracted by the Army Corp of Engineers to perform bendway weir construction work and other vessels engaged in construction of the new Greenville Highway Bridge. The Captain of the Port Memphis may authorize vessels to transit the regulated navigation area between 6 a.m. and 6 p.m. when construction activities pause or are delayed. Vessels authorized to transit during these times must proceed at minimum safe speed when passing the bridge construction site. Mariners will be notified via marine broadcasts on channel 16.

From 6 p.m. to 6 a.m. and at any other time vessels are allowed to transit through the area the following restrictions apply. Vessels may not meet or overtake other vessels within the regulated navigation area. When downbound vessels reach mile 539.0, they shall make a broadcast in the blind on VHF–FM channel 13 announcing their estimated time of arrival at mile 537.0. When upbound vessels reach mile 528.3 they shall make a broadcast in the blind on VHF–FM channel 13 announcing their estimated time of arrival at mile 529.8. If a downbound vessel is already in the RNA the upbound vessel shall adjust its speed to avoid a meeting situation within the RNA. All vessels shall contact the Army Corps of Engineers on-scene vessel and continually monitor VHF–FM channel 13 while in and approaching the Regulated Navigation Area.

No vessel may transit between the caissons and the bank at mile 530.8.

Deviation from this rule is prohibited unless specifically authorized by the Captain of the Port Memphis, or his designated representative. They may be contacted via VHF Channel 13 or 16, or via telephone at (901) 544–3941.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal. This is not a 24-hour a day closure of the waterway. Vessel traffic is allowed to transit the regulated navigation area 12 hours a day and when the Captain of the Port Memphis authorizes vessels to navigate through the area between the hours of 6 a.m. to 6 p.m.

Representatives from both projects have met with local industry including the Lower Mississippi River Committee (LOMRC), to discuss ways to minimize the economic impact. LOMRC is an industry body, composed primarily of companies that transport commodities between Cairo, IL and New Orleans, LA. It represents carriers, facilities, and other maritime interests for the entire Lower Mississippi River. Local industry has agreed to implement voluntary measures to quickly clear waiting traffic and minimize delays during periods when the area is open for transit. The Army Corps of Engineers is providing a vessel to assist waiting vessels through the area as quickly as possible.

Small Entities

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

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

If you are a small business entity and are significantly affected by this regulation please contact LT Malcolm McLellan, Marine Safety Office Memphis, at (662) 332–0964.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive

Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A ''Categorical Exclusion Determination'' is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T08–064 is added to read as follows:

§ 165.T08–064 Regulated Navigation Area; Lower Mississippi River Mile 529.8 to 537.0, Greenville, Mississippi.

(a) *Definitions. Construction vessels* are defined as those vessels contracted for by the Army Corps of Engineers to perform bendway weir construction work and other vessels engaged in construction of the new Greenville Highway Bridge.

(b) *Location.* The following area is a regulated navigation area: the waters of the Lower Mississippi River from mile 529.8 to mile 537.0, extending the entire width of the river.

(c) *Effective date.* This section is effective from 12 a.m. on July 11, 2002 to 12 a.m. on November 30, 2002.

(d) *Regulations.* (1) All vessels other than construction vessels are prohibited from transiting through this area from 6 a.m. to 6 p.m., daily, unless authorized by the Captain of the Port Memphis or his designated representative. Vessels authorized to transit during these times must proceed at minimum safe speed when passing the bridge construction site.

(2) From 6 p.m. to 6 a.m. and at any other time the Captain of the Port Memphis authorizes vessels to transit through the area the following restrictions apply.

(i) Vessels may not meet or overtake other vessels within the regulated navigation area.

(ii) When downbound vessels reach mile 539.0, they shall make a broadcast in the blind on VHF–FM channel 13 announcing their estimated time of arrival at mile 537.0. When upbound vessels reach mile 528.3 they shall make a broadcast in the blind on VHF–FM channel 13 announcing their estimated time of arrival at mile 529.8. If a downbound vessel is already in the regulated navigation area the upbound vessel shall adjust its speed to avoid a meeting situation within the regulated area.

(iii) All vessels shall contact the Army Corps of Engineers on-scene vessel prior to entering the regulated navigation area. They shall continually monitor VHF–FM channel 13 while in and approaching the Regulated Navigation Area.

(iv) No vessel may transit between the caissons and the bank at mile 530.8.

(3) Deviation from this rule is prohibited unless specifically authorized by the Captain of the Port Memphis, or his designated representative. They may be contacted via VHF–FM channel 13 or 16, or via telephone at (901) 544–3941.

Dated: July 11, 2002.

R.J. Casto,

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

[FR Doc. 02–18759 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket #: Id–00–001; FRL–7251–3]

Clean Air Act Finding of Attainment; Portneuf Valley PM–10 Nonattainment Area, Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has determined that the Portneuf Valley nonattainment area has attained the National Ambient Air Quality Standards for particulate matter with an aerodynamic diameter of less than or equal to 10 microns by the attainment date of December 31, 1996, as required by the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on August 26, 2002.

ADDRESSES: Copies of all information supporting this action are available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Pacific Standard Time at EPA Region 10, Office of Air Quality, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Steven Body, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–0782.

SUPPLEMENTARY INFORMATION:

I. Background

On December 6, 2000, EPA solicited public comment on a proposal to find that the Portneuf Valley nonattainment area has attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to 10 microns (PM–10) by the attainment date of December 31, 1996, as required by the Clean Air Act. *See* 65 FR 76203. On December 21, 2000, EPA granted a request to extend the comment period to January 19, 2001. *See* 65 FR 80397.

Although the finding at issue in the proposal was whether the area attained the PM–10 standards by the December 31, 1996 attainment date, EPA also discussed air quality data subsequent to the attainment date. During the end of December 1999 and the beginning of January 2000, there was a significant air pollution episode in the Portneuf Valley and Fort Hall PM–10 nonattainment areas during which three levels above the level of the 24-hour PM–10 NAAQS were reported at the Federal Reference Method (FRM) sampler at the Garrett and Gould monitoring station. None of the other monitoring stations in the Portneuf Valley area reported levels above the level of the 24-hour PM–10 standard during this time period. As discussed in the proposal, although these three exceedances were of concern to EPA, they did not represent a violation of the 24-hour PM–10 standard because three exceedances in three years results in an expected exceedance rate of 1.0 for the three-year period from 1997 to 1999. The 24-hour standard is attained when the expected exceedance rate is less than or equal to 1.0.

II. Air Quality Data Since Proposal

Because of concerns in the community regarding whether the Portneuf Valley area had in fact attained the PM–10 standards, including public comments received on the proposal, and the fact that a single exceedance at the Garrett and Gould FRM monitor during 2000 or 2001 would constitute a violation of the 24-hour PM–10 standard, EPA delayed taking final action on EPA's December 2000 proposal until air quality data for 2000 and 2001 was available. There have been no additional exceedances of the 24-hour PM–10 standard in 2000 or 2001 at the FRM sampler at Garrett and Gould. Therefore, the expected exceedance rate for the site is 1.0 for the years 1999, 2000, and 2001, just below the rate that would represent a violation of the 24-hour PM–10 standard. Therefore, the 24-hour PM–10 standard is attained at the Garrett and Gould FRM sampler as of December 31, 2001. There have been no exceedances of the 24-hour standard at the FRM sampler at the Sewage Treatment Plant in 2000 or 2001.[1]

In the beginning of 2001, IDEQ installed a continuous PM–10 sampler (TEOM) at the Garrett and Gould monitoring site. IDEQ has reported that a level of 166 ug/m3 was recorded at this TEOM sampler on May 5, 2001, which would represent an exceedance of the 24-hour PM–10 standard. IDEQ has flagged this exceedance as attributable to a high wind natural event under EPA's policy entitled ''Areas Affected by Natural Events,'' dated May 30, 1996 (EPA's Natural Events Policy), and requested that this exceedance not be considered in determining the attainment status of the area. This exceedance is still under evaluation by EPA, both in terms of the value of the exceedance[2] and whether the exceedance qualifies as a natural event under EPA's Natural Events Policy. In any event, the exceedance at the TEOM sampler does not, in and of itself or in connection with the three exceedances that occurred at the Garrett and Gould FRM sampler in 1999, constitute a violation of the 24-hour PM–10 standard. For purposes of determining a violation of the 24-hour PM–10 standard, each sampler is evaluated separately. In other words, for there to be a violation of the 24-hour PM–10 standard, the data collected from a single sampler must document an expected annual exceedance rate of greater than 1.0 averaged over a three-year period. *See* Memorandum from Gerald A. Emison, Director, Office of Air Quality Planning and Standard, EPA, entitled ''Revision to Policy on the Use of PM–10 measurement Data,'' dated November 21, 1988. For this reason, EPA believes that the Portneuf Valley PM–10 nonattainment area continues to attain the PM–10 NAAQS when considering PM–10 data collected through 2001.

III. Major Issues Raised by Commenters

EPA received four comment letters in response to the proposal, one supporting the proposed action and three objecting to the proposed action. The following is a summary of the issues raised in the adverse comments on the proposal, along with EPA's response to those issues.

A. Air Quality in the Portneuf Valley Area

All three adverse commenters disputed the characterization of the Portneuf Valley area as being in attainment of the PM–10 standards. These commenters stated that the air quality in the area is very poor, especially during the winter and during inversions. The commenters further stated that the poor air quality results in adverse health effects for the citizens of Pocatello, such as headaches, sinus infections, sore throats, burning eyes, and respiratory problems.

It is certainly correct that poor air quality can cause or aggravate health problems. However, the scope of the action that was proposed, is very narrow; the only issue is whether the Portneuf Valley area has attained the PM–10 standards as of December 31, 1996, the attainment date for the area. Under sections 179(c)(1) and 188(b)(2) of the Clean Air Act (CAA), such a finding is based exclusively upon measured air quality levels over the most recent and complete three calendar year period preceding the attainment date, not on health data. See 40 CFR part 50 and appendix K. EPA finds that monitored air quality data in the Portneuf Valley nonattainment area shows attainment of the PM–10 NAAQS as of the attainment date of December 31, 1996.

Although EPA is finding that the Portneuf Valley area has attained the PM–10 standards, the area will continue to be designated nonattainment for PM–10 until the State of Idaho (Idaho or IDEQ) completes all planning obligations required by the CAA. These obligations include maintaining compliance with the PM–10 NAAQS, developing and submitting a State Implementation Plan (SIP) that provides the regulatory framework for attaining the PM–10 NAAQS, and developing and submitting a maintenance plan that will assure maintenance of the PM–10 standards for an additional 10-year period. Both the SIP and maintenance plan must demonstrate that the PM–10 NAAQS is protected at all places in the Portneuf Valley nonattainment area at all times.

EPA also notes that one of the major sources of particulate matter and particulate precursor gasses in the area, the FMC/Astaris elemental phosphorus facility, just across the border from the Portneuf Valley PM–10 nonattainment area, has recently shut down manufacturing operations resulting in significantly reduced emissions of PM–10. EPA estimates that almost 400 tons

[1] Operation of the FRM monitors at Idaho State University and Chubbuck School was discontinued in the summer of 1999.

[2] There are questions regarding how to ''gap fill'' for periods when the TEOM sampler did not operate on May 5, 2001.

per year of PM–10 have been eliminated from this shutdown.

B. Planning for the Portneuf Valley Area

One commenter expressed concern that the Portneuf Valley area has no SIP in place that shows how the area will demonstrate attainment with the NAAQS for the next 10 years. The commenter states that EPA should not be moving to upgrade the nonattainment status of the Portneuf Valley area until such time as Idaho has an approved SIP that outlines a plan for improvement of air quality and that ensures compliance with air quality standards for the next decade.

As discussed above, this finding of attainment under section 179(c)(1) and 188(b)(2) of the CAA is based exclusively upon measured air quality levels over the most recent and complete three calendar year period preceding the attainment date. The status of the area's planning efforts are not relevant to a determination of attainment under section 179(c)(1) and 188(b)(2) of the CAA. In order for the Portneuf Valley PM–10 nonattainment area to be redesignated from nonattainment to attainment, however, Idaho must complete all planning obligations required by the CAA, including maintaining compliance with the PM–10 NAAQS, developing and submitting a SIP that provides the regulatory framework for attaining the PM–10 NAAQS, and developing and submitting a maintenance plan that assures maintenance of the PM–10 standards for an additional 10-year period. Although IDEQ has not yet completed its planning efforts for the area, EPA believes that Idaho has made substantial progress in its planning efforts, especially the nonattainment planning requirements under section 189 of the CAA.

C. Secondary Aerosols

One commenter stated that neither EPA nor IDEQ has any plan to deal with secondary aerosols (or their precursors) and that secondary aerosols constitute a large portion of overall air pollution in the area. The measured air quality data relied on in this action includes PM–10 contributions from secondary aerosols and their precursors. This data shows that secondary aerosols are not causing a violation of the PM–10 standards. As discussed above, the status of the area's planning efforts are not relevant to a determination of attainment under section 179(c)(1) and 188(b)(2) of the CAA.

D. December 1999 Data

One commenter noted the air pollution episode that occurred at the end of December 1999, suggesting this information should preclude a finding of attainment. As discussed above, the FRM at Garret and Gould recorded three exceedances of the 24-hour standard in 1999, there were no exceedances at this monitor during 1997, 1998, 2000, or 2001. Thus, the expected exceedance rate for each three-year period including 1999 is 1.0 and does not represent a violation of the 24-hour PM–10 NAAQS. In any event, the finding at issue in this action is whether the area attained the PM–10 standards as the attainment date of December 31, 2001.

IV. Implications of Today's Action

As discussed above, EPA finds that the Portneuf Valley PM–10 nonattainment area attained the PM–10 NAAQS by December 31, 1996, the attainment date for the area. This finding of attainment should not be confused, however, with a redesignation to attainment under CAA section 107(d) because the State has not, for the Portneuf Valley area, submitted a SIP or maintenance plan as required under section 175(A) of the CAA or met the other CAA requirements for redesignations to attainment. The designation status in 40 CFR part 81 will remain moderate nonattainment for the Portneuf Valley PM–10 nonattainment area until such time as Idaho meets the CAA requirements for redesignations to attainment.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 September 23, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 12, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–18869 Filed 7–24–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7250–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, ''the Agency'' or ''we'' in this preamble) is granting a petition submitted by Ormet Primary Aluminum Corporation (Ormet) to exclude (or ''delist'') vitrified spent potliner (VSP), generated and treated at the Ormet facility in Hannibal, Ohio from the lists of hazardous wastes. Spent potliners from primary aluminum reduction are listed as hazardous waste number K088 under the Resource Conservation and Recovery Act (RCRA).

Today's action conditionally excludes the petitioned waste from the list of hazardous wastes only if the waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

EFFECTIVE DATE: This rule is effective on July 25, 2002.

ADDRESSES: The RCRA regulatory docket for this final rule, number R5-ORMT–01, is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call Todd Ramaly at (312) 353–9317 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Todd Ramaly at the address above or at (312) 353–9317.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background
A. What Is a Delisting Petition?
B. What Regulations Allow a Waste to Be Delisted?
II. Ormet's Delisting Petition
A. What Waste Did Ormet Petition EPA to Delist?
B. What Information Must the Generator Supply?
C. What Information Did Ormet Submit to Support This Petition?
III. EPA's Evaluation and Final Rule
A. What Decision Is EPA Finalizing and Why?
B. What Are the Terms of This Exclusion?
C. When Is the Delisting Effective?
D. How Does This Action Affect the States?
IV. Public Comment Received on the Proposed Exclusion and EPA's Responses
V. Regulatory Impact
VI. Congressional Review Act

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in Title 40, Code of Federal Regulations (CFR) 261.11 and in the background document for the waste. A petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether any factors other than those for which the waste was listed warrant retaining it as a hazardous waste.

A generator remains obligated under RCRA to confirm that its waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the wastes.

B. What Regulations Allow a Waste to Be Delisted?

Under 40 CFR 260.20 and 260.22, a generator may petition the EPA to remove its wastes from hazardous waste control by excluding it from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste on a ''generator specific'' basis from the hazardous waste lists.

II. Ormet's Delisting Petition

A. What Waste Did Ormet Petition EPA To Delist?

On April, 8, 1994, Ormet submitted an up front petition to exclude vitrified spent potliner, K088, generated at its Hannibal Ohio plant from the list of hazardous wastes contained in 40 CFR 261.31. In December 1999, Ormet submitted a revised petition to exclude an annual volume of 8,500 cubic yards of K088 generated under full scale operation. K088 is defined as spent potliners from primary aluminum reduction.

B. What Information Must the Generator Supply?

A generator must provide sufficient information to allow the EPA to determine that the waste does not meet any of the criteria for which it was listed as a hazardous waste. In addition, where there is a reasonable basis to believe that factors other than those for which the waste was listed (including additional constituents) could cause the waste to be hazardous, the Administrator must determine that such factors do not warrant retaining the waste as hazardous.

C. What Information Did Ormet Submit To Support This Petition?

To support its petition, Ormet submitted descriptions and schematic diagrams of its manufacturing and vitrification processes and detailed chemical and physical analysis of the vitrified potliner.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

Today the EPA is finalizing an exclusion for 8500 cubic yards of vitrified spent potliner generated and treated annually at the Ormet facility in Hannibal, Ohio.

Ormet petitioned EPA to exclude, or delist, the vitrified spent potliner because Ormet believes that the petitioned waste does not meet the criteria for which it was listed it and that there are no additional constituents or factors which could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 United States Code (U.S.C.) 6921(f), and 40 CFR 260.22(d)(2)–(4).

On August 21, 2001 EPA proposed to exclude or delist Ormet's vitrified spent potliner from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (66 FR 43823). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that Ormet's waste should be excluded from hazardous waste control.

B. What Are the Terms of This Exclusion?

Ormet must dispose of the vitrified spent potliner in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste. Any amount exceeding 8,500 cubic yards, annually, is not considered delisted under this exclusion. This exclusion is effective only if all conditions contained in today's rule are satisfied.

C. When Is the Delisting Effective?

This rule is effective July 25, 2002. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received our authorization to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If Ormet transports the petitioned waste to or manages the waste in any state with delisting authorization, Ormet must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

IV. Public Comments Received on the Proposed Exclusion and EPA's Responses

One comment was received from Ormet which pointed out that the proposed rule required sampling on a quarterly basis but required subsequent data submittals on a monthly basis. The discrepancy has been corrected. Verification sampling and data submittals are both required quarterly.

V. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or impose substantial direct compliance costs on Indian tribal governments as specified in Executive Order 13175, 65 FR 67249, November 6, 2000. For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, or impose substantial direct compliance costs state and local governments as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non agency parties (5 U.S.C. 804(3)). This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

List of Subjects in 40 CFR Part 261

Environmental Protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: July 9, 2002.

Phyllis A. Reed,

Acting Director, Waste, Pesticides and Toxins Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. In Table 2 of Appendix IX to part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Ormet Primary Aluminum Corporation.	Hannibal, OH	Vitrified spent potliner (VSP), K088, that is generated by Ormet Primary Aluminum Corporation in Hannibal (Ormet), Ohio at a maximum annual rate of 8,500 cubic yards per year and disposed of in a Subtitle D landfill, licensed, permitted, or registered by a state. The exclusion becomes effective as of July 25, 2002. 1. *Delisting Levels:* (A) The constituent concentrations measured in any of the extracts specified in paragraph (2) may not exceed the following levels (mg/L): Antimony—0.235; Arsenic—0.107; Barium—63.5; Beryllium—0.474; Cadmium—0.171; Chromium (total)—1.76; Lead—5; Mercury—0.17; Nickel—32.2; Selenium—0.661; Silver—4.38; Thallium—0.1; Tin—257; Vanadium—24.1; Zinc—320; Cyanide—4.11. (B) Land disposal restrictions (LDR) treatment standards for K088 must also be met before the VSP can be land disposed. Ormet must comply with any future LDR treatment standards promulgated under 40 CFR 268.40 for K088. 2. *Verification Testing:* (A) On a quarterly basis, Ormet must collect two samples of the waste and analyze them for the constituents listed in paragraph (1) using the methodologies specified in an EPA-approved sampling plan specifying (a) the TCLP method, and (b) the TCLP procedure with an extraction fluid of 0.1 Normal sodium hydroxide solution. The constituent concentrations measured in the extract must be less than the delisting levels established in paragraph (1). Ormet must also comply with LDR treatment standards in accordance with 40 CFR 268.40. (B) If the quarterly testing of the waste does not meet the delisting levels set forth in paragraph (1), Ormet must notify the Agency in writing in accordance with paragraph (5). The exclusion will be suspended and the waste managed as hazardous until Ormet has received written approval for the exclusion from the Agency. Ormet may provide sampling results that support the continuation of the delisting exclusion. 3. *Changes in Operating Conditions:* If Ormet significantly changes the manufacturing process, the treatment process, or the chemicals used, Ormet must notify the EPA of the changes in writing. Ormet must handle wastes generated after the process change as hazardous until Ormet has demonstrated that the wastes continue to meet the delisting levels set forth in paragraph (1) and that no new hazardous constituents listed in Appendix VIII of part 261 have been introduced and Ormet has received written approval from EPA. 4. *Data Submittals:* Ormet must submit the data obtained through quarterly verification testing or as required by other conditions of this rule to U.S. EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604 by February 1 of each calendar year for the prior calendar year. Ormet must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. Ormet must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). 5. *Reopener Language*—(a) If, anytime after disposal of the delisted waste, Ormet possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent identified in paragraph (1) is at a level in the leachate higher than the delisting level established in paragraph (1), or is at a level in the groundwater higher than the point of exposure groundwater levels referenced by the model, then Ormet must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (5)(a) or any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (c) If the Regional Administrator determines that the information does require Agency action, the Regional Administrator will notify Ormet in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Ormet with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. Ormet shall have 30 days from the date of the Regional Administrator's notice to present the information. (d) If after 30 days Ormet presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
*	*	* * * * * *

[FR Doc. 02–18711 Filed 7–24–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 100

RIN 0906–AA55

National Vaccine Injury Compensation Program: Revisions and Additions to the Vaccine Injury Table

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: On July 13, 2001, the Secretary of Health and Human Services (the Secretary) published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) proposing changes to the regulations governing the National Vaccine Injury Compensation Program (VICP). Specifically, the Secretary proposed revisions to the Vaccine Injury Table (the Table). The primary proposal made in the NPRM was that vaccines containing live, oral, rhesus-based rotavirus be added to the Table as a distinct category, with intussusception listed as a covered Table injury. This proposal was based upon the Secretary's determination that the condition of intussusception can reasonably be determined in some circumstances to be caused by vaccines containing live, oral, rhesus-based rotavirus. The Secretary is now making this amendment to the Table by final rule. The Secretary is also making additional amendments to the Table and to the Table's Qualifications and Aids to Interpretation (Qualifications and Aids), described below under **SUPPLEMENTARY INFORMATION**, as proposed in the NPRM. The changes implemented here are authorized by section 2114(c) and (e) of the Public Health Service Act (the Act).

DATES: This regulation is effective on August 26, 2002. *Applicability dates:* As provided by section 13632(a)(3) of Public Law 103–66, the Omnibus Budget Reconciliation Act of 1993, the addition of vaccines containing live, oral, rhesus-based rotavirus took effect on October 22, 1998, the effective date of the excise tax for rotavirus vaccines, provided that they were administered on or before August 26, 2002. Under the same authority, the addition of pneumococcal conjugate vaccines took effect on December 18, 1999, the effective date of the excise tax for this categories of vaccines. See discussion under **SUPPLEMENTARY INFORMATION** in the NPRM underlying this final rule (66 FR 36735, July 13, 2001) for an explanation of these applicability dates.

FOR FURTHER INFORMATION CONTACT: Geoffrey Evans, M.D., Medical Director, Division of Vaccine Injury Compensation, Office of Special Programs, Health Resources and Services Administration (HRSA), Parklawn Building, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number (301) 443–4198.

SUPPLEMENTARY INFORMATION:

Introductory and Procedural History

On July 13, 2001, the Secretary published in the **Federal Register** (66 FR 36735, July 13, 2001) an NPRM to revise and amend the Table and the Qualifications and Aids. The NPRM was issued pursuant to Section 2114(c) of the Act, which authorizes the Secretary to promulgate regulations to modify the Table, and Section 2114(e), which directed the Secretary to add to the Table, by rulemaking, coverage of additional vaccines which are recommended by the Centers for Disease Control and Prevention (CDC) for routine administration to children.

The Department held a 6-month comment period, which ended on January 9, 2002, in connection with this NPRM. The Secretary did not receive any comments in response to the NPRM. A public hearing was held on December 6, 2001, as announced in the **Federal Register** (66 FR 58154, Nov. 20, 2001), but no individual or organization appeared to testify.

Because the Secretary has not received any comments, either written or oral, from any interested individual or organization on the proposals made in the NPRM, and because the Secretary continues to believe in the advisability of effectuating such proposals, this final rule implements the proposals made in the NPRM. One technical amendment to 42 CFR 100.3(c)(4), which was inadvertently omitted from the NPRM, is being implemented in this final rule. In addition, we are modifying the authority citation for 42 CFR part 100. The rationales for all other revisions and additions made in this final rule were explained fully in the Preamble to the NPRM. For the reasons set forth in the NPRM, the Secretary makes several amendments affecting the operation of the VICP in this rule.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive, and equity effects). In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget. Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Secretary has determined that no resources are required to implement the requirements in this rule. Compensation will be made in the same manner. The final rule only lessens the burden of proof for certain potential petitioners. Therefore, in accordance with the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

The Secretary has also determined that this rule does not meet the criteria for a major rule as defined by Executive Order 12866 and will have no major effect on the economy or Federal expenditures. We have determined that this rule is not a ''major rule'' within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, it will not have effects on State, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Nor on the basis of family well-being will the provisions of this rule affect the following family elements: family safety, family stability, marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999.

The Department has also reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, or 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 stated above, this rule will modify the Vaccine Injury Table and the Qualifications and Aids based on legal authority.

Impact of the New Rule

The final rule will have the effect of decreasing the burden of proof on expected future petitioners filing petitions alleging a vaccine-related injury caused or aggravated by a rotavirus vaccine. Under this rule, future petitioners alleging the injury of intussusception as the result of a live, oral rhesus-based rotavirus vaccine, the only type of rotavirus vaccine licensed to date in the United States, will be afforded a presumption of causation. This rule will not change the burden of proof applicable to petitioners alleging other injuries related to a rotavirus vaccine, who must rely on a causation in fact analysis.

Because the final rule limits the Table injury of intussusception to live, oral, rhesus-based rotavirus vaccines, administered on or before the effective date of the final rule, individuals seeking compensation for injuries related to such a vaccine administered after the final rule becomes effective will no longer receive the presumption of a Table injury for intussusception. Because the manufacturer of the only U.S.-licensed rotavirus vaccine voluntarily ceased distribution of the vaccine in July 1999, and because the CDC recommended that this vaccine no longer be recommended for infants in the United States in October 1999, the Secretary has concluded that no potential claims arising after this rule is published will be likely to exist.

This final rule will have a similar effect for petitioners seeking compensation for injuries related to hemophilus influenzae type b polysaccharide (unconjugated) vaccines. As explained in the NPRM, the Secretary believes that no potential claims relating to this category of vaccines exist. Thus, it is very unlikely that the removal of unconjugated Hib vaccines from the Table will have an adverse impact upon potential petitioners. Removing early-onset Hib disease from the Table's Qualifications and Aids to Interpretation will not have an adverse effect on petitioners because it will no longer be listed as an adverse event for any vaccine on the Table.

Similarly, because residual seizure disorder is not listed on the Table as an adverse event for any vaccine on the Table, removing residual seizure disorder will not have an adverse impact upon future petitioners.

Finally, this rule will have the effect of making petitioners seeking compensation for injuries related to pneumococcal conjugate vaccines eligible for compensation under a separate category on the Table.

Paperwork Reduction Act of 1980

This final rule has no information collection requirements.

List of Subjects in 42 CFR Part 100

Biologics, Health insurance, and Immunization.

Dated: March 14, 2002.

Elizabeth M. Duke,

Administrator, Health Resources and Services Administration.

Approved: May 17, 2002.

Tommy G. Thompson,

Secretary.

Accordingly, 42 CFR part 100 is amended as set forth below:

PART 100—VACCINE INJURY COMPENSATION

1. The authority citation for 42 CFR part 100 is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act (42 U.S.C. 216); secs. 312 and 313 of Pub. L. 99–660, 100 Stat. 3779–3782 (42 U.S.C. 300aa–1 note); sec. 2114(c) and (e) of the PHS Act, 100 Stat. 3766 and 107 Stat. 645–646 (42 U.S.C. 300aa–14(c) and (e)); sec. 904(b) of Pub. L. 105–34, 111 Stat. 873; sec. 1503 of Pub. L. 105–277, 112 Stat. 2681–741; and sec. 523(a) of Pub. L. 106–170, 113 Stat. 1927–1928.

2. Section 100.3 is amended as follows:

a. In paragraph (a), the Table is amended by removing Item IX; redesignating Items X, XI, XII, and XIII as Items IX, X, XI, and XIV; and adding new Items XII and XIII to read as set forth below.

b. Paragraph (b)(3) is removed and reserved.

c. Paragraph (b)(4) is amended by revising the phrase ''paragraphs (b)(2) and (3)'' in the first sentence to read ''paragraph (b)(2)''.

d. Paragraph (b)(11) is removed.

e. Paragraph (c)(2) is amended by removing the words '', and XI'' in the parenthetical phrase and adding the word ''and'' before the number ''X''.

f. Paragraph (c)(3) is revised as set forth below.

g. Paragraph (c)(4) is redesignated as (c)(5) and is amended by revising the phrase ''Item XIII'' in the parenthetical phrase to read ''Item XIV''.

h. A new paragraph (c)(4) is added to read as set forth below.

§ 100.3 Vaccine injury table.

(a) * * *

VACCINE INJURY TABLE

Vaccine	Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
* * *	* * *	*
XII. Vaccines containing live, oral, rhesus-based rotavirus.	Intussusception.	0–30 days.
XIII. Pneumococcal conjugate vaccines	No condition specified.	Not applicable.
* * *	* * *	*

(c) * * *

(3) Rotavirus vaccines (Item XI of the Table) are included in the Table as of October 22, 1998. Vaccines containing live, oral, rhesus-based rotavirus (Item XII of the Table) are included in the Table as of October 22, 1998, provided that they were administered on or before August 26, 2002.

(4) Pneumococcal conjugate vaccines (Item XIII of the Table) are included in the Table as of December 18, 1999.

* * * * *

[FR Doc. 02–18827 Filed 7–24–02; 8:45 am]

BILLING CODE 4165–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 80

[PR Docket No. 92–257; RM–9664; FCC 02–74]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules that will streamline our licensing process for Automated Maritime Telecommunications System (AMTS) stations by utilizing a geographic area licensing system. With respect to high seas spectrum, the Commission will now process applications on a first-come, first-served basis, thereby precluding the filing of mutually exclusive applications and thus, the need to use competitive bidding procedures. The Commission believes that these decisions will increase competition in the provision of telecommunications services, promote more efficient use of maritime spectrum, increase the types of telecommunications services available to vessel operators, allow maritime commercial mobile radio service (CMRS) providers to respond more quickly to market demand, and reduce regulatory burdens on AMTS and high seas public coast station licensees.

EFFECTIVE DATE: Effective August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Fickner, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at (202) 418–7308.

SUPPLEMENTARY INFORMATION: The Commission's *Second Memorandum Opinion and Order and Fifth Report and Order,* PR Docket No. 92–257, FCC 02–74, was adopted March 13, 2002, and released on April 8, 2002. The full text of this Commission's *Second Memorandum Opinion and Order and Fifth Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th 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 20037. The full text may also be downloaded at: *http://www.fcc.gov/Wireless/Orders/2002/fcc0274.txt.* Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Summary of the Second Memorandum Opinion and Order

1. The Commission resolves a petition for reconsideration of the suspension of acceptance of applications for new AMTS and HF radiotelephone high seas public coast stations that went into effect on November 16, 2000. The Commission states that it believes that suspension of acceptance and processing of AMTS applications is warranted in order to facilitate the orderly and effective resolution of the matters pending in this proceeding. By maintaining the processing suspension, it states that it will be able to weigh the costs and benefits of the existing regulatory framework against its proposals.

2. The Commission also resolves a petition for declaratory ruling regarding section 309 of the Communications Act. The Commission states that sections 309(d)(2) and (e) do not restrict its authority to dismiss an AMTS application that, as of November 16, 2000, was mutually exclusive with other applications or for which the relevant period to file mutually exclusive applications had not expired. The Commission also rejects the petitioner's argument that in instances where a petition to deny was filed against one or more mutually exclusive applications that were subject to the processing suspension, section 309(j)(6)(E) requires the Commission to first address the petition to deny because a grant of the petition could resolve the mutual exclusivity, thus enabling the surviving application(s) to be processed. The Commission states that section 309(j)(6)(E) merely requires that it take certain measures, when it is in the public interest, to avoid mutual exclusivity within the framework of existing, not outmoded, licensing policies.

Summary of the Fifth Report and Order

3. The Commission concludes that the public interest will be best served by a transition to geographic area licensing for AMTS spectrum. Such an approach will speed assignment of subsequent AMTS licenses, reduce processing burdens on the Commission, facilitate the expansion of existing AMTS systems and the development of new AMTS systems, eliminate inefficiencies arising from the intricate web of relationships created by site-specific authorization, and enhance regulatory symmetry.

4. The Commission adopts a 10 dB co-channel interference protection standard because it will afford AMTS incumbents with sufficient protection. The Commission believes that 10 dB protection to an incumbent's 38 dBu service contour (the standard used in

the 220–222 MHz band) provides the incumbent with sufficient protection from potential interference. On the other hand, it believes that an overly conservative co-channel interference protection standard, such as 18 dB, would be spectrally inefficient because it would prevent geographic licensees from using AMTS spectrum in areas that could be served without harm to other licensees.

5. The Commission concludes that AMTS geographic licensees should be permitted to operate at a 38 dBu field strength at the geographic boundaries. This is the standard used in the 220–222 MHz band. To require a lower field strength might unnecessarily restrict AMTS licensees ability to provide quality service to mobile units operating in boundary areas.

6. The Commission concludes that the requirement that AMTS stations must serve a waterway is inconsistent with geographic licensing. It believes that requiring AMTS stations to serve coastlines or sizable navigable inland waterways could prevent service from being offered in some licensing areas. Therefore, it will permit a licensee to place stations anywhere within its service area so long as marine-originating traffic is given priority and incumbent operations are protected. However, licensees whose service areas include certain major waterways will be required to provide coverage to those waterways.

7. The Commission concludes that an AMTS geographic area licensee should be permitted to acquire both AMTS frequency blocks in the same geographic area. It believes that limiting bidders to one channel block could impede vigorous competitive bidding. Moreover, when it considers that there are already competing commercial mobile radio service (CMRS) providers, such as VPC and 220–222 MHz, it believes that allowing one applicant to acquire both AMTS channel blocks in the same geographic area will not have anti-competitive consequences for the public.

8. The Commission concludes that AMTS licensees should be required to make a substantial service showing only at the time of license renewal. It believes that requiring substantial service at the time of license renewal (ten years) will ensure efficient use of AMTS spectrum, as well as expeditious provision of service to the public. This standard also is consistent with other geographic area license services.

9. The Commission concludes that it is in the public interest to modify its current licensing procedures for assigning high seas public coast spectrum by requiring applications to be processed on a first-come, first-served basis, thereby precluding the filing of mutually exclusive applications and thus, the need to use competitive bidding procedures. The Commission believes that the extensive international coordination requirements of high seas spectrum as well as the need to conform to the changing allocations and allotments instituted by the World Radio Conference, makes it an inappropriate spectrum band for license grant via competitive bidding.

10. The Commission concludes that Medium Frequency (MF) private coast stations should be permitted to use unassigned public coast station radiotelephone frequency pairs in the 2 MHz band for non-CMRS services. It believes that permitting private coast stations to share 2 MHz public correspondence frequencies will promote the more efficient use of maritime spectrum and will reduce congestion for MF private coast licensees.

Final Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Third Further Notice of Proposed Rule Making* in this proceeding. The Commission sought written public comment on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[2]

A. Need for, and Objectives of, the Fifth Report and Order

12. Our objective is to simplify our licensing process for AMTS stations. Specifically, this action will: (1) Convert licensing of AMTS station spectrum from site-by-site licensing to geographic area licensing, (2) simplify and streamline the AMTS spectrum licensing procedures and rules, (3) increase licensee flexibility to provide communication services that are responsive to dynamic market demands, and (4) introduce market-based forces into the Maritime Services by using competitive bidding procedures (auctions) to resolve mutually exclusive applications for AMTS spectrum. We find that these actions will increase the number and types of communications services available to the maritime community and improve the safety of life and property at sea, and that the potential benefits to the maritime community exceed any negative effects that may result from the promulgation of rules for this purpose. Thus, we conclude that the public interest is served by amending our rules as described above.

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

13. No comments were submitted in response to the IRFA. However, Mobex Communications, Inc., a commenter to the *Third Further Notice of Proposed Rulemaking,* suggested that we allow applicants to exclude operating revenues from activities which have been discontinued more than one year prior to the filing of the short form application when determining the average gross revenues for the preceding three years. The Commission carefully considered this comment when reaching the decision that it was in the public interest that such revenues continue to be included in the calculation of average gross revenues, because the inclusion of such revenues will help provide an accurate and equitable measure of the size of a business and whether that business is truly eligible for small business bidding credits.

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

14. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[3] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[4] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[5] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[6] A small

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* 5 U.S.C. 604.

[3] 5 U.S.C. 603(b)(3).

[4] 5 U.S.C. 601(6).

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[6] Small Business Act, 15 U.S.C. 632 (1996).

organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[7]

15. The rules adopted herein will affect licensees using AMTS and high seas public coast spectrum. In the *Third Report and Order* in this proceeding, the Commission defined the term ''small entity'' specifically applicable to public coast station licensees as any entity employing fewer than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers.[8] Since the size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of AMTS and high seas public coast station licensees that are small businesses, and no commenters responded to our request for information regarding the number of small entities that use or are likely to use public coast spectrum, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms that operated in 1992 had 1,000 or more employees. There are three AMTS public coast station licensees and approximately thirteen high seas public coast station licensees. Based on the rules adopted herein, it is unlikely that more than seven licensees will be authorized in the future. Therefore, for purposes of our evaluations and conclusions in this FRFA, we estimate that there are approximately twenty-three AMTS and high seas public coast station licensees that are small businesses, as that term is defined by the Small Business Administration.

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

16. All small businesses that choose to participate in the competitive bidding for these services will be required to demonstrate that they meet the criteria set forth to qualify as small businesses, as required under part 1, subpart Q of the Commission's Rules, 47 CFR part 1, subpart Q. Any small business applicant wishing to avail itself of small business provisions will need to make the general financial disclosures necessary to establish that the business is in fact small. Prior to auction, each small business applicant will be required to submit an FCC Form 175, OMB Clearance Number 3060–0600. The estimated time for filling out an FCC Form 175 is 45 minutes.

17. In addition to filing an FCC Form 175, each applicant will have to submit information regarding the ownership of the applicant, any joint venture arrangements or bidding consortia that the applicant has entered into, and financial information demonstrating that a business wishing to qualify for installment payments and bidding credits is a small business.

18. Applicants that do not have audited financial statements available will be permitted to certify to the validity of their financial showings. While many small businesses have chosen to employ attorneys prior to filing an application to participate in an auction, the rules are intended to enable a small business working with the information in a bidder information package to file an application on its own.

19. When an applicant wins a license, it will be required to submit an FCC Form 601, which will require technical information regarding the applicant's proposals for providing service. This application will require information provided by an engineer who will have knowledge of the system's design. The estimated time for completing an FCC Form 601 is one hour and fifteen minutes.

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

20. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

21. The Commission in this proceeding has considered comments on implementing broad changes to the maritime service rules. It has adopted alternatives which minimize burdens placed on small entities. It has decided to adopt for AMTS the small business provisions that were adopted in the auction of VHF public coast spectrum. Specifically, the Commission has concluded that AMTS small businesses will receive a bidding credit of 25 percent and very small businesses will receive a bidding credit of 35 percent. It has defined small businesses as those entities, together with their affiliates and controlling interests, with not more than fifteen million dollars in average gross revenues for the preceding three years, and very small businesses as those entities, together with their affiliates and controlling interests, with not more than three million dollars in average gross revenues for the preceding three years.[9]

22. The Commission considered and rejected several significant alternatives. It rejected the Mobex Communications, Inc. request that we allow applicants to exclude operating revenues from activities which have been discontinued more than one year prior to the filing of the short form application when determining the average gross revenues for the preceding three years. This was rejected because it could encourage bad business practices by large businesses that are designed to circumvent the Commission's small business provisions for the purpose of becoming eligible for bidding credits. The Commission also rejected the proposal that AMTS geographic area licensees be required to provide substantial service to their service areas within five years. Instead, the Commission has adopted a requirement that AMTS licensees provide substantial service within ten years, *i.e.,* at the time of license renewal. The ten-year substantial service requirement should prove to be less burdensome on small businesses than a five-year benchmark.

23. *Report to Congress:* The Commission will send a copy of the *Fifth Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[10] In addition, the Commission will send a copy of the *Fifth Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the Small

[7] 5 U.S.C. 601(4).

[8] *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order,* 13 FCC Rcd 19853, 19893 (1998) (citing 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812 (now North American Industry Classification System (NAICS) Code 513322)).

[9] These small business size standards have been approved by the U.S. Small Business Administration, pursuant to Section 3 of the Small Business Act. *See* Letter from Aida Alvarez, Administrator, Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission (dated November 3, 2000) (approving size standards for AMTS and high seas public coast services); *see also* 15 U.S.C. 632(a)(2) (establishment of size standards by federal agencies); 13 CFR 121.90(b) (promulgation of special size standards by federal agencies).

[10] *See* 5 U.S.C. 801(a)(1)(A).

Business Administration. In addition, the *Fifth Report and Order* and FRFA (or summaries thereof) will be published in the **Federal Register**.[11]

24. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Fifth Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 1 and 80

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, The Federal Communications Commission amends 47 CFR parts 1 and 80 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.227 is amended by revising paragraph (b)(4) to read as follows:

§ 1.227 Consolidations.

* * * * *

(b) * * *

(4) This paragraph applies when mutually exclusive applications subject to section 309(b) of the Communications Act and not subject to competitive bidding procedures pursuant to § 1.2102 of this chapter are filed in the Private Radio Services, or when there are more such applications for initial licenses than can be accommodated on available frequencies. Except for applications filed under part 101, subparts H and O, Private Operational Fixed Microwave Service, and applications for high seas public coast stations (see §§ 80.122(b)(1) (first sentence), 80.357, 80.361, 80.363(a)(2), 80.371(a), (b), and (d), and 80.374 of this chapter) mutual exclusivity will occur if the later application or applications are received by the Commission's offices in Gettysburg, PA (or Pittsburgh, PA for applications requiring the fees set forth at part 1, subpart G of the rules) in a condition acceptable for filing within 30 days after the release date of public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing or within such other period as specified by the Commission. For applications in the Private Operational Fixed Microwave Service, mutual exclusivity will occur if two or more acceptable applications that are in conflict are filed on the same day. Applications for high seas public coast stations will be processed on a first come, first served basis, with the first acceptable application cutting off the filing rights of subsequent, conflicting applications. Applications for high seas public coast stations received on the same day will be treated as simultaneously filed and, if granting more than one would result in harmful interference, must be resolved through settlement or technical amendment.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

3. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. Section 80.49 is amended by revising paragraph (a)(3) to read as follows:

§ 80.49 Construction and regional service requirements.

(a) * * *

(3) Each AMTS coast station geographic area licensee must make a showing of substantial service within its service area within ten years of the initial license grant, or the authorization becomes invalid and must be returned to the Commission for cancellation. ''Substantial'' service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. For site-based AMTS coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within two years from the date of the grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

* * * * *

5. Section 80.60 is amended by revising paragraphs (a) and (b)(2) and adding paragraph (d)(3) to read as follows:

§ 80.60 Partitioned licenses and disaggregated spectrum.

(a) *Eligibility.* The following licensees may partition their service areas or disaggregate their spectrum. Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment pursuant to § 1.948 of this chapter.

(1) VHF Public Coast area licensees, *see* § 80.371(c)(1)(ii), may partition their geographic service area or disaggregate their spectrum pursuant to the procedures set forth in this section.

(2) AMTS geographic area licensees, *see* § 80.385(a)(3), may partition their geographic service area or disaggregate their spectrum pursuant to the procedures set forth in this section. Site-based AMTS public coast station licensees may partition their license or disaggregate their spectrum pursuant to the procedures set forth in this section, provided that the partitionee or disaggregatee's predicted 38 dBu signal level contour does not extend beyond the partitioner or disaggregator's predicted 38 dBu signal level contour. The predicted 38 dBu signal level contours shall be calculated using the F(50, 50) field strength chart for Channels 7–13 in § 73.699 (Fig. 10) of this chapter, with a 9 dB correction for antenna height differential.

(3) Nationwide or multi-region LF, MF, and HF public coast station licensees, *see* §§ 80.357(b)(1), 80.361(a), 80.363(a)(2), 80.371(b), and 80.374, may partition their spectrum pursuant to the procedures set forth in this section, except that frequencies or frequency pairs licensed to more than one licensee as of March 13, 2002 may be partitioned only by the earliest licensee, and only on the condition that the partitionee shall operate on a secondary, non-interference basis to stations licensed as of March 13, 2002 other than the earliest licensee. Coordination with government users is required for partitioning of spectrum the licensing of which is subject to coordination with government users.

(b) * * *

(2) *Disaggregation.* VHF (156–162 MHz) spectrum may only be disaggregated according to frequency pairs. AMTS spectrum may be disaggregated in any amount.

* * * * *

(d) * * *

(3) *Site-based AMTS, and nationwide or multi-region LF, MF, and HF public coast.* Parties seeking to acquire a partitioned license or disaggregated spectrum from a site-based AMTS, or nationwide or multi-region LF, MF, and HF public coast licensee will be

[11] *See* 5 U.S.C. 604(b).

required to construct and commence ''service to subscribers'' in all facilities acquired through such transactions within the original construction deadline for each facility as set forth in § 80.49. Failure to meet the individual construction deadline will result in the automatic termination of the facility's authorization.

6. Section 80.70 is amended by revising the section heading and paragraph (c) to read as follows:

§ 80.70 Special conditions relative to coast station VHF facilities.

* * * * *

(c) A VHF (156–162 MHz) public coast licensee initially authorized on any of the channels listed in the table in § 80.371(c)(1), or an AMTS licensee initially authorized on any of the channel blocks listed in the table in § 80.385(a)(2), may transfer or assign its channel(s), or channel block(s), to another entity. If the proposed transferee or assignee is the geographic area licensee for the geographic area to which the frequency block is allocated, such transfer or assignment will be deemed to be in the public interest. However, such presumption will be rebuttable.

7. Section 80.122 is amended by revising paragraph (b)(1) to read as follows:

§ 80.122 Public coast stations using facsimile and data.

* * * * *

(b) * * *

(1) Frequencies in the 2000–27500 kHz bands in part 2 of this chapter as available for shared use by the maritime mobile service and other radio services are assignable to public coast stations for providing facsimile communications with ship stations. Additionally, frequencies in the 156–162 MHz and 216–220 MHz bands available for assignment to public coast stations for radiotelephone communications that are contained in subpart H of this part are also available for facsimile and data communications.

* * * * *

8. Section 80.153 is amended by revising paragraph (a), removing paragraphs (b) and (c)(1), and redesignating paragraph (c)(2) as paragraph (b), to read as follows:

§ 80.153 Coast station operator requirements.

(a) Except as provided in § 80.179, operation of a coast station transmitter must be performed by a person who is on duty at the control point of the station. The operator is responsible for the proper operation of the station.

* * * * *

9. Section 80.207 is amended by revising the table entries for 216–220 MHz in paragraph (d) to read as follows:

§ 80.207 Classes of emission.

* * * * *

(d) * * *

Types of stations	Classes of emission
Ship Stations [1]	
Radiotelegraphy:	
* * * * * * *	
216–220 MHz [3]	F1B, F2B, F2C, F3C, F1D, F2D
* * * * * * *	
Land Stations [1]	
Radiotelegraphy:	
* * * * * * *	
216–220 MHz [3]	F1B, F2B, F2C, F3C, F1D, F2D
* * * * * * *	

[1] Excludes distress, EPIRBs, survival craft, and automatic link establishment.

* * * * * * *

[3] Frequencies used in the Automated Maritime Telecommunications System (AMTS). See § 80.385(b).

* * * * * * *

10. Section 80.215 is amended by revising paragraph (h)(3)(i) to read as follows:

§ 80.215 Transmitter power.

* * * * *

(h) * * *

(3) * * *

(i) Shows that the proposed site is the only suitable location (which, at the application stage, requires a showing that the proposed site is especially well-suited to provide the proposed service);

* * * * *

11. Section 80.357 is amended by revising paragraph (b)(1) to read as follows:

§ 80.357 Morse code working frequencies.

* * * * *

(b) *Coast station frequencies.*—(1) *Frequencies in the 100–27500 kHz band.* The following table describes the working carrier frequencies in the 100–27500 kHz band which are assignable to coast stations located in the designated geographical areas. The exclusive maritime mobile HF bands listed in the table contained in § 80.363(b) of this part are also available for assignment to public coast stations for A1A or J2A radiotelegraphy following coordination with government users. With respect to frequencies that are assignable in more than one geographical area, once the frequency is assigned to one licensee, any subsequent license will be authorized on a secondary, non-interference basis with respect to the incumbent license's existing operation. If the first licensee later seeks authorization to operate in an additional geographic area, such authorization will be on a secondary, non-interference basis to other co-channel licensees.

* * * * *

12. Section 80.371 is amended by revising the entries to the table and footnote 1 and adding footnotes 4 and 5 in paragraph (a), and by (b) introductory text, revising paragraphs (c)(1)(ii) and (c)(4) to read as follows:

§ 80.371 Public correspondence frequencies.

(a) * * *

WORKING FREQUENCY PAIRS IN THE 2000–4000 kHz BAND

Region	Carrier frequencies (kHz)	
	Ship transmit	Coast transmit
East Coast:	* * *	* * *
	2118.0	[1] 12514.0
	* * *	* * *
	2382.0	[5] 2482.0
	* * *	* * *
	2406.0	[4] 2506.0
West Coast:	* * *	* * *
	2430.0	[5] 2482.0
Gulf Coast:	* * *	* * *
	[1] 2158.0	[1] 2550.0
	* * *	* * *
	2382.0	[5] 2482.0
* * * * *		
Alaska	2131.0	[5] 2309.0
* * * * *		

[1] Unlimited hours of use from December 15 to April 1 and day only from April 1 to December 15. Harmful interference must not be caused to any station in the Great Lakes region.

* * * * *

[4] Harmful interference must not be caused to any coast station in the Caribbean region.

[5] *But see* section 80.373(c)(3) of this chapter.

(b) *Working frequencies in the 4000–27500 kHz band.* This paragraph describes the working carrier frequencies in the 4000–27500 kHz band. With respect to frequencies that are assignable in more than one geographical area, once the frequency is assigned to one licensee, any subsequent license will be authorized on a secondary, non-interference basis with respect to the incumbent license's existing operation. If the first licensee later seeks authorization to operate in an additional geographic area, such authorization will be on a secondary, non-interference basis to other co-channel licensees.

* * * * *

(c) * * *

(1) * * *

(ii) Service areas in the marine VHF 156–162 MHz band are VHF Public Coast Station Areas (VPCSAs). As listed in the table in this paragraph, VPCSAs are based on, and composed of one or more of, the U.S. Department of Commerce's 172 Economic Areas (EAs). *See* 60 FR 13114 (March 10, 1995). In addition, the Commission shall treat Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico as EA-like areas 173–176, respectively. Maps of the EAs and VPCSAs are available for public inspection and copying at the Federal Communications Commission, Public Safety and Private Wireless Division, 445 12th St., SW., Room 4–C330, Washington, DC. Except as shown in the table, the frequency pairs listed in paragraph (c)(1)(i) of this section are available for assignment to a single licensee in each of the VPCSAs listed in the table in this paragraph. In addition to the listed EAs listed in the table in this paragraph, each VPCSA also includes the adjacent waters under the jurisdiction of the United States.

* * * * *

(4) Subject to the requirements of § 1.924 of this chapter and § 80.21, each VPCSA licensee may place stations anywhere within its region without obtaining prior Commission approval provided:

* * * * *

13. Section 80.373 is amended by adding paragraph (c)(3) to read as follows:

§ 80.373 Private communications frequencies.

* * * * *

(c) * * *

(3) In addition to the frequencies shown in paragraph (c)(1) of this section, the following coast transmit frequencies listed in the table in § 80.371(a) of this chapter are available for assignment to private coast stations and authorized ship stations for simplex business and operational radiotelephone communications: in the East Coast, West Coast, and Gulf Coast regions, 2482 kHz; in the Alaska region, 2309 kHz. These frequencies shall not be assigned to public coast stations before July 25, 2002. After that date, only the above frequencies in the above regions that have been assigned to at least one private coast station shall continue to be available for assignment to private coast stations. If, by that date, in any of the above regions, any of the above frequencies has not been assigned to a private coast station, that frequency in that region shall be available for assignment only to public coast stations.

* * * * *

14. Section 80.385 is amended by revising paragraphs (a)(2) and (b), redesignating paragraph (a)(3) as paragraph (a)(4) and paragraph (c) as (d), and adding new paragraphs (a)(3) and (c) to read as follows:

§ 80.385 Frequencies for automated systems.

* * * * *

(a) * * *

(2) The following carrier frequencies are available for assignment to public coast stations for public correspondence communications with ship stations and units on land. AMTS operations must not cause harmful interference to the U.S. Navy SPASUR system which operates in the band 216.880–217.080 MHz.

Channel No.	Carrier frequency (MHz)		
	Ship transmit[1,3]	Coast transmit[2]	Group
101	.....	216.0125	D
102	.....	216.0375	
103	.....	216.0625	
104	.....	216.0875	
105	.....	216.1125	
106	.....	216.1375	
107	.....	216.1625	
108	.....	216.1875	
109	.....	216.2125	
110	.....	216.2375	
111	.....	216.2625	
112	.....	216.2875	
113	.....	216.3125	
114	.....	216.3375	
115	.....	216.3625	
116	.....	216.3875	

Channel No.	Carrier frequency (MHz)		
	Ship transmit[1,3]	Coast transmit[2]	Group
117	.....	216.4125	
118	.....	216.4375	
119	.....	216.4625	
120	.....	216.4875	
121	.....	216.5125	C
122	.....	216.5375	
123	.....	216.5625	
124	.....	216.5875	
125	.....	216.6125	
126	.....	216.6375	
127	.....	216.6625	
128	.....	216.6875	
129	.....	216.7125	
130	.....	216.7375	
131	.....	216.7625	
132	.....	216.7875	
133	.....	216.8125	
134	.....	216.8375	
135	.....	216.8625	
136	.....	216.8875	
137	.....	216.9125	
138	.....	216.9375	
139	.....	216.9625	
140	219.0125	216.9875	
141	219.0375	217.0125	B
142	219.0625	217.0375	
143	219.0875	217.0625	
144	219.1125	217.0875	
145	219.1375	217.1125	
146	219.1625	217.1375	
147	219.1875	217.1625	
148	219.2125	217.1875	
149	.....	217.2125	
150	219.2375	217.2375	
151	219.2625	217.2625	
152	219.2875	217.2875	
153	219.3125	217.3125	
154	219.3375	217.3375	
155	219.3625	217.3625	
156	219.3875	217.3875	
157	219.4125	217.4125	
158	219.4375	217.4375	
159	219.4625	217.4625	
160	219.4875	217.4875	
161	219.5125	217.5125	A
162	219.5375	217.5375	
163	219.5625	217.5625	
164	219.5875	217.5875	
165	219.6125	217.6125	
166	219.6375	217.6375	
167	219.6625	217.6625	
168	219.6875	217.6875	
169	219.7125	217.7125	
170	219.7375	217.7375	
171	219.7625	217.7625	
172	219.7875	217.7875	
173	219.8125	217.8125	
174	219.8375	217.8375	
175	219.8625	217.8625	
176	219.8875	217.8875	
177	219.9125	217.9125	
178	219.9375	217.9375	
179	219.9625	217.9625	
180	219.9875	217.9875	

[1] Ship transmit frequencies in Groups C and D are not authorized for AMTS use.

[2] Coast station operation on frequencies in Groups C and D are not currently assignable and are shared on a secondary basis with the Low Power Radio Service in part 95 of this chapter. Frequencies in the band 216.750–217.000 MHz band are available for low power point-to-point network control communications by AMTS coast stations under the Low Power Radio Service (LPRS). LPRS operations are subject to the conditions that no harmful interference is caused to the United States Navy's SPASUR radar system (216.88–217.08 MHz) or to TV reception within the Grade B contour of any TV channel 13 station or within the 68 dBu predicted contour of any low power TV or TV translator station operating on channel 13.

[3] Ship transmit frequencies in Groups A and B are permitted to provide mobile-to-mobile communications where the written consent of all affected licensees is obtained.

(3) As listed in the table in this paragraph, AMTS Areas (AMTSAs) are based on, and composed of one or more of, the U.S Department of Commerce's 172 Economic Areas (EAs). See 60 FR 13114 (March 10, 1995). In addition, the Commission shall treat Puerto Rico, the United States Virgin Islands, and the Gulf of Mexico as EA-like areas. Maps of the EAs and AMTSAs are available for public inspection and copying at the Federal Communications Commission, Public Safety and Private Wireless Division, 445 12th Street, SW., Room 4–C330, Washington, DC. The Group A and B frequency pairs listed in the table in paragraph (a)(2) of this section are available for assignment to a single licensee in each of the AMTSAs listed in the table in this paragraph. In addition to the listed EAs listed in the table in this paragraph, each AMTSA also includes the adjacent waters under the jurisdiction of the United States.

AMTS AREAS (AMTSAS)

AMTSAs	EAs
1 (Northern Atlantic)	1–5, 10.
2 (Mid-Atlantic)	9, 11–23, 25, 42, 46.
3 (Southern Atlantic)	24, 26–34, 37, 38, 40, 41, 174.
4 (Mississippi River)	35, 36, 39, 43–45, 47–53, 67–107, 113, 116–120, 122–125, 127, 130–134, 176.
5 (Great Lakes)	6–8, 54–66, 108, 109.
6 (Southern Pacific)	160–165.
7 (Northern Pacific)	147, 166–170.
8 (Hawaii)	172.
9 (Alaska)	171.
10 (Mountain)	110–112, 114–115, 121, 126, 128, 129, 135–146, 148–159.

* * * * *

(b) Subject to the requirements of § 1.924 of this chapter, §§ 80.215(h), and 80.475(a), each AMTS geographic area licensee may place stations anywhere within its region without obtaining prior Commission approval provided:

(1) The AMTS geographic area licensee must locate its stations at least 120 kilometers from the stations of co-channel site-based AMTS licensees. Shorter separations between such stations will be considered by the Commission on a case-by-case basis upon submission of a technical analysis indicating that at least 10 dB protection will be provided to an site-based licensee's predicted 38 dBu signal level contour. The site-based licensee's predicted 38 dBu signal level contour shall be calculated using the F(50, 50) field strength chart for Channels 7 through 13 in § 73.699 (Fig. 10) of this chapter, with a 9 dB correction for antenna height differential. The 10 dB protection to the site-based licensee's predicted 38 dBu signal level contour shall be calculated using the F(50, 10) field strength chart for Channels 7–13 in § 73.699 (Fig. 10a) of this chapter, with a 9 dB correction factor for antenna height differential.

(2) The locations and/or technical parameters of the transmitters are such that individual coordination of the channel assignment(s) with a foreign administration, under applicable international agreements and rules in this part, is not required.

(3) For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, licensees must notify the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460–1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, Attn: Information Processing Branch, 1270 Fairfield Rd., Gettysburg, PA 17325–7245.

(4) The transmitters must not have a significant environmental effect as defined by §§ 1.1301 through 1.1319 of this chapter.

(c) Any recovered frequency blocks will revert automatically to the holder of the geographic area license within which such frequencies are included. Any frequency blocks recovered where there is no geographic area licensee will be retained by the Commission for future licensing.

* * * * *

15. Section 80.475 is amended by revising paragraph (a) to read as follows:

§ 80.475 Scope of service of the Automated Maritime Telecommunications System (AMTS).

(a) A separate Form 601 is not required for each coast station in a system. However, except as provided in § 80.385(b) and paragraph (b) of this section, the applicant must provide the technical characteristics for each proposed coast station, including transmitter type, operating frequencies, emissions, transmitter output power, antenna arrangement, and location.

* * * * *

16. Section 80.479 is revising paragraph (a) and adding paragraphs (b) and (c) to read as follows:

§ 80.479 Assignment and use of frequencies for AMTS.

(a) The frequencies assignable to AMTS stations are listed in subpart H of this part. These frequencies are assignable to ship and public coast stations for public correspondence communications.

(b) The transmissions from a station of an AMTS geographic area licensee may not exceed a predicted 38 dBu field strength at the geographic area border, unless all affected co-channel geographic area licensees agree to the higher field strength. The predicted 38 dBu field strength is calculated using the F(50, 50) field strength chart for Channels 7 through 13 in § 73.699 (Fig. 10) of this chapter, with a 9 dB correction factor for antenna height differential. Geographic area licensees must coordinate to minimize interference at or near their geographic area borders, and must cooperate to resolve any instances of interference in accordance with the provisions of § 80.70(a).

(c) AMTS frequencies may be used for mobile-to-mobile communications if written consent is obtained from all affected licensees.

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DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AB55

Acquisition Regulations: Revision of Patent Regulations Relating to Department of Energy Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy is adopting, with changes, as a final rule the interim final rule published on November 15, 2000, which amended the Department of Energy Acquisition Regulation (DEAR) to improve the patent coverage relating to the Department's management and operating contracts. The final rule generally reflects the contract clauses used by the Department in management and operating contracts over the last 5 years. The changes adapt patent-related clauses to subcontracting under management and operating contracts, restate the clauses in plain language, and provide a complete set of patent clauses for a variety of management and operating contracts.

DATES: This final rule is effective August 26, 2002.

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SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Changes
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 13132
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Congressional Review
J. Approval by the Office of the Secretary of Energy

I. Background

On November 15, 2000, at 65 FR 68932, the Department of Energy (DOE or Department) published an interim final rule containing amendments to the patent regulations covering its management and operating contracts. In response to the notice of interim final rulemaking, DOE received only one comment. That comment took no exception to the interim final rule and opined that the rule had achieved its intended purposes of clarity and organization. Internal deliberations of the Department have resulted in minor changes to the interim final rule. These are discussed in the next portion of this rule. Except as noted in this preamble, the regulations and clauses are as originally promulgated.

Since publication of the interim final rule, the regulations and clauses included in the interim final rule were republished as part of a final rule republishing Part 970 of the DEAR (65 FR 80994, Dec. 22, 2000). While the provisions themselves were not changed in any way in that republication, changes in numbering did occur. The numbering system of this final rule are different than those used in the publication of the interim final rule but are consistent with the republication of DEAR Part 970.

Finally, since the publication of the interim final rule, Congress enacted two statutes that affect the Technology Transfer Mission clause at 970.5227–3. Section 3196 of Pub. L. 106–398 limited the time for agency review and response to proposed joint work statements and proposed Cooperative Research and Development Agreements (CRADAs) at contractor-operated, government-owned laboratories. Also, Section 11 of the Technology Transfer Commercialization Act of 2000, Pub. L. 106–404, directs the Secretary to assure that certain of DOE's laboratory and facilities contractors designate a Technology Partnership Ombudsman to perform specified duties This final rule amends the Technology Transfer Mission clause to implement these statutes. The implementing language follows the statutory direction.

II. Discussion of Changes

In order to reflect Section 3196 of Pub.L. 106–398, changes have been made to paragraph (n) of the Technology Transfer Mission clause, now at 970.5227–3. These changes reflect the time for DOE review of proposed joint work statements and CRADAs that result after enactment of the statute. Additionally, a paragraph (p) has been added to the same clause to reflect Section 11 of the Technology Transfer Commercialization Act of 2000, Pub. L. 106–404. This latter change will assure that DOE's management and operating and other major contractors with a technology transfer mission designate a Technology Partnership Ombudsman to perform specified duties.

The threshold for flowdown of the clause at 970.5227–4, Authorization and Consent, has been raised to $100,000 to reduce the contractor's burden of including it in subcontracts, and paragraph (c) has been reorganized to improve its clarity. The flowdown threshold for the clause at 970.5227–5, Notice and Assistance Regarding Patent and Copyright Infringement, has been raised to $100,000 also to reduce the contractor's burden of including the clause in subcontracts.

The clause at 970.5227–8, Refund of Royalties, was altered as a result of experience gained since the publication of the interim final rule. Changes have been made to limit the scope of the clause to royalties payable for a licensing of an invention. The version originally published covered all royalties, including royalties for copyright. In this day of the purchase of large quantities of commercial software, that inclusion would be burdensome and not provide a return worth the investment of resources by both the contractor and DOE. Additionally, the version of the clause included in the interim final rule was written in a way that assumed there was a solicitation and that the royalties could be identified in the contract price for the term of the contract. While there are more solicitations leading to management and operating contracts than ever before, there remain many instances in which contracts are extended. In neither event would it be possible for the offeror or the contractor to identify all royalties associated with contract performance at the inception of the contract because of the broad research and development nature of these contracts; therefore, the Department has made changes to focus the clause to require that the contractor gain DOE approval before paying patent royalties of more than $250 during contract performance.

The Department has deleted the phrase ''as DOE deems appropriate'' as the last words of paragraph (b)(6) of the clause at 970.5227–10, Patent Rights-Management and Operating Contracts, Nonprofit Organizations or Small Business Firm Contractor and paragraph (b)(9) of the clause at 970.5227–12, Patent Rights-Management and Operating Contracts, For-Profit Contractor, Advance Class Waiver. The sentence without that phrase accomplishes its intended purpose of requiring the contractor to share royalties with a co-inventor who is a Federal employee. That additional phrase could have been construed as making the sharing scheme subject to DOE dictation or approval, neither of which was intended.

The Department has also inserted specific reference to the National Nuclear Security Administration in the definition of ''weapons related inventions'' in Alternates I to the clauses at 970.5227–10 and –12.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this final rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final regulation meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act does not apply to this rulemaking.

D. Review Under the Paperwork Reduction Act

Section 11 of the Technology Transfer Commercialization Act of 2000, Pub. L. 106–404, provides that each technology partnership ombudsman appointed pursuant to the Act ''shall * * * report quarterly on the number and nature of complaints and disputes raised, along with the ombudsman's assessment of their resolution, consistent with the protection of confidential and sensitive information'' to specified DOE officials and employees. In this final rule, DOE is amending the Technology Transfer Mission clause at 970.5227–3 to include this reporting requirement. Although mandated by statute, the Technology Partnership Ombudsman reporting requirement is subject to review and approval by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* As provided in OMB's regulations implementing the Act, DOE will soon publish a separate notice in the **Federal Register** inviting public comment on this collection of information, after which it will submit the collection of information to OMB for approval pursuant to 5 CFR 1320.10.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this final rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, subpart D) implementing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6); therefore, this final rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then Executive Order 13132 requires agencies to engage in intergovernmental consultation and take other steps before promulgating such a regulation or rule. This final rule merely provides the Department a single set of clauses to govern patent rights in its contracts for the management and operation of major DOE sites and facilities. The action does not involve any substantial direct effects on States or other considerations stated in Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This final rule would only affect private sector entities, and the impact is less than $100 million.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This final rule would not affect the family.

I. Congressional Notification

Consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801), DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will note that it has been determined that this rule does not constitute a ''major rule'' under that Act.

J. Approval by the Office of the Secretary of Energy

Issuance of this final rule has been approved by the Office of the Secretary of Energy.

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC, on July 15, 2002.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management, U.S. Department of Energy.

Accordingly, the interim rule amending Chapter 9 of Title 48 of the Code of Federal Regulations which was published at 65 FR 68932 on November 15, 2000, is adopted as a final rule with the following changes.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS.

1. The authority citation for Part 970 continues to read as follows:

Authority: 42 U.S.C. 2201; 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.*

Subpart 970.27—Patents, Data, and Copyrights.

2. The clause at 970.5227–3, Technology Transfer Mission, is amended as follows:

a. The clause date is revised;

b. Paragraph (n)(1)(iii) is revised;

c. Paragraph (n)(l)(iv) is deleted and paragraph (n)(l)(v) is redesignated as (n)(l)(iv);

d. Redesignated paragraph (n)(l)(iv) is amended by deleting the last sentence; and

e. In Alternate I, paragraph (p) is redesignated as paragraph (q) and the date is revised to read ''(August 2002)'', and a new paragraph (p) is added to the clause:

970.5227–3 Technology transfer mission.

* * * * *

Technology Transfer Mission (August 2002)

(n) * * *

(1)(i) * * *

(ii) * * *

(iii) Within thirty (30) days after submission of a JWS or proposed CRADA, the contracting officer shall approve, disapprove or request modification to the JWS or CRADA. The contracting officer shall provide a written explanation to the Contractor's Laboratory Director or designee of any disapproval or requirement for modification of a JWS or proposed CRADA.

* * * * *

(p) Technology Partnership Ombudsman.

(1) The Contractor agrees to establish a position to be known as ''Technology Partnership Ombudsman,'' to help resolve complaints from outside organizations regarding the policies and actions of the contractor with respect to technology partnerships (including CRADAs), patents owned by the contractor for inventions made at the laboratory, and technology licensing.

(2) The Ombudsman shall be a senior official of the Contactor's laborratory staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or, if appointed from outside the laboratory or facility, shall function as such senior official.

(3) The duties of the Technology Partnership Ombudsman shall include:

(i) Serving as the focal point for assisting the public and industry in resolving complaints and disputes with the laboratory or facility regarding technology partnerships, patents, and technology licensing;

(ii) Promoting the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low cost resolution of complaints and disputes, when appropriate; and

(iii) Submitting a quarterly report, in a format provided by DOE, to the Secretary of Energy, the Administrator for Nuclear Security, the Director of the DOE Office of Dispute Resolution, and the Contracting Officer concerning the number and nature of complaints and disputes raised, along with the Ombudsman's assessment of their resolution, consistent with the protection of confidential and sensitive information.

(End of clause)

3. The clause at 970.5227–4 is revised to read as follows:

970.5227–4 Authorization and Consent.

Insert the following clause in solicitations and contracts in accordance with 970.2702–1:

Authorization and Consent (August 2002)

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(b) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the contracting officer. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.

(c)(1) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227–1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed $100,000 at any tier for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.

(2) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities expected to exceed $100,000.

(3) Omission of an authorization and consent clause from any subcontract, including those valued less than $100,000 does not affect this authorization and consent.

(End of clause)

970.5227–5 [Amended]

4. Paragraph (c) of the clause at 970.5227–5 is amended by deleting the reference ''$25,000'' and inserting ''$100,000'' in its place.

5. The clause at 970.5227–8 is revised to read as follows:

970.5227–8 Refund of Royalties.

Insert the following clause in solicitations and contracts in accordance with 970.2702–4:

Refund of Royalties (August 2002)

(a) During performance of this Contract, if any royalties are proposed to be charged to the Government as costs under this Contract, the Contractor agrees to submit for approval of the Contracting Officer, prior to the execution of any license, the following information relating to each separate item of royalty:

(1) Name and address of licensor;

(2) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;

(3) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;

(4) Percentage or dollar rate of royalty per unit;

(5) Unit price of contract item;

(6) Number of units;

(7) Total dollar amount of royalties; and

(8) A copy of the proposed license agreement.

(b) If specifically requested by the Contracting Officer, the Contractor shall furnish a copy of any license agreement entered into prior to the effective date of this clause and an identification of applicable claims of specific patents or other basis upon which royalties are payable.

(c) The term ''royalties'' as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications that are used in the performance of this contract or any subcontract hereunder.

(d) The Contractor shall furnish to the Contracting Officer, annually upon request, a statement of royalties paid or required to be paid in connection with performing this Contract and subcontracts hereunder.

(e) For royalty payments under licenses entered into after the effective date of this Contract, costs incurred for royalties proposed under this paragraph shall be allowable only to the extent that such royalties are approved by the Contracting Officer.If the Contracting Officer determines that existing or proposed royalty payments are inappropriate, any payments subsequent to such determination shall be allowable only to the extent approved by the Contracting Officer.

(f) Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to a patent for which the Contractor makes a royalty or other payment.

(g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of any royalties to which this clause applies, the Contractor shall promptly notify the Contracting Officer of that fact and shall promptly reimburse the Government for any refunds received or royalties paid after having received notice of such relief.

(h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

(End of clause)

970.5227–10 [Amended]

6. The clause at 970.5227–10 is amended by:

a. Deleting the phrase ''as DOE deems appropriate'' at the end of paragraph (b)(6); and

b. By adding the phrase ''or the National Nuclear Security Administration'' at the end of Alternate 1 Weapons Related Subject Inventions, paragraph (a)(10).

970.5227–12 [Amended]

7. The clause at 970.5227–12 is amended by:

a. Deleting the phrase ''as DOE deems appropriate'' at the end of paragraph (b)(9); and

b. By adding the phrase ''or the National Nuclear Security Administration'' at the end of Alternate 1 Weapons Related Subject Inventions, paragraph (a)(9).

[FR Doc. 02–18825 Filed 7–24–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atomospheric Administration

50 CFR Parts 600 and 660

[Docket No. 011231209–2090–01; I.D. 062702C]

Magnuson-Stevens Act Provisions; Fisheries Off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures; Corrections

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

ACTION: Corrections to trip limit adjustments in the Pacific Coast groundfish fishery.

SUMMARY: This document contains corrections to trip limit tables in the trip limit adjustments in the Pacific Coast groundfish fishery published on July 5, 2002.

DATES: Effective July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, NMFS, (206) 526–6140.

SUPPLEMENTARY INFORMATION: Changes to current groundfish management measures were recommended by the Pacific Fishery Management Council, in consultation with Pacific Coast Treaty Tribes and the States of Washington, Oregon, and California, at its June 18–21, 2002, meeting in Foster City, CA. Adjustments to trip limits were made to slow the catch of overfished species, particularly darkblotched and bocaccio rockfish, and keep it within the optimum yield (OY) and acceptable biological catch (ABC). The specifications and management measures for the current fishing year (January 1 - December 31, 2002) were initially published in the **Federal Register** as an emergency rule for January 1 - February 28, 2002 (67 FR 1540, January 11, 2002), and as a proposed rule for all of 2002 (67 FR 1555, January 11, 2002), then finalized effective March 1, 2002 (67 FR 10490, March 7, 2002). The final rule was subsequently amended at 67 FR 15338, April 1, 2002; at 67 FR 18117, April 15, 2002; at 67 FR 30604, May 7, 2002; at 67 FR 40870, June 14, 2002; and at 67 FR 44778, July 5, 2002.

Trip limit adjustments published on July 5, 2002, contained errors in trip limit tables that require correction. This document corrects the errors and re-publishes trip limit tables for groundfish taken with limited entry trawl gear, limited entry fixed gear, and open access gear.

Corrections

In the rule FR Doc. 02–16811, in the issue of Friday, July 5, 2002 (67 FR 44778) make the following corrections:

1. On pages 44782 - 44784, Tables 3 and 4, respectively, are corrected to read as follows:

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Table 3. Trip Limits[1] and Gear Requirements[2] for Limited Entry Trawl Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	NOTE FOR **NORTH OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING WITH LARGE FOOTROPE GEAR IS **PROHIBITED**[5]. **NOTE FOR **SOUTH** OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING FOR GROUNDFISH IS **CLOSED** EXCEPT FOR DTS COMPLEX, SLOPE ROCKFISH SPECIES, AND SPECIFIED FLATFISH AND GRENADIER TAKEN INCIDENTALLY IN THOSE FISHERIES.						
1	**Minor slope rockfish**						
2	North	1,800 lb/ 2 months				CLOSED[7]	
3	South						
4	40°10' - 36° N. lat.	50,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb / 2 months	
5	South of 36° N. lat.	50,000 lb/ 2 months				15,000 lb/ 2 months	
6	**Splitnose - South**						
7	40°10' - 36° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb / 2 months	
8	South of 36° N. lat.	25,000 lb/ 2 months				15,000 lb/ 2 months	
9	**Pacific ocean perch - North**[6]	2,000 lb/ month		4,000 lb/ month	4,000 lb/ 2 months		
10	**Chilipepper - South**[6]						
11	mid-water trawl	25,000 lb/ 2 months			CLOSED[7]		
12	small footrope trawl	7,500 lb/ 2 months		4,000 lb/ 2 months			
13	large footrope trawl	500 lb/ trip, not to exceed small footrope cumulative 2-month limits at any time during the year					
14	**DTS complex - North**						
15	Sablefish	6,000 lb/ 2 months		3,500 lb/ 2 months	3,000 lb/ 2 months	CLOSED[7]	
16	Longspine thornyhead	10,000 lb/ 2 months		6,000 lb/ 2 months	1,500 lb/ 2 months		
17	Shortspine thornyhead	2,600 lb/ 2 months		2,000 lb/ 2 months	1,500 lb/ 2 months		
18	Dover sole	30,000 lb/ 2 months	28,000 lb/ 2 months	14,000 lb/ 2 months			
19	**DTS complex - South**						
20	Sablefish[6]	4,500 lb/ 2 months					
21	Longspine thornyhead	10,000 lb/ 2 months					
22	Shortspine thornyhead	2,600 lb/ 2 months					
23	Dover sole	22,000 lb/ 2 months					
24	**Flatfish - North**						
25	All other flatfish[3]	LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits, includes arrowtooth flounder.		LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits. Retention of **petrale and rex sole** prohibited if large footrope gear is onboard.	SMALL FOOTROPE REQUIRED: 40,000 lb/ month, no more than 15,000 of which may be petrale sole	CLOSED[7]	
		SMALL FOOTROPE:		SMALL FOOTROPE:		CLOSED[7]	
		15,000 lb/ month	35,000 lb/ month	30,000 lb/ month, no more than 10,000 of which may be petrale sole			
26	Petrale sole	Not limited, large footrope allowed					
27	Rex sole						
28	Arrowtooth flounder	LARGE FOOTROPE: included in "all other flatfish" limit.		SMALL FOOTROPE REQUIRED: 7,500 lb/ trip, no more than 30,000 lb/ month; large footrope prohibited		CLOSED[7]	
		SMALL FOOTROPE:					
		30,000 lb/ trip					
29	**Flatfish - South**						
30	All other flatfish[3]	LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits, includes arrowtooth flounder.		LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits. Retention of **petrale and rex sole** prohibited if large footrope gear is onboard.	CLOSED[7] With the exception of 1,000 lb/ trip of rex sole, petrale sole, English sole, and arrowtooth flounder combined when landed with DTS complex. The amount of per trip flatfish landings must not exceed the amount of DTS landed. Landings can be made with small or large footrope gear.		
		SMALL FOOTROPE: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs.		SMALL FOOTROPE: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs. Of the species other than Pacific sanddabs, no more than 15,000 lb may be petrale sole.			
31	Petrale sole	Not limited, large footrope allowed					
32	Rex sole						
33	Arrowtooth flounder	LARGE FOOTROPE: included in "all other flatfish" limit.		SMALL FOOTROPE REQUIRED: 7,500 lb/ trip, no more than 30,000 lb/ month; large footrope prohibited			
		SMALL FOOTROPE:					
		30,000 lb/ trip					
35	**Whiting**[4]	20,000 lb/ trip		Primary Season		CLOSED[7]	

Table 3. (CONTINUED) Trip Limits[1/] and Gear Requirements[2/] for Limited Entry Trawl Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	NOTE FOR **NORTH OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING WITH LARGE FOOTROPE GEAR IS **PROHIBITED**[5/]. **NOTE FOR **SOUTH** OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING FOR GROUNDFISH IS **CLOSED** EXCEPT FOR DTS COMPLEX, SLOPE ROCKFISH SPECIES, AND SPECIFIED FLATFISH AND GRENADIER TAKEN INCIDENTALLY IN THOSE FISHERIES.						
37	**Minor shelf rockfish**						
38	North	300 lb/ month		1,000 lb/ month, no more than 300 lb of which may be yelloweye rockfish		CLOSED[7/]	
39	South	500 lb/ month		1,000 lb/ month, no more than 300 lb of which may be yelloweye rockfish	CLOSED[7/]		
40	**Canary rockfish**						
	North	200 lb/ 2 months		600 lb/ 2months	600 lb/ 2 months	CLOSED[7/]	
	South				CLOSED[7/]		
	Widow rockfish						
41	North						
42	mid-water trawl	CLOSED[7/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month			CLOSED[7/]
43	small footrope trawl	1,000 lb/ month				CLOSED[7/]	
	South						
	mid-water trawl	CLOSED[7/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month	CLOSED[7/]		
	small footrope trawl	1,000 lb/ month			CLOSED[7/]		
44	**Yellowtail - North**[6/]						
45	mid-water trawl	CLOSED[7/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month			CLOSED[7/]
46	small footrope trawl	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Combined with and without flatfish, not to exceed 30,000 lb/ 2 months.				CLOSED[7/]	
47	**Bocaccio - South**[6/]	600 lb/ 2 months		1,000 lb/ 2 months	CLOSED[7/]		
48	**Cowcod**	CLOSED[7/]					
49	**Minor nearshore rockfish**						
50	North	300 lb/ month				CLOSED[7/]	
51	South	300 lb/ month			CLOSED[7/]		
	Lingcod[8/]						
	North	800 lb/ 2 months		1,000 lb/ 2 months		CLOSED[7/]	
	South			1,000 lb/ 2 months	CLOSED[7/]		
52	**Other Fish**[10/]	Not limited			Grenadier retention permitted	CLOSED[7/]	

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Gear requirements and prohibitions are explained above. See IV.A.(14).

3/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

4/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies before and after the primary season.

5/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter. In areas where trawl gear is restricted, only one type of trawl gear is allowed on board at ony one time. See above.

6/ Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. POP in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.

7/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ The minimum size requirement for sablefish is 22 inches (56 cm) total lengthand. No more than 500 lb of undersized sablefish may be landed per trip.

10/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4. Trip Limits[1/] for Limited Entry Fixed Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	NOTE FOR FISHING SOUTH OF 40°10': ALL GROUNDFISH FISHING IS **CLOSED OFFSHORE OF THE 20 FATHOM DEPTH CONTOUR, EXCEPT FOR SABLEFISH, THORNYHEADS, AND SLOPE ROCKFISH. SEE FOOTNOTE 8/.						
1	**Minor slope rockfish**						
2	North	1,000 lb/ month		5,000 lb/ 2 months			2,000 lb/ 2 months
3	South						
4	40°10' - 36° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
5	South of 36° N. lat.	25,000 lb/ 2 months				15,000 lb/ 2 months	
6	**Splitnose - South**						
7	40°10' - 36° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
8	South of 36° N. lat.	25,000 lb/ 2 months				15,000 lb / 2 months	
9	**Pacific ocean perch - North[5/]**	2,000 lb/ month		4,000 lb/ month	4,000 lb/ 2 months		2,000 lb/ month
10	**Sablefish[9/]**						
11	North of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months					
12	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		300 lb/ day, or 1 landing per week of up to 900 lb			
13	**Longspine thornyhead**	9,000 lb/ 2 months					
14	**Shortspine thornyhead**	2,000 lb/ 2 months					
15	**Dover sole**	5,000 lb/ month (all flatfish)			5,000 lb/ month (all flatfish)[8/]		
16	**Arrowtooth flounder**						
17	**Petrale sole**						
18	**Rex sole**						
19	**All other flatfish[2/]**						
20	**Whiting[3/]**	20,000 lb/ trip					
21	**Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish[5/]**						
22	North	200 lb/ month					
23	South						
24	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[4/]	Shoreward of 20 ftm depth, 200 lb/ month, otherwise CLOSED[4/]	CLOSED[4/]		
25	South of 34°27' N. lat.	CLOSED[4/]	1,000 lb/ month				
26	**Canary rockfish**	CLOSED[4/]					
27	**Yelloweye rockfish**	CLOSED[4/]					
28	**Cowcod**	CLOSED[4/]					
29	**Bocaccio - South[5/]**						
30	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[4/]		CLOSED[4/]		
31	South of 34°27' N. lat.	CLOSED[4/]	200 lb/ month				
32	**Chilipepper - South[5/]**						
33	40°10' - 34°27' N. lat.	500 lb/ month	CLOSED[4/]		CLOSED[4/]		
34	South of 34°27' N. lat.	CLOSED[4/]	2,500 lb/ month				
35	**Minor nearshore rockfish**						
36	North	5,000 lb/ month, no more than 2,000 lb of which may be species other than black or blue rockfish[6/]		6,000 lb/ 2 months, no more than 3,000 lb of which may be species other than black or blue rockfish[6/]			
37	South						
38	40°10' - 34°27' N. lat.	1,600 lb/ 2 months	CLOSED[4/]	Shoreward of 20 ftm depth, 1,600 lb/ 2 months, otherwise CLOSED[4/]	1,600 lb/ 2 months[8/]		CLOSED[4/]
39	South of 34°27' N. lat.	CLOSED[4/]	2,000 lb/ 2 months		2,000 lb/ 2 months[8/]		
40	**Lingcod[7/]**						
41	North	CLOSED[4/]		400 lb/ month			CLOSED[4/]
42	South						
43	40°10' - 34°27' N. lat.	CLOSED[4/]		Shoreward of 20 ftm depth, 400 lb/ month, otherwise CLOSED[4/]	400 lb/ month[8/]		CLOSED[4/]
44	South of 34°27' N. lat.			400 lb/ month			

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies.

4/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).

5/ Yellowtail rockfish and widow rockfish coastwide and bocaccio and chilipepper rockfishes in the north are included in the trip limits for shelf rockfish in the appropriate area. POP in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.

6/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

8/ South of 40°10' N. lat., trip limits apply to inside of 20 fm only. Beginning July 1, 2002, it is prohibited to prosecute groundfish fisheries with non-trawl gear outside 20 fm south of 40°10' N. lat.

9/ The minimum size requirement for sablefish is 22 inches (56 cm) total length.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

2. On page 44785, Table 5 and its footnotes are corrected to read as follows:

Table 5. Trip Limits[1/] for Open Access Gears
Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table
Exceptions for exempted gears at Section IV.C.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	NOTE FOR FISHING SOUTH OF 40°10': ALL GROUNDFISH FISHING IS **CLOSED OFFSHORE OF THE 20 FATHOM DEPTH CONTOUR, EXCEPT SABLEFISH AND SLOPE ROCKFISH. SEE FOOTNOTE 8/. ** NOTE: EFFECTIVE JULY 1, 2002, THERE IS NO RETENTION OF GROUNDFISH WITH EXEMPTED TRAWL GEAR.						
1	**Minor slope rockfish**						
2	North	Per trip, no more than 25% of weight of the sablefish landed					
3	South						
4	40°10' - 36° N. lat.	10,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
5	South of 36° N. lat.	10,000 lb/ 2 months					
6	**Splitnose - South**	200 lb/ month					
7	**Pacific ocean perch - North[4/]**	100 lb/ month					
8	**Sablefish[7/]**						
9	North of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months					
10	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		300 lb/ day, or 1 landing per week of up to 900 lb			
11	**Thornyheads**						
12	North of 34° 27' N. lat.	CLOSED[3/]					
13	South of 34° 27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months					
14	**Dover sole**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs			3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sandabs[6/]		
15	**Arrowtooth flounder**						
16	**Petrale sole**						
17	**Rex sole**						
18	**All other flatfish[2/]**						
19	**Whiting**	300 lb/ month					
20	**Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish[4/]**						
21	North	200 lb/ month					
22	South						
23	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[3/]	Shoreward of 20 ftm depth, 200 lb/ month, otherwise CLOSED[3/]	CLOSED[3/]		
24	South of 34°27' N. lat.	CLOSED[3/]	500 lb/ month				
25	**Canary rockfish**	CLOSED[3/]					
26	**Yelloweye rockfish**	CLOSED[3/]					
27	**Cowcod**	CLOSED[3/]					
28	**Bocaccio - South[4/]**						
29	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[3/]		CLOSED[3/]		
30	South of 34°27' N. lat.	CLOSED[3/]	200 lb/ month				
31	**Chilipepper - South[4/]**						
32	40°10' - 34°27' N. lat.	500 lb/ month	CLOSED[3/]		CLOSED[3/]		
33	South of 34°27' N. lat.	CLOSED[3/]	2,500 lb/ month				
34	**Minor nearshore rockfish**						
35	North	3,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[5/]		6,000 lb/ 2 months, no more than 3,000 lb of which may be species other than black or blue rockfish[5/]			
36	South						
37	40°10' - 34°27' N. lat.	1,200 lb/ 2 months	CLOSED[3/]	Shoreward of 20 ftm depth, 1,200 lb/ 2 months, otherwise CLOSED[3/]	1,200 lb/ 2 months[8/]		CLOSED[3/]
38	South of 34°27' N. lat.	CLOSED[3/]	1,200 lb/ 2 months				
39	**Lingcod[6/]**						
40	North	CLOSED[3/]		300 lb/ month			CLOSED[3/]
41	South						
42	40°10' - 34°27' N. lat.	CLOSED[3/]		Shoreward of 20 ftm depth, 300 lb/ month, otherwise CLOSED[3/]	300 lb/ month[8/]		CLOSED[3/]
43	South of 34°27' N. lat.			300 lb/ month			

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. To the U.S.-Canada border. "South" means 40°10' N. lat. To the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

3/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).

4/ Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. Pop in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.

5/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

6/ The size limit for lingcod is 24 inches (61 cm) total length.

7/ The minimum size requirement for sablefish is 22 inches (56 cm) total length.

8/ South of 40°10' N. lat., trip limits apply to inside of 20 fm only. Beginning July 1, 2002, it is prohibited to prosecute groundfish fisheries with non-trawl gear outside 20 fm south of 40°10' N. lat.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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

Dated: July 19, 2002.

Virginia M. Fay,

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

[FR Doc. 02–18858 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020311051–2135–02; I.D. 022002C]

RIN 0648–AN75

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Pelagic Longline Gear Restrictions, Seasonal Area Closure, and Other Sea Turtle Take Mitigation Measures; Correction

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

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule implementing pelagic longline gear restrictions for the Western Pacific pelagic fisheries published on June 12, 2002. This action would clarify amendatory instruction 4 that removes unneeded text.

DATES: Effective July 25, 2002.

FOR FURTHER INFORMATION CONTACT: William Chappell, NMFS, at 301–713–2341.

SUPPLEMENTARY INFORMATION:

Background

The final rule under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region that implements the reasonable and prudent alternative of the March 29, 2001, Biological Opinion issued by NMFS under the Endangered Species Act, was published in the **Federal Register** on June 12, 2002 (67 FR 40232). This final rule did not clearly explain in amendatory instruction 4 that the introductory text of 50 CFR 660.32(a) was removed by the final rule.

Corrections

In the rule FR Doc. 02–14749, in the issue of Wednesday, June 12, 2002 (67 FR 40232), on page 40236, at the bottom of the first column, correct amendatory instruction 4 to read as follows:

''4. In § 660.32, the introductory text of paragraph (a) is removed, paragraphs (a)(1) and (a)(2) are redesignated as paragraphs (a)(4) and (a)(5) respectively, new paragraphs (a)(1) and (a)(2) are added, and paragraph (a)(3) is revised to read as follows:''

Dated: July 19, 2002.

Rebecca Lent,

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

[FR Doc. 02–18859 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 143
Thursday, July 25, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

[Docket No. FV02–911–1]

Limes Grown in Florida; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of Florida limes to determine whether they favor continuance of the marketing order regulating the handling of limes grown in the production area.

DATES: The referendum will be conducted from September 9, through September 28, 2002. To vote in this referendum, growers must have been producing Florida limes during the period April 1, 2001, through March 31, 2002.

ADDRESSES: Copies of the marketing order may be obtained from the office of the referendum agent at 799 Overlook Drive, Suite A, Winter Haven, Florida, 33884, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida, 33884; telephone (863) 324–3375; or Kathleen Finn, Marketing Order Administration Branch, Fruit & Vegetable Programs, AMS, USDA, 1400 Independence Ave SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–2491.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 911 (7 CFR Part 911), hereinafter referred to as the ''order'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers. The referendum shall be conducted during the period September 9, through September 28, 2002, among Florida lime growers in the production area. Only growers that were engaged in the production of Florida limes during the period of April 1, 2001, through March 31, 2002, may participate in the continuance referendum.

The USDA has determined that continuance referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. The USDA would consider termination of the order if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of Florida limes represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the USDA will consider the results of the referendum and other relevant information regarding operation of the order. The USDA will evaluate the order's relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0189 for Florida limes. It has been estimated that it will take an average of 20 minutes for each of the approximately 75 growers of Florida limes to cast a ballot. Participation is voluntary. Ballots postmarked after September 28, 2002, will not be included in the vote tabulation.

Doris Jamieson and Chris Nissen of the Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, are hereby designated as the referendum agents of the USDA to conduct such referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR Part 900.400 *et seq.*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: July 19, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18789 Filed 7–24–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–11–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. TPE331–3, −5, −6, −8, −10, and −11 Series Turboprop and TSE331–3 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Turbine Engine Company and AiResearch Manufacturing Company of Arizona) TPE331–3, −5, −6, −8, −10, and −11 series turboprop and TSE331–3 series turboshaft engines. This proposal would require removing weld repaired first stage compressor impellers from service. This proposal is prompted by an uncontained TPE331–11U turboprop engine failure and an in-flight shutdown due to the separation of the first stage Ti 6–4 compressor impeller. The actions specified by the proposed AD are intended to prevent uncontained

engine failures, in-flight shutdowns, and secondary damage.

DATES: Comments must be received by September 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–11–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in the proposed rule may be obtained from Honeywell Engines, Systems and Services, Technical Data Distribution, M/S 2101–201, PO Box 52170, Phoenix, AZ 85072–2170; telephone: (602) 365–2493 (General Aviation), (602) 365–5535 (Commercial); fax: (602) 365–5577 (General Aviation and Commercial). This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood CA 90712–4137; telephone: (562) 627–5246; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NE–11–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–11–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On November 16, 1994, a TPE331–11U turboprop uncontained engine failure and in-flight shutdown occurred due to the separation of the first stage Ti 6–4 compressor impeller. The failed impeller, part number (P/N) 896223–3, which was weld repaired at 3,983 cycles-since-new (CSN), had accumulated 27,456 CSN. The crack initiated in the backface at the fillet adjacent to the curvic arm and propagated forward along the bore in low cycle fatigue (LCF). Compressor impellers, P/N's 896223–1, −2, −3 and −7 and 3107109–2, are similarly designed to P/N 896223–3, and are affected by this proposal. The FAA has determined that weld repairs and the associated heat treatment on these impellers reduce LCF mechanical properties and may contribute to impeller failures. Failure of the first stage compressor impeller, if not corrected, could result in an uncontained separation of the impeller, in-flight shutdown and secondary engine and aircraft damage.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Honeywell International Inc. Alert Service Bulletin (ASB) TPE331–A72–2083, Revision 1, dated May 17, 2002, which provides a listing of certain impellers by serial number which have been weld repaired and provides impeller replacement information.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Honeywell International Inc TPE331–3, −5, −6, −8, −10, and −11 series turboprop and TSE331–3 series turboshaft engines of the same type design, the proposed AD would require the replacement of suspect impellers with serviceable impellers. The actions would be required to be done in accordance with the ASB described previously.

Economic Analysis

There are approximately 2,040 engines of the affected design in the worldwide fleet. The FAA estimates that 1,020 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA estimates that 1,000 engines will have the required actions done during a scheduled engine overhaul. The FAA also estimates that it would take approximately 2 work hours per engine to do the proposed actions during scheduled engine overhauls and 80 work hours per engine during unscheduled engine overhauls, and that the average labor rate is $60 per work hour. Required parts would cost approximately $9,600 per engine to do the proposed actions during scheduled engine overhauls and $14,600 per engine which includes consumables, during unscheduled engine overhauls. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $10,108,000.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Honeywell International Inc.: Docket No. 2001–NE–11–AD.

Applicability

This airworthiness directive (AD) is applicable to Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Turbine Engine Company and AiResearch Manufacturing Company of Arizona) TPE331–3, −5, −6, −8, −10, and −11 series turboprop and TSE331–3 series turboshaft engines equipped with first stage compressor impeller, part number (P/N) 896223–1, −2, −3, −7, or 3107109–2. These engines are installed on, but not limited to: Ayres S–2R series; Beech 18 and 45 series and Models JRB–6, 3N, 3NM, 3TM, and B100; Cessna Model 441; Construcciones Aeronauticas, S.A. (CASA) C–212 series; De Havilland DH 104 series 7AXC (Dove); Dornier 228 series; Fairchild SA226 and SA227 series (Swearingen Merlin and Metro series); Grumman American G–164 series; Jetstream 3101; Mitsubishi MU–2B series (MU–2 series); Prop-Jets, Inc. Model 400; Rockwell Commander S–2R; Shorts Brothers and Harland, Ltd. SC7 (Skyvan); Pilatus PC–6 series (Fairchild Porter and Peacemaker); and Schweizer G–164 series; and Twin Commander Aircraft Corp. (Jetprop Commander) Models 695 and 695A airplanes; and Sikorsky S–55 series (Helitec Corp. S55T) helicopters.

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

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent a uncontained engine failure, in-flight shutdown, and secondary damage, do the following:

Removal of Weld Repaired First Stage Compressor Impellers From Service

(a) Remove from service weld repaired first stage compressor impellers, P/N's 896223–1, −2, −3, and −7 and 3107109–2, with SN's listed in Table 1 and Table 2 of the Accomplishment Instructions in 2.A.(1) and 2.A.(2) of Honeywell Alert Service Bulletin TPE331–A72–2083, Revision 1, dated May 17, 2002, in accordance with the following schedule:

(1) Remove impellers with no record of cycles since weld repair, within 3,600 cycles-in-service (CIS) or at the next engine overhaul, or at the next major Continuous Airworthiness Maintenance (CAM) compressor section inspection, after the effective date of this AD, whichever occurs first.

(2) Remove impellers with more than 8,900 cycles since ''weld repair,'' within 3,600 CIS, or at the next engine overhaul, or at the next major CAM compressor section inspection after the effective date of this AD, whichever occurs first.

(3) Remove impellers with 8,900 or less cycles since ''weld repair,'' before reaching 12,500 cycles since weld repair after the effective date of this AD.

(b) For purposes of this AD, weld repaired or weld repair is defined as an impeller repair which involved heat treating and that was performed from 1980 through 1997 at Honeywell Aerospace Services, Aftermarket-Phoenix Repair and Overhaul, 1944 E. Sky Harbor Circle, Phoenix, AZ 85034 (FAA Certificate Number ZN3R030M). Former names and FAA certificate numbers for Honeywell's Repair and Overhaul Facility are listed in Section 2.A. of the Accomplishment Instructions in Honeywell Alert Service Bulletin TPE331–A72–2083, Revision 1, dated May 17, 2002.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from, Los Angeles ACO.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on July 18, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–18816 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–2044; File No. S7–28–02]

RIN 3235–AH 26

Custody of Funds or Securities of Clients by Investment Advisers

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Proposed rule.

SUMMARY: The Commission is proposing amendments to the custody rule under the Investment Advisers Act of 1940. The proposed amendments would modernize the rule by, among other things, requiring advisers that have custody of client assets to maintain those assets with broker-dealers, banks, or other qualified custodians. The amendments also would clarify circumstances under which an adviser has custody of client assets. The amendments are designed to conform the rule to modern custodial practices and enhance protections for client assets while reducing burdens on advisers that have custody of client assets.

DATES: Comments must be received on or before September 25, 2002.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only.

Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549–0609. Comments may also be submitted electronically at the following E-mail address: *rule-comments@sec.gov.*

All comment letters should refer to File No. S7–28–02; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site *(http://www.sec.gov)*.[1]

FOR FURTHER INFORMATION CONTACT: Vivien Liu, Senior Counsel, or Jennifer L. Sawin, Assistant Director, at 202–942–0719 or IArules@sec.gov, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on the proposed amendments to rule 206(4)–2 [17 CFR 275.206(4)–2] [2] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (the ''Advisers Act'' or ''Act'') and to Part II, Item 14 of Form ADV [17 CFR 279.1].

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Executive Summary

Rule 206(4)–2 under the Advisers Act requires each investment adviser that has custody of client funds or securities to deposit client funds in bank accounts and to segregate and identify client securities and hold them in safekeeping. The rule also requires the adviser to send quarterly account statements to each client whose assets are in the adviser's custody, and to have an independent public accountant conduct an annual surprise examination of the custodied assets.

The Commission is proposing to amend rule 206(4)–2 to reflect modern custodial practices and clarify circumstances under which an adviser has custody of client assets and thus must comply with the rule. The amendments would require advisers that have custody to maintain client funds and securities with a broker-dealer, bank or other ''qualified custodian.'' If the qualified custodian sends monthly account statements directly to an adviser's clients, the adviser would be relieved from sending its own account statements and undergoing an annual surprise examination. The proposed amendments would exempt advisers from the custody rule with respect to clients that are registered investment companies or are limited partnerships or other pooled investment vehicles that are subject to annual audit by an independent public accountant. The proposed amendments would also add a definition of ''custody'' to the rule and illustrate circumstances under which an adviser has custody of client assets. Finally, the proposed amendments would remove the requirement in Form ADV that advisers with custody include an audited balance sheet in their disclosure brochure to clients.

I. Background

Rule 206(4)–2 requires advisers to protect the assets that their clients have entrusted to their custody. We adopted the rule in 1962, shortly after Congress amended the Advisers Act to give us rulemaking and inspection authority under the Act's anti-fraud provisions.[3] A key factor prompting us to ask Congress for this authority was concern about the custodial practices of advisers and the safety of client assets.[4]

Rule 206(4)–2 applies to advisers that are registered with the Commission and that have custody of client funds or securities.[5] Under the rule, the adviser must deposit client funds in bank accounts that contain only client funds, and must segregate and identify client securities and hold them in a reasonably safe place.[6] Immediately after accepting custody of a client's funds or securities, the adviser must notify the client of where and how they will be maintained.[7]7 Each quarter, the adviser must send clients account statements, and at least once each year, the adviser must have an independent public accountant conduct a surprise examination of all client funds and securities in the adviser's custody.[8]

We have not amended rule 206(4)–2 substantively since we adopted it over forty years ago.[9] Since then, custodial practices have changed and, as a result, portions of the rule have become outdated or inconsistent with modern custodial practices.[10] Advisers' business practices also have evolved, increasing the likelihood that advisers may obtain custody of client assets in circumstances that we may not have anticipated in 1962.[11] Our staff has attempted to

[1] We do not edit personal or identifying information, such as names or E-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] Unless otherwise noted, when we refer to rule 206(4)–2 or any paragraph of the rule, we are referring to 17 CFR 275.206(4)–2 of the Code of Federal Regulations in which the rule is published.

[3] Amendments to the Advisers Act (Pub. L. 86–750, 86th Cong., 2nd Sess., 74 Stat. 885, 1960) (amending sections 206(4) and 204 of the Advisers Act); *Adoption of Rule 206(4)–2 under the Investment Advisers Act of 1940,* Investment Advisers Act Release No. 123 (Feb. 27, 1962) [27 FR 2149 (Mar. 6, 1962)].

[4] *See Securities Act Amendments, 1959: Hearings Before House Committee on Interstate and Foreign Commerce,* 86th Cong., 107 (1959) (statement of Edward Gadsby, Chairman of the Securities and Exchange Commission). *See also* Securities and Exchange Commission, *Protection of Clients' Securities and Funds in Custody of Investment Advisers: Report on Embezzlement of Clients' Securities and Recommendations for Amending the Investment Advisers Act of 1940 (1945)* (describing various frauds involving advisers' embezzlement of client assets and recommending the Commission be given authority to regulate advisers' custodial practices); Investment Advisers Act Release No. 39 (Jan. 31, 1945).

[5] As of June 2002, 867 advisers (approximately 11% of the 7,583 investment advisers registered with the Commission) reported on their Form ADV that they had custody of client funds or securities.

[6] Rule 206(4)–2(a)(1) and (2).

[7] Rule 206(4)–2(a)(3).

[8] Rule 206(4)–2(a)(4) and (5).

[9] Rule 206(4)–2 has been amended twice. In 1989, we amended the rule to require accountants conducting surprise examinations to include Form ADV–E [17 CFR 279.8] as a cover page when filing examination certificates with us. *See Forms for Filing by Accountants,* Investment Advisers Act Release No. 1181 (July 26, 1989) [54 FR 32048 (Aug. 4, 1989)]. In 1997, as part of implementing Title III of the National Securities Markets Improvement Act of 1996 (Pub. L. 104–290, 110 Stat. 3428), we amended the rule so that it applies only to advisers registered (or required to be registered) with us. *See Rules Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Release No. 1633 (May 15, 1997) [62 FR 28112 (May 22, 1997)].

[10] For example, the rule requires an adviser to segregate, identify and safe-keep client securities. *See* rule 206(4)–2(a)(1). This requirement assumes that securities are held in physical certificates. Most securities are now, however, held through book-entry in custodians' accounts with securities depositories. *See Custody of Investment Company Assets with a Securities Depository,* Investment Company Act Release No. 25266 (Nov. 15, 2001) [66 FR 58412 (Nov. 21, 2001)] at n.7 and accompanying text. *See also* James Rogers, *Policy Perspectives on Revised UCC Article 8,* 43 UCLA L. Rev. 1431 (1996).

[11] For example, many firms today have (as general partners) formed limited partnerships through which they provide advisory services (as investment advisers). Form ADVs submitted by advisers registered with us show that as of May 16, 2002, 2560 advisers act (or have related persons that act) as general partners to limited partnerships or as managing members to limited liability companies. Advisers that serve as both general partner and adviser generally have custody over the assets of the limited partnerships. *See infra* Section II. A of this Release.

accommodate these evolving business practices, and to reduce unnecessary compliance burdens on advisers, by issuing numerous no-action and interpretive letters and releases that helped to clarify the operation of the rule.[12] Many underlying issues remain, however, that can be resolved only through amendments to the rule. In addition, the accumulated guidance in these no-action and interpretive letters, while helpful to advisers, has diminished the transparency of the rule's requirements because an adviser seeking to understand the rule must review a large body of letters in addition to the rule itself.

Today, as part of our ongoing effort to review and modernize federal securities law, we are proposing comprehensive amendments to rule 206(4)–2 under the Advisers Act. The amendments, which we describe in more detail below, are designed to enhance the protections afforded to advisory clients' assets, harmonize the rule with current custodial practices, and clarify circumstances under which advisers have custody of client assets.

II. Discussion

A. Definition of Custody

Currently, we define ''custody'' in our instructions to Form ADV.[13] We propose to incorporate that definition into rule 206(4)–2, provide examples that illustrate the application of the definition, and include, within the rule, a limited exception for advisers that inadvertently receive client assets.

The proposed definition would provide that an adviser has custody of client assets when it holds, ''directly or indirectly, client funds or securities or [has] any authority to obtain possession of them.'' [14] Accordingly, an adviser must comply with the rule when it has access to client funds and securities as well as when the adviser holds those assets. In either circumstance, clients are at risk that their assets may be lost, misused, misappropriated, or subject to the adviser's financial reverses.[15]

We propose to include, in the definition, three examples designed to illustrate circumstances under which an adviser has custody of client assets.[16] The first example clarifies that an adviser has custody when it has *any* possession or control of client funds or securities.[17] An adviser that holds clients' stock certificates or cash, even temporarily, puts those assets at risk of misuse or loss. We recognize, however, that an adviser may inadvertently receive client assets when a third party sends funds or securities to a client via the adviser, or when a client attempts to route funds or securities to his custodian through the adviser's office. To avoid causing an adviser to violate the rule inadvertently as a result of actions by other persons, the rule would expressly exclude inadvertent receipt by the adviser of client funds or securities, so long as the adviser returns them to the sender within one business day of receiving them.[18] We also propose to clarify that an adviser's possession of a check drawn by the client and made payable to a third party will not be considered possession of client funds for purposes of the custody definition.[19] The client's relationship with the drawee bank should provide the client with protections comparable to the protections the proposed rule would provide.[20]

The second example clarifies that an adviser has custody if it has the authority to withdraw funds or securities from a client's account.[21] An adviser with power of attorney to sign checks on a client's behalf, to withdraw funds or securities from a client's account, or to dispose of client assets for any purpose other than authorized trading has access to the client's assets.[22] Similarly, an adviser authorized to deduct advisory fees or other expenses directly from a client's account has access to, and therefore has custody of, the client funds and securities in that account.[23] These advisers might not have possession of client assets, but they have the authority to obtain possession.

The last example clarifies that an adviser has custody if it is the legal owner of the client assets or has access to those assets.[24] One common instance is a firm that acts as both general partner and investment adviser to a limited partnership.[25] By virtue of its position

[12] Our Division of Investment Management has issued approximately 90 no-action and interpretive letters, and one interpretive release, under the rule. *See Investment Advisers; Uniform Registration, Disclosure, and Reporting Requirements; Staff Interpretation,* Investment Advisers Act Release No. 1000 (Dec. 3, 1985) [50 FR 49835 (Dec. 5, 1985)].

[13] Advisers use Form ADV to register with us. We amended instructions to Form ADV in 1985 to, among other things, explain that an adviser has custody if it directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them. *See* Glossary of Terms, Form ADV; *Uniform Investment Adviser Registration Application Form,* Investment Advisers Act Release No. 991 (Oct. 15, 1985) [50 FR 42903 (Oct. 23, 1985)].

[14] Proposed rule 206(4)–2(c)(1).

[15] *See Proposal to Adopt Rule 206(4)–2 under the Investment Advisers Act of 1940,* Investment Advisers Act Release No. 122 (Nov. 6, 1961) [26 FR 10607 (Nov. 10, 1961) (the custody rule was designed to require investment advisers to maintain client funds and securities ''in such a way that they will be insulated from and not be jeopardized by any unlawful activities or financial reverses, including insolvency, of the investment adviser.''). *See also supra* note 3.

[16] While these examples represent some of the most common circumstances, there are other circumstances in which an adviser may have custody of client assets. An adviser may, for example, have custody if its affiliate holds assets of the adviser's clients and the adviser either controls the affiliate's operations or has access to the client assets through the affiliate. *See* section 208(d) of the Advisers Act [15 U.S.C. 80b–8(d)] (adviser may not, indirectly or through or by any other person, do any act or thing that would be unlawful for the adviser to do directly). Our staff previously has expressed similar views. *See Crocker Investment Management Corp.,* SEC Staff Letter (Apr. 14, 1978); *Ryder Stilwell Investment Advisers,* SEC Staff Letter (Nov. 22, 1988); *Baker, Jongewaard & Levenson Financial Planning Group, Inc.,* SEC Staff Letter (Feb. 24, 1989); *Penn Davis McFarland, Inc.,* SEC Staff Letter (Apr. 2, 1990).

[17] Proposed rule 206(4)–2(c)(1)(i).

[18] Our staff has issued no-action letters agreeing not to recommend enforcement action to the Commission if an adviser failed to comply with rule 206(4)–2 in such circumstances. *See Hayes Financial Services, Inc.,* SEC Staff Letter (Apr. 2, 1991).

[19] Checks payable to an adviser for payment of advisory fees or similar fees due to the adviser also do not represent client funds within the meaning of the custody rule and therefore advisers would not have custody as a result of receiving those checks. An adviser would, however, have custody of client funds if it holds a check drawn by the client and made payable to the adviser with instructions to pass the funds through to a custodian or to a third party.

[20] The client's relationship with the drawee bank provides the client with periodic statements and other sources of information regarding the disposition of the check.

[21] Proposed rule 206(4)–2(c)(1)(ii).

[22] *See* Glossary of Terms, Form ADV (entry for Custody states that an advisory ''firm has custody, for example, if it has a general power of attorney over a client's account or signatory power over a client's checking account''). The Commission staff also has interpreted the rule in this manner in several letters. *See, e.g., Eugene Kaufman Inc.,* SEC Staff Letter (Jan. 7, 1982); *Howard J. Gordon Investments,* SEC Staff Letter (Dec. 1, 1982); *Baldwin Brothers Inc.,* SEC Staff Letter (Sept. 1, 1989); and *Baker, Jongewaard & Levenson Financial Planning Group Inc.,* SEC Staff Letter (Feb. 24, 1989).

[23] We understand many advisers rely on a series of staff no-action letters to avoid application of the rule when they have authority to withdraw their advisory fees from client assets (and, in the case of general partners, withdraw capital from the partnerships) that are otherwise held by an independent custodian. *See, e.g., Investment Counsel Association of America, Inc.,* SEC Staff Letter (June 9, 1982); *John B. Kennedy,* SEC Staff Letter (June 5, 1996); and *Securities America Advisors Inc.,* SEC Staff Letter (Apr. 4, 1997). The no-action assurances in these letters are conditioned on the advisers' use of alternative procedures to protect client assets, including an independent custodian's periodic delivery, to the clients, of information about the withdrawals. We have designed the proposed rule so that these advisers would be able to comply with the rule without facing the burdens they previously sought to avoid. *See infra* Sections II. B and II. C of this Release.

[24] Proposed rule 206(4)–2(c)(1)(iii).

[25] This example applies equally to an adviser that acts as both managing member and investment

Continued

as general partner, the adviser generally has authority to dispose of funds and securities in the limited partnership's account and thus has custody of client assets.[26]

Our proposed definition of ''custody'' is based on our longstanding interpretation of the term currently used in the rule.

• Should we revise the definition in any way?

• The proposed rule would continue to interpret ''custody'' broadly to include advisers' access to client funds and securities. Does that definition continue to work well to protect client assets?

• Advisers that withdraw their fees from clients' accounts and rely on staff letters to avoid application of the custody rule send clients invoices detailing how those fees were calculated. Should our rules require advisers that deduct fees from clients' accounts to send such invoices to those clients?

• Will the examples be helpful? Are there additional examples we should add?

B. Use of Qualified Custodians

Rule 206(4)–2 currently requires advisers to maintain client funds with a bank, but does not require that client securities be held in a brokerage account or with any other type of financial institution.[27] Almost all advisers that have custody of client securities maintain them in accounts with a broker or a bank, but on occasion our examiners discover an adviser keeping certificates in office files or in a safety deposit box. Such practices do not provide adequate protection for client securities, because these certificates may too easily be lost, stolen, or destroyed.[28] We are therefore proposing to amend the rule to require that advisers maintain both client funds and securities with a qualified custodian in an account either under the client's name or under the adviser's name as agent or trustee for its clients.[29]

''Qualified custodians'' under the proposed rule would include the types of financial institutions that customarily provide custodial services and are regulated and examined by their regulators with respect to those services.[30] These would include banks,[31] savings associations,[32] registered broker-dealers,[33] and registered futures commission merchants.[34] We recognize that advisory clients often invest in securities traded on foreign exchanges and their advisers must, as a practical matter, maintain securities with financial institutions in foreign countries where the securities are traded.[35] With respect to securities for which the primary market is in a country other than the United States, and to cash and cash equivalents reasonably necessary to effect transactions in those securities, we would treat financial institutions that customarily hold financial assets in that country and that hold the client assets in customer accounts segregated from their proprietary assets as qualified custodians.

Many advisers registered with us also would be qualified custodians under the proposed rule.[36] These advisers could maintain their own clients' assets, subject to the account statement requirements described below and the custody rules imposed by the regulators of the advisers' custodial functions. Advisers could also maintain client assets with affiliates that are qualified custodians.

We request comment on our proposal to require client funds and securities to be maintained by a qualified custodian.

• Should we require that all client funds and securities be maintained with qualified custodians?

• Are there other financial institutions that should be included as qualified custodians?

• Is our proposal with respect to foreign qualified custodians too broad—

adviser of a limited liability company or another type of investment vehicle, or as both trustee and investment adviser of a trust.

[26] Advisers that also act as general partners have, in the past, avoided application of rule 206(4)–2 to their activities by relying on staff no-action and interpretive letters. *See, e.g., Bennett Management Co.,* SEC Staff Letter (Feb. 26, 1990); *Canyon Management Company,* SEC Staff Letter (Oct. 15, 1991); *PIMS Inc.,* SEC Staff Letter (Oct. 21, 1991). The no-action assurances in these letters are conditioned on, among other things, an independent representative reviewing and authorizing the adviser's withdrawals of funds from the partnership accounts and on custodians sending quarterly account statements to the independent representative. Under the proposed rule, an adviser would not be subject to an annual surprise examination if the qualified custodian sends monthly account statements directly to the limited partners or to their independent representative—a requirement similar to the procedures that these advisers already follow under the staff letters. *See infra* Section II. C of this Release. Moreover, under our proposal, the custody rule would not apply to advisers with respect to limited partnerships that are audited annually. *See infra* Section II. D. 2 of this Release.

[27] Instead, the rule currently requires that client securities be held in a reasonably safe place. *See* rule 206(4)–2(a)(1) and (2).

[28] For discussions of risks in keeping securities certificates, *see* Uniform Commercial Code, Revised Article 8, Prefatory Note at I.C.; Randall D. Guynn, Modernizing Securities Ownership, Transfer and Pledging Laws 21 (Capital Markets Forum, International Bar Association 1996).

[29] Proposed rule 206(4)–2(a)(1). Under the proposed rule, client funds and securities would have to be maintained in a custodial account so that the qualified custodian can provide account information to the clients. Keeping securities certificates in a bank safety deposit box, for example, would not satisfy the requirements of the proposed rule.

[30] Regulatory agencies or self-regulatory organizations require (either by rule or by supervisory policy) these financial institutions to carry fidelity bonds to cover possible losses caused by their employees' fraudulent activities. *See, e.g.,* New York Stock Exchange (''NYSE'') rule 319, 2 New York Stock Exchange Guide (CCH) ¶ 2319; National Association of Securities Dealers (''NASD'') rule 3020, NASD Manual (CCH) 4836; 12 CFR 7.2013 (national banks); 12 CFR 563.190 (savings associations); 12 U.S.C. 1828(e) and *Federal Deposit Insurance Corporation Manual of Examination Policies,* Section 4.4 (insured state nonmember banks); *3–1555 Federal Reserve Regulatory Service* (Feb. 28, 1962) and *Federal Reserve Board Commercial Bank Examination Manual,* Section 4040.1 (insured state member banks).

We are not proposing to require advisers to look beyond the ''primary'' custodian to determine whether the client assets are maintained with a qualified custodian. As a result, our proposed definition of ''qualified custodian'' does not include clearing agencies or securities depositories because they usually hold or process funds and securities transmitted from primary custodians. *Compare* section 17(f)(2) of the Investment Company Act of 1940 (''Investment Company Act'') [15 U.S.C. 80a–17(f)(2)] and rules 17f–4 and 17f–7 [17 CFR 270.17f–4 and 17f–7] under the Investment Company Act.

[31] A ''bank'' under section 202(a)(2) of the Advisers Act [15 U.S.C. 80b–202(a)(2)] includes national banks, members of the Federal Reserve System, and other banks and trust companies having similar authority to national banks and supervised by state or federal banking agencies.

[32] ''Qualified custodian'' would include any ''savings association'' as defined in section 3(b)(1) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)(1)] and insured and supervised by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act [12 U.S.C. 1811].

[33] ''Qualified custodian'' would include any broker-dealer that is registered with and regulated by us under the Securities Exchange Act of 1934 (the ''Exchange Act''), holding the client assets in customer accounts.

[34] Futures commission merchants are registered with the Commodity Futures Trading Commission (''CFTC'') under section 4f(a) of the Commodity Exchange Act [7 U.S.C. 6f(a)] and regulated by the CFTC. ''Qualified custodian'' would include a registered futures commission merchant holding the client assets in customer accounts. Registered investment advisers that also provide clients with advice about futures, including ''security futures,'' may be required by CFTC rules to maintain custody of those clients' funds and security futures with a futures commission merchant. *See* rule 4.30 [17 CFR 4.30] under the Commodity Exchange Act. *See also* the Commodity Futures Modernization Act (Pub. L. 106–554, 114 Stat. 2763 (2000)) (security futures are both securities and futures).

[35] *See Exemption for Custody of Investment Company Assets Outside the United States,* Investment Company Act Release No. 14132 (Sept. 7, 1984) [49 FR 36080 (Sept. 14, 1984)] (prohibiting foreign financial institutions from acting as qualified custodians for securities purchased on a foreign stock exchange would cause ''inconvenience and expense associated with moving the securities away [from] their primary market'').

[36] For example, Form ADVs submitted by SEC-registered advisers indicate that as of May 16, 2002, 647 advisers are broker-dealers registered with us under section 15 of the Exchange Act [15 U.S.C. 78o] and 77 advisers are banks (or separately identifiable departments or divisions of banks).

should we limit them to entities regulated by a foreign financial regulatory authority? Alternatively, is the proposal too narrow—how many advisory clients would need to have a foreign custodian hold funds or securities other than those permitted under the proposed amendments?

• Should the rule permit advisers that are qualified custodians to maintain their clients' funds and securities themselves? With affiliated qualified custodians?

C. Delivery of Account Statements to Clients

Rule 206(4)–2 seeks to deter misuse of client assets by requiring an adviser with custody to send each client quarterly account statements,[37] and to engage an independent public accountant to conduct an annual surprise examination of client assets in custody.[38] Advisers have complained about the cost of annual surprise examinations and have sought to avoid them.[39] Moreover, experience has shown that the current rule has limited deterrent effect. Advisers that intend to misuse client assets can fabricate client account statements [40] and, because the surprise examination is performed only annually, many months may pass before the accountant has an opportunity to detect a fraud.

After reviewing the operation of the current rule and evaluating its benefits and costs, we are proposing an entirely different approach to protect advisory clients—an approach that would rely on periodic disclosure of account information by a qualified custodian rather than rely on a surprise examination. We propose to exempt advisers from the requirements to send quarterly account statements and to undergo annual surprise examinations if the qualified custodian sends monthly account statements directly to each advisory client.[41] Qualified custodians' delivery of account statements to clients directly should provide clients with confidence that any erroneous or unauthorized transactions or withdrawals by an adviser have been reflected.

We recognize that our new approach may not work in all custodial arrangements. Some advisers do not disclose the identity of their clients to their custodians to prevent a potential competitor from having access to their clients. Others may wish to protect the privacy of certain well-known clients. To accommodate this business practice, the proposed rule would require an adviser to continue sending quarterly account statements to each client that does not receive account statements directly from the qualified custodian and to undergo an annual surprise examination to verify the funds and securities of those clients.[42] To enhance our ability to protect advisory clients' assets by intervening as early as possible, the proposed amendments would require notice of any material discrepancies found during the examination. The rule would require the accountant finding such discrepancies during an examination to notify our Office of Compliance Inspections and Examinations.[43]

The proposed amendments contain a special provision requiring account statements (whether delivered by the qualified custodian or the adviser) to be sent directly to the limited partners of a limited partnership (or to their independent representative) if the adviser to the limited partnership also acts as its general partner and has custody of client assets.[44] As general partner, the adviser generally has custody of these client assets.[45] This special provision would avoid the adviser's being the sole recipient of account statements in its capacity as general partner of the limited partnership.[46] Delivery of account statements to the adviser but not to the limited partners would not, of course, deter the adviser's misuse of client assets.

• We request comments on our proposal to rely on account statements delivered to clients by qualified custodians instead of relying on investment advisers sending account statements and undergoing annual surprise examinations. Would the proposal afford equivalent protection to clients? Should the rule expressly require advisers to review the custodian's statement and identify any discrepancies?

• Should advisers that are acting as their clients' qualified custodians or that are using affiliated qualified custodians continue to be subject to annual surprise examinations?

• We understand that many, perhaps most, qualified custodians already send account statements directly to customers as a matter of practice, and therefore the effect of our proposal would be to eliminate the cost of annual surprise examinations for many advisers without imposing additional burdens.

[37] Rule 206(4)–2(a)(4). This requirement is applicable to advisers with respect to each client whose assets are in the advisers' custody.

[38] Rule 206(4)–2(a)(5).

[39] *See Baldwin Brothers, Inc.,* SEC Staff Letter (Apr. 22, 1985). *See also* staff letters listed in notes 23 and 26 *supra.*

[40] *See, e.g., In the Matter of Vector Index Advisors, Inc. and Steven H. Adler,* Investment Advisers Act Release No. 1996 (Nov. 15, 2001) (adviser sent clients false account statements to hide its fraudulent activities). *See also Securities and Exchange Commission* v. *RCS Financial Services, Inc.,* (N.D. Ohio) Civil Action No. 98 CV 1047, Litigation Release No. 15748 (May 19, 1998); *In the Matter of Robert Pierce and Carrie L. Williams Pierce,* Investment Advisers Act Release No. 1620 (Mar. 17, 1997); *Securities and Exchange Commission* v. *Teresa V. Fernandez,* (S.D.N.Y.) 96 Civ. 8702 (JES), Litigation Release No. 15159 (Nov. 19, 1996); *United States* v. *Steven D. Wymer,* Criminal Action No. 92–2–RG (C.D. Cal), Litigation Release No. 13635 (May 12, 1993); *In re Thomas Walter McKibbin and Equitrust, Inc.,* Investment Advisers Act Release No. 1165 (May 1, 1989).

Steven D. Wymer, an investment adviser, testified before a Congressional subcommittee that his ability to misuse client assets was dependent upon custodians making him the exclusive recipient of account statements. He was thus able to deliver fabricated statements to clients to hide unauthorized transactions and losses. *See* Investment Adviser Industry Reform, Hearing before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce, 103d Cong. 1st Sess. 88–89 (1993).

[41] Proposed rule 206(4)–2(a)(3). To avoid the situation in which an adviser would be violating the rule as a result of a qualified custodian's failure to deliver an account statement to a client, the rule would require the adviser to have a ''reasonable belief'' that the custodian is delivering the required account statements. An adviser could form a reasonable belief under the proposed rule if, for example, the qualified custodian provides the adviser with a copy of the account statement that was delivered to the client.

[42] Proposed rule 206(4)–2(a)(3)(ii). Our proposal in this regard has no effect on a qualified custodian's other legal obligations with respect to its customers.

[43] Proposed rule 206(4)–2(a)(3)(ii)(C). Our rules under the Exchange Act impose a similar requirement. *See* rule 17a–5(h)(2) [17 CFR 240.17a–5(h)(2)] (requiring an auditor, upon finding any material inadequacies in the audited broker-dealer's accounting system or procedures for safeguarding securities, to notify the broker-dealer, and requiring the broker-dealer to notify us within 24 hours of receiving the notice from the auditor).

[44] Proposed rule 206(4)–2(a)(3)(iii). The provision would also apply to advisers with respect to other pooled investment vehicles, including limited liability companies where the adviser also acts as the managing member of the limited liability company. Account statements must be sent directly to the limited liability company members or to their independent representative(s). Limited partnerships and other investment vehicles often engage an independent representative to receive account statements and monitor the status of assets in custody on behalf of all the limited partners.

For purposes of the rule, an ''independent representative'' would be a person that (i) acts as agent for investors in a pooled investment vehicle and by law or contract is obligated to act in the best interest of the investors; (ii) does not control, is not controlled by, and is not under common control with the adviser; and (iii) does not have, and has not had within the past two years a material business relationship with the adviser. *See* proposed rule 206(4)–2(c)(2).

[45] *See supra* discussions of ''custody'' under Section II. A of this Release.

[46] As discussed below in more detail, the custody rule, including proposed rule 206(4)–2(a)(3)(iii), would not apply to advisers with respect to pooled investment vehicles that are audited annually. *See* proposed rule 206(4)–2(b)(2).

We request comment on our understanding and expectations.

• We propose to require monthly account statements from qualified custodians so that clients may identify any irregularities earlier. We understand that most qualified custodians send monthly account statements to clients as a matter of practice.[47] We request comment on this understanding.

• The proposed rule would permit independent representatives to receive account statements from qualified custodians on behalf of investors in limited partnerships and other pooled investment vehicles. Are there any other types of clients that need independent representatives to receive account statements on their behalf?

• We also request comment on our proposal to require advisers with custody to continue sending quarterly account statements to clients and to continue undergoing annual surprise examinations if the qualified custodian does not send account statements directly to the adviser's clients. We understand that most custodians do send statements directly—is there a need for this alternative procedure? Should we require these advisers to obtain their clients' informed consent prior to using this alternative procedure? If not, should we require advisers that use this alternative procedure to disclose, to clients, the risks involved in receiving account statements quarterly from the adviser itself rather than monthly from a qualified custodian, or to make other disclosures?

• Should we require additional safeguards to deter misuse of clients' assets by advisers that send account statements to clients themselves—for example, should we require these advisers to send their statements to clients monthly rather than quarterly? Should the rule require surprise examinations to be conducted more often than annually? Are there other requirements or procedures that would further protect these advisers' clients' assets?

D. Exemptions

1. Registered Investment Companies

We propose to exempt advisers from the rule with respect to clients that are registered investment companies. Registered investment companies and their advisers must comply with the strict requirements of section 17(f) of the Investment Company Act of 1940 and the custody rules we have adopted under that section.[48] We believe that applying rule 206(4)–2 in addition to those requirements may not increase safeguards on investment company assets.

2. Pooled Investment Vehicles

We also propose to exempt advisers from the rule with respect to client assets held in pooled investment vehicles such as limited partnerships or limited liability companies if the pooled investment vehicle (i) has its transactions and assets audited at least annually; and (ii) distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 90 days of the end of its fiscal year.[49] These investors will have established, by contract, a means to protect themselves from misuse of pool assets. Moreover, a periodic report by auditors may be more useful to them than receiving reports of the large number of transactions in pool assets.

• We request comment on our proposal to exempt advisers from the rule with respect to pooled investment vehicles that are subject to an annual audit. Should the rule expressly require the adviser to maintain the assets of the pooled vehicle with a qualified custodian?

• We understand that this exemption would apply to most limited partnerships, limited liability companies and other pooled investment vehicles, and thus would eliminate a great number of issues and concerns that have arisen under the current rule and that have been addressed in numerous staff no-action or interpretive letters.[50] We ask for comment on this understanding.

3. Registered Broker-Dealers

We are not proposing to retain the current exemption from the rule for advisers that are also registered broker-dealers.[51] The proposed rule would permit advisers that are also registered broker-dealers (and advisers that are also other types of qualified custodians) to hold custody of their clients' funds and securities without being subject to annual surprise examinations so long as they send monthly statements to their clients. Broker-dealers already are required to send confirmations and account statements to their customers, including those that are advisory clients.[52] Most advisers that also are registered broker-dealers should therefore already be in compliance with the proposed rule and face no additional burdens.

E. Amendments to Part II of Form ADV

Advisers that have custody of client assets must include, in their disclosure statements (''brochures'') sent to clients, a balance sheet audited by an independent public accountant.[53] We adopted the audited balance sheet requirement, in part, to assist clients in determining whether their adviser may face financial pressure to misuse the assets entrusted to it.[54] A balance sheet, however, may give an imperfect picture of the financial health of an advisory firm—many profitable advisers have few financial assets. Moreover, rule 206(4)–4[55] now requires advisers to disclose to their clients any financial condition that

[47] Broker-dealers that are members of the NASD, the NYSE or the American Stock Exchange (AMEX) are generally required to provide customers with immediate confirmations and account statements at least quarterly. While NYSE rules permit a member to send account statements to, for example, the investment adviser if the adviser holds power of attorney over the customer's account, such delivery would not satisfy the requirement under (a)(3)(i) of the proposed rule (account statements to clients by qualified custodian). *See* NASD Rules IM–2340, NASD Manual (CCH) 4292; NYSE rule 409, 2 New York Stock Exchange Guide (CCH) ¶ 2409; AMEX rule 419, 2 American Stock Exchange Guide (CCH) ¶ 9439. Banks effecting a purchase or sale of securities for a customer are required to provide immediate confirmations under regulations of the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, subject to limited exceptions. These regulations permit banks and their customers to agree upon account statements at least quarterly in lieu of immediate confirmations for certain types of customer accounts, such as agency accounts for which the bank exercises investment discretion. 12 CFR 12.4, 12.5, 208.34, 344.5, 344.6 (2001). While these regulations generally require account statements to be sent quarterly, we understand that broker-dealers and banks send account statements to customers monthly as a matter of practice.

[48] 15 U.S.C. 80a–17(f) and rules 17f–1 through 17f–7 under the Investment Company Act of 1940 [17 CFR 270.17f–1 through 17 CFR 270.17f–7].

[49] *See* proposed rule 206(4)–2(b)(2). For purposes of this clause, ''audit'' has the meaning under section 2(d) of Article 1 of Regulation S–X [17 CFR 210.1–02(d)].

We are not proposing to require that any pooled investment vehicle undergo an annual audit. We understand, however, that many hedge funds and other pooled accounts do undergo an annual audit, and we believe requiring an adviser to comply with the requirements of proposed rule 206(4)–2 for those accounts may be unnecessary.

[50] As discussed earlier, advisers should no longer find it necessary to rely on these staff letters. *See supra* note 26.

[51] Rule 206(4)–2(b) exempts advisers that are also broker-dealers from the custody rule if they are subject to and in compliance with the net capital requirement under rule 15c3–1 [17 CFR 240.15c3–1] under the Exchange Act.

[52] *See supra* note 47.

[53] Part II, Item 14 of Form ADV.

[54] *See Investment Adviser Requirements Concerning Disclosure, recordkeeping, Applications for Registration and Annual Filings,* Investment Advisers Act Release No. 664 (Jan. 30, 1979) [44 FR 7870 (Feb. 7, 1979)] (adopting Part II of Form ADV, including the requirement to include an audited balance sheet).

[55] 17 CFR 275.206(4)–4.

is reasonably likely to impair the adviser's ability to meet its contractual commitments to its clients, a disclosure requirement that did not exist in 1979 when the audited balance sheet requirement was adopted.[56] We believe that this current disclosure requirement is a better means to warn clients of when their assets may be at additional risk, and that clients should not have to rely for protection on reviewing balance sheet information. We are therefore proposing to eliminate the requirement that advisers with custody include a balance sheet in their client brochures.

- We request comment on this proposal. Have advisory clients found the balance sheet useful in evaluating the risks to their assets in advisers' custody? Should we retain the requirement?

III. General Request for Comment

The Commission requests comment on the rule amendments proposed in this Release, suggestions for additional changes to the rules and comment on other matters that might have an effect on the proposals contained in this Release. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1966, the Commission also requests information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters should provide empirical data to support their views.

IV. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits resulting from its rules. Rule 206(4)–2 seeks to protect clients' assets in the custody of advisers from misuse or misappropriation, by requiring advisers to send each client quarterly account statements and to have independent public accountants conduct annual surprise examinations of the custodied assets. In the 40 years since we adopted the rule, custody practices in the securities markets have changed, and some provisions of the rule have become outdated. In addition, advisers have complained about the cost of annual surprise examinations. Moreover, experience has shown that the current rule has limited deterrent effect on investment advisers determined to misuse client assets. Our proposed amendments to the rule would require advisers to maintain clients' assets with qualified custodians and excuse advisers from annual surprise examinations if the qualified custodians send monthly account statements to the clients directly.

We believe the vast majority of advisers already maintain their clients' assets with qualified custodians who prepare monthly account statements. These amendments will enhance the protections afforded to clients' assets while at the same time reducing advisers' compliance burden. We have identified certain costs and benefits that may result from the proposed rule amendments. We request comment on the costs and benefits of the proposed rule amendments, and encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or any additional costs and benefits.

A. Background

Our rules currently require advisers with custody of client assets to deposit client funds in bank accounts that contain only client funds, and to segregate and identify client securities and hold them in a reasonably safe place.[57] Each quarter, these advisers must send clients account statements, and at least once each year, these advisers must have an independent public accountant conduct a surprise examination of all the client funds and securities in the advisers' custody.[58] In addition, advisers with custody of client funds or securities must include an audited balance sheet with the disclosure brochure they send to their clients.

Rule 206(4)–2 has not been substantively amended since its adoption over 40 years ago. The proposed amendments would make several changes to the existing rule, to modernize it to reflect developments in securities market custody practices. First, advisers with custody of client funds and securities would be required to maintain those assets in accounts with qualified custodians, such as a broker or a bank.[59] Under the current rule, advisers are required to maintain clients' funds in a bank, but they are not required to maintain clients' securities with a qualified custodian. Second, if the qualified custodian sends monthly account statements directly to the advisory clients, the adviser would not be required to send account statements. The current rule requires advisers to send each client a quarterly account statement itemizing the funds and securities in the advisers' custody and all transactions for the account. Third, if the qualified custodian sends monthly account statements directly to the advisory clients, the adviser would not be required undergo an annual surprise examination. Under the current rule, advisers with custody must have an independent public accountant conduct an annual verification of the accuracy of account statements provided to the adviser's clients. Fourth, for any advisers subject to the annual surprise examination requirement, their independent public accountants would be required to notify the Commission of any material discrepancies that they uncover in the examination. The current rule does not require any such notice. Fifth, we would eliminate the current requirement that advisers with custody include an audited balance sheet with their disclosure brochures.

In addition, the proposed amendments would add new provisions to the custody rule to enhance its transparency and reflect advisers' business practices. First, the proposed amendments insert a definition of ''custody'' into the rule (based on the definition currently used in Form ADV) together with examples to illustrate circumstances under which an adviser has custody.[60] Second, a special provision would require account statements to be sent directly to the limited partners (or beneficial owners in other types of pooled investment vehicles) if the adviser also serves as the general partner of the limited partnership and has custody (or holds a managing position in other types of pooled investment vehicles and has custody). Third, we would exempt client assets held in a limited partnership or other pooled investment vehicle from the requirements of the rule if the partnership is audited at least annually and the audited financial statements are delivered to limited partners.

Based on advisers' filings with us, we estimate that a relatively small portion of investment advisers registered with us—approximately 11 percent—have custody of clients' assets.[61] Of the 867

[56] *Financial and Disciplinary Information that Investment Advisers Must Disclose to Clients,* Investment Advisers Act Release No. 1083 (Sept. 25, 1987) [52 FR 36915 (Oct., 2, 1987)] (adopting rule 206(4)–4, which requires disclosure of an adviser's precarious financial condition).

[57] Rule 206(4)–2(a)(1) and (2).

[58] Rule 206(4)–2(a)(4) and (5).

[59] Under proposed rule 206(4)–2(c)(3), a qualified custodian could be a bank, a savings association, a broker-dealer, a futures commission merchant, or in certain instances a foreign custodial institution.

[60] Proposed rule 206(4)–2(c)(1) would provide that an adviser has custody of client assets when it holds, ''directly or indirectly, client funds or securities or [has] any authority to obtain possession of them.'' The examples, based on longstanding interpretation of the term currently used in the rule, address situations involving advisers' possession or control of clients' funds or securities, the authority to withdraw funds or securities from clients' accounts, or access to clients' funds or securities by virtue of the advisers' legal capacity.

[61] *See infra* note 80 and accompanying text (867 SEC-registered advisers report having custody, but

Continued

advisers who currently report having custody, many also report that they are broker-dealers (123) or banks (33).[62] Advisers that are also registered broker-dealers or banks would be ''qualified custodians'' under the proposed rule and may keep custody of their own clients' assets. We expect that all 156 of these advisers[63] would, in their capacity as qualified custodians, send monthly account statements to their advisory clients. Of the remaining 711 advisers that report having custody,[64] we estimate that 95 percent of them (675 advisers)[65] would arrange to have qualified custodians send monthly account statements to 99 percent of their clients, and would prepare their own statements for 1 percent of their clients.[66] We expect that the remaining 36 advisers[67] would prepare their own statements for all of their clients.[68]

B. Benefits

Improved protection for advisory clients. We have designed the proposed amendments to offer greater protection for advisory clients. As discussed above, the proposed amendments would exempt advisers from the requirements to send each client account statements and to undergo an annual surprise examination of the client's account if a qualified custodian sends monthly account statements directly to the advisory client. We expect that, as a result, most advisers will have qualified custodians deliver account statements directly to advisory clients, rather than pay the costs of annual surprise examinations. Clients' early identification of questionable transactions upon receipt of an accurate account statement from a qualified custodian on a monthly basis, rather than an annual surprise examination that may not occur for many months, should allow clients to move more swiftly and to reduce their assets' exposure to malfeasance by advisers. Similarly, we anticipate that the special provision for providing account statements for limited partnerships and other pooled investment vehicles should provide investors (or their independent representatives) the opportunity to identify any erroneous or unauthorized transactions or withdrawals by the partnership's adviser.

As discussed above, we expect that nearly all of the clients of advisory firms that currently have custody of their clients' assets will receive monthly statements from qualified custodians under the rule.[69] The potential benefit to each client is not, however, quantifiable. We also infer that most of these clients already receive monthly statements from qualified custodians, as a result of voluntary practices by their advisers. The potential benefit of having this practice institutionalized in a regulation is also not quantifiable.

In addition, as discussed above, we estimate that a few advisers will not avail themselves of the option to have qualified custodians send monthly account statements to some or all of their clients, and that approximately 28,845 clients will continue to be protected primarily by annual surprise examinations of these advisers as a result.[70] The proposed amendments would require independent public accountants conducting these examinations to advise the Commission of any material discrepancies they discover in the examination. This will enhance the safety of these clients' assets, because the Commission will be able to act promptly and preempt further losses resulting from malfeasance by the adviser. The potential benefit to clients in this regard is not quantifiable.

The rule will also provide greater protection for advisory clients by requiring advisers to maintain clients' securities with a qualified custodian. Based on our examination experience, it is rare for an adviser to retain physical custody of any particular client's securities. Thus, advisory clients are already receiving this benefit as a matter of practice in most instances. The potential benefit of having this practice institutionalized in a regulation is not quantifiable.

Remove unnecessary regulatory requirements. We estimate that approximately 744 advisers are currently required to undergo annual surprise examinations.[71] The Commission staff has estimated, in connection with Paperwork Reduction Act analyses, that on average, an adviser spends approximately 335 hours and pays an additional $8,000 annually in connection with undergoing annual surprise examinations under the existing rule.[72] The proposed amendments to rule 206(4)–2 would provide these advisers with the opportunity to avoid the costs of these annual surprise examinations. As discussed above, we estimate that only 36 advisers will continue to incur the costs of an annual surprise examination with respect to all their clients, and another 675 will only incur these costs with respect to one percent of their clients.[73] The new compliance requirements under the amended rule 206(4)–2 would focus on investment advisers ascertaining whether qualified custodians are sending monthly account statements to each of the adviser's clients. This sets forth a much simpler and less expensive compliance procedure.

We request comment on our estimates of the number of advisers that would avail themselves of the opportunity to avoid the time and costs of an annual surprise examination under the rule. We also request comments quantifying the reduction in costs that would be obtained through the new compliance procedure.

In addition, for other advisers who have custody but rely on procedures set out in staff no-action letters in lieu of complying with the annual surprise examination requirement, the proposed amendments would eliminate the cost of compliance with the procedures set forth in those letters. The number of advisers who have custody but rely on procedures set out in staff no-action letters in lieu of complying with the annual surprise examination requirement is difficult to estimate.[74] We request comments quantifying the costs advisers incur in connection with the alternative procedures under the staff no-action letters, how many

this may under-represent the number of advisers who actually have custody).

[62] *See infra* note 82 and accompanying text.

[63] 123 + 33 = 156.

[64] 867 − 123—33 = 711.

[65] 711 × 0.95 = 675.

[66] We base this estimate on our experience examining investment advisers. As we discuss, *infra* note 90 and accompanying text, we estimate that SEC-registered investment advisers have a mean of 670 clients each. Thus, we estimate that this group of advisers would be preparing their own statements for an aggregate group of 4,725 clients (670 mean clients per adviser × 0.01 = 7 clients per adviser × 675 advisers = 4,725 clients).

[67] 867 − 123 − 33 − 675 = 36.

[68] We estimate that these 36 advisers would have 24,120 clients in the aggregate (36 × 670 = 24,120). *See supra* note 66.

[69] *See supra* notes 61–68 and accompanying text.

[70] *See supra* notes 66 and 68. We estimate the aggregate number of clients at 28,845 (4,725 + 24,120).

[71] As we discuss at notes 61–68 *supra* and accompanying text, 867 advisers report having custody. Of these, 123 report that they are also broker-dealers. Broker-dealers are exempt from the current rule. 867 − 123 = 744 non-exempt advisers with custody.

[72] This estimate is based on the estimate that an adviser (i) spends 0.5 hours per client in connection with the annual surprise examination, (ii) has an average of 670 clients (0.5 x 670 = 335), and (iii) pays $8,000 in fees to an independent public accountant. *See infra* notes 87–88 and accompanying text.

[73] These 675 advisers would benefit from reducing the hours and other costs they spend on surprise examinations. As discussed below, *infra* notes 90 and 93, each of these 675 advisers would spend approximately 3.5 hours and pay $1,000 annually in connection with undergoing annual surprise examinations under the proposed rule.

[74] *See infra* note 80 and accompanying text.

advisers incur such costs, and the reduction in costs that would be obtained through the new compliance procedure.

The proposed amendments would also eliminate the requirement set forth in Form ADV that advisers with custody must include, in their disclosure brochures sent to clients, a balance sheet prepared and audited by an independent public accountant. The elimination of this balance sheet requirement would reduce advisers' compliance burden. The Commission staff has estimated, in connection with Paperwork Reduction Act analyses, that an adviser not otherwise required to prepare audited financial statements presently spends approximately $15,000 annually to comply with this requirement, and that approximately 580 advisers with custody are currently incurring these costs.[75] We request comment on our estimate of these costs and the number of advisers who would be relieved from these costs as a result of the proposed amendments.

We do not anticipate that eliminating the balance sheet requirement will reduce protections to clients. Many profitable advisers have few financial assets, and a balance sheet may give an imperfect picture of the financial health of an advisory firm. Moreover, some clients may not have experience in interpreting the financial information presented in a balance sheet. Finally, rule 206(4)–4 [76] now requires advisers to disclose to their clients any financial condition that is reasonably likely to impair the adviser's ability to meet its contractual commitments to its clients, and this disclosure is likely to be more useful to clients than a balance sheet; accordingly, we do not expect any reduction in investor protection to result from the proposed change.

Improved clarity and transparency of the rule. We anticipate that investment advisers will find it easier to understand and to comply with the rule as a result of the proposed amendments, and that this increased transparency may result in cost savings for advisers. We adopted rule 206(4)–2 in 1962 and the rule was designed to operate in the securities markets of that time. The proposed amendments would improve the clarity and transparency of the rule by inserting a definition of ''custody'' into the rule and by incorporating current custodial practices into our requirements. The definition of ''custody'' is based on the definition that has been used in the instructions to Form ADV since 1985, but our proposed amendments make the definition easier to use by providing examples of the custodial situations most likely to be encountered by an adviser in today's securities markets. Advisers will benefit from this transparency because they (or their counsel) will no longer need to refer to other materials such as staff no-action letters for these examples. Similarly, advisers relying on certain procedures set out in staff no-action letters discussed above, as an alternative to the annual surprise examination requirement, will no longer need to refer to this body of letters. We request comment on the costs advisers currently incur in this regard, such as attorneys' fees, and on the likely savings advisers would experience under the proposed amendments to the rule.

C. Costs

The proposed amendments would require that all client funds or securities be maintained with a qualified custodian. This requirement may impose costs on advisers that are not already maintaining clients' securities in accounts with qualified custodians. Based on our experience in examining advisers' operations, however, we estimate that no more than 1 percent of advisers with custody keep any clients' securities in places other than accounts with qualified custodians, and even these advisers maintain almost all of their clients' assets with qualified custodians. We estimate that the additional cost of this requirement, if any, would therefore be minimal.

In addition, while the proposed amendments would exempt most advisers that have custody from the costs of undergoing annual surprise examinations and sending account statements, that exemption would be conditioned on qualified custodians sending monthly account statements directly to the advisers' clients. This condition may impose costs on some advisers. Our understanding is that, in most instances, qualified custodians are already delivering monthly account statements to advisers' clients as a matter of practice.[77] However, qualified custodians that are not delivering account statements directly to clients and that would have to do so at the request of advisers may pass on the new costs to advisers. These costs are necessary for the protection of advisory clients and we estimate that they should be no greater, at an aggregate level, than the costs incurred under the current account statement delivery requirement. Moreover, an investment adviser has the option to continue under the old approach,[78] in the unlikely event that the costs are greater. We request comments quantifying the costs that advisers would incur under either approach.

D. Request for Comment

- The Commission requests comments on the potential costs and benefits identified in this release, as well as any other costs or benefits that may result from the proposals.
- We encourage comments to identify, discuss, analyze, and supply relevant data regarding these or additional costs and benefits.

V. Paperwork Reduction Act

The proposed amendments contain several ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995,[79] and the Commission has submitted the amendments to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are ''Rule 206(4)–2, Custody of Funds or Securities of Clients by Investment Advisers'' and ''Form ADV, Financial Information'' under the Advisers Act. The rule and the form contain currently approved collection of information numbers under OMB control numbers 3235–0241 and 3235–0049, respectively. 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 control number.

The collections of information under rule 206(4)–2 are necessary to ensure that clients' funds and securities in the custody of advisers are safeguarded, and information contained in the collections is used by staff of the Commission in its enforcement, regulatory, and examination programs. The respondents are investment advisers registered with us that have custody of clients' funds or securities. The collections of information under Form ADV are necessary for use by staff of the Commission in its examination and oversight program. The respondents are investment advisers seeking to register with the Commission or to update their registration. Responses provided to the Commission are not kept confidential.

[75] *See infra* note 96 and accompanying text. pp

[76] 17 CFR 275.206(4)–4. When we adopted the balance sheet requirement in 1979, rule 206(4)–4 was not in existence. *See supra* note 54.

[77] Based on our experience in examining advisers, we estimate that less than 1% of advisory clients (excluding investors in pooled investment vehicles) do not receive account statements directly from custodians.

[78] Proposed rule 206(4)–2(a)(3)(ii).

[79] 44 U.S.C. 3501 to 3520.

A. Rule 206(4)–2

According to our records, 867 out of the 7,583 advisers registered with the Commission have custody of client funds or securities.[80] These records also show that 123 advisers registered with us that report having custody are also registered broker-dealers exempted from the current rule. The proposed amendments would remove this exemption, but these advisers should be in compliance with the proposed rule without facing additional burdens.[81]

The current rule requires advisers registered with us that have custody of clients' assets to send account statements to those clients at least quarterly and to undergo an annual surprise examination to verify the custodied assets. The proposed amendments would exempt advisers from these two requirements if qualified custodians send monthly account statements directly to the advisory clients. As discussed in detail below, we estimate that of the 867 advisers that reported to have custody of client assets, 156 would be fully exempted from these two requirements, 675 would be exempted from the requirements with respect to 99 percent of their clients and 36 would remain subject to both requirements with respect to all of their clients.

We estimate that advisers that are registered broker-dealers (123 firms) or banks (33 firms) would be exempt from these two requirements with respect to all of their clients.[82] We further estimate, based on our experience in examining advisers, that 95 percent of the other 711 advisers that have custody would use this exemption with respect to approximately 99 percent of their clients; these 675 advisers[83] would still be required to send account statements and undergo an annual surprise examination with respect to 1 percent of their clients; and 36 advisers would still be subject to these requirements with respect to all of their clients.

In addition, the proposed amendments would further reduce burdens by exempting all advisers from the custody rule with respect to their clients that are investment companies or audited limited partnerships.[84]

The above analysis shows that the proposed amendments would generally reduce the paperwork burden for advisers. The currently approved annual aggregate burden of collection of information under rule 206(4)–2 is 21,625 hours. This approved annual aggregate burden was based on estimates that (i) 173 advisers were subject to the rule, (ii) the advisers had, on average, 50 clients each, and (iii) each of these advisers spent an average of 2.5 hours annually in responses with respect to each client.[85] In addition, the approved annual burden includes an aggregate cost estimate of $692,000. This cost was based on an estimate that an adviser would pay an independent public accountant $4,000 to conduct the annual surprise examination.[86]

Updating those prior calculations based on current information from advisers registered with us, however, we would now estimate that (i) 744 advisers are subject to the existing rule, and (ii) advisers registered with us have, on average, 670 clients each. We would continue to estimate that the burden on each adviser is 2.5 hours annually for each client. These current data would increase the annual aggregate burden under the current rule to 1,246,200 hours.[87] In addition, we would now estimate the cost an adviser would incur in obtaining an annual surprise examination in the form of accounting fees would be $8,000, and these current data would increase the aggregate cost estimate to $5,952,000.[88]

As stated above, however, for purposes of estimating the burden hours under the proposed amendments, we now estimate that the number of advisers subject to the collections of information with respect to all of their clients for whom they have custody would decrease to 36 (5 percent of the 711 advisers that have custody and are not broker-dealers or banks), and a further 675 advisers (711 advisers × 95 percent) would be subject to these burdens with respect to only 1 percent of their clients.[89] Assuming an average of 670 clients per adviser registered with us, the aggregate annual burden that advisers would face under the proposed amendments would decrease to 72,113 hours.[90] In addition, the proposed amendments would require an independent public accountant to notify our Office of Compliance Inspections and Examinations upon finding any material discrepancy during the course of conducting an annual surprise examination of the client funds and securities in an adviser's custody. Of the 711 annual surprise examinations that would occur under the proposed

[80] Based on information filed through the IARD system as of June 2002, 867 advisers registered with us report on their Form ADVs that they have custody. There may be additional advisers registered with us that would be deemed to have custody under the proposed revised rule but that are relying on staff letters (*see supra* notes 23 and 26) to avoid application of the current rule to their advisory business, and therefore do not report on their Form ADV that they have custody.

[81] Advisers that are also registered broker-dealers would be ''qualified custodians'' under the proposed rule and may keep custody of their own (and other advisers') clients' assets. Broker-dealer rules already require these firms to send account statements to their customers and we understand that broker-dealers generally send customers monthly account statements, as a matter of practice. Therefore these advisers should not be subject to the annual surprise examination requirement. *See supra* note 47.

[82] As noted earlier, 123 advisers registered with us that report having custody are also broker-dealers. Another 33 advisers registered with us that report having custody also report that they are actively engaged in business as a bank. As is the case for broker-dealers, banks would be qualified custodians under the rule and may keep custody of their own (and other advisers') clients' assets. *See supra* note 81. In addition, many of these 33 advisers that are banks may also use the exemption provided under proposed rule 206(4)–2(b)(1) (exempting advisers from the custody rule with respect to any client that is a registered investment company). Section 202(a)(11)(A) of the Advisers Act [15 U.S.C. 80b–2(a)(11)(A)] excludes banks from the definition of ''investment adviser'' except to the extent they advise a registered investment company, and many of these banks may therefore have only registered investment companies as their advisory clients.

[83] 0.95 × 711 = 675.

[84] *See supra* Section II. D. of this Release.

[85] The approved burden was based on an estimated 173 advisers that are subject to the custody rule (a total of 628 advisers with custody minus 455 broker-dealers exempted from the custody rule). The approved burden was also based on an estimate that these 173 advisers responded, on average, 5 times annually (4 times to prepare quarterly account statements and 1 time to respond to the annual surprise examination requirement) with respect to each of their 50 clients at an average of 0.5 hours per response, thus spending an estimated 2.5 hours per client annually. The total burden for each adviser was therefore estimated to be 125 hours annually (50 clients × 2.5 hours = 125 hours) and the annual aggregate burden for all advisers was estimated to be 21,625 hours (173 advisers × 125 hours = 21,625 hours).

[86] 173 advisers × $4,000 accounting fees = $692,000.

[87] 744 advisers x 670 clients × 2.5 hours annually per adviser per client = 1,246,200 hours.

[88] 744 advisers × $8,000 accounting fees = $5,952,000.

[89] As discussed earlier, 867 advisers registered with us currently report having custody of clients' funds or securities. We estimate that 123 broker-dealers and 33 banks will not be required to send quarterly account statements or undergo an annual surprise examination under the rule as proposed to be revised. We further estimate that, of the remaining 711 advisers that have custody, 95% (675 advisers) will use qualified custodians to deliver account statements to 99% of their clients, leaving an average of 7 clients per adviser for whom the adviser must send account statements and undergo an annual examination. The other 5% of advisers with custody (36 advisers) would be subject to the collections of information under the rule with respect to all of their clients (an average of 670 clients per adviser).

[90] 675 advisers would have 5 responses with respect to each of 7 clients annually for an average of 35 annual responses per adviser, or an aggregate of 23,625 annual responses. An additional 36 advisers would have 5 responses with respect to each of 670 clients annually for an average of 3,350 annual responses per adviser, or an aggregate of 120,600 annual responses. 23,625 + 120,600 = 144,225 total annual responses under the proposed rule. Each response is assumed to take approximately 0.5 hours, for a total hour burden of 72,112.5 (rounded to 72,113) hours annually for all advisers in the aggregate.

amended rule, we anticipate that not more than 1 examination per year would yield a material discrepancy, and that the burden on an accountant in providing notice to the Commission would be no more than 0.5 hours. This new requirement would not increase the total annual aggregate burden under the proposed amendments.[91]

The aggregate cost estimate for accounting fees for the annual surprise examination would be $288,000 for the 36 advisers who will be subject to the collection of information for all of their clients.[92] We estimate that accounting fees for the 675 advisers who would be subject to the collection of information for 1 percent of their clients would decrease to $1,000 per adviser, for an aggregate of $675,000.[93] As a result, the aggregate cost estimate would decrease to $963,000.[94]

We believe, however, that using the average of 670 clients per adviser affected by the rule may overstate the burden significantly. The 670 number is a mean, but a few large advisers represent a significant portion of the total client base, so the typical number of clients for advisers registered with us should be much smaller.

B. Form ADV, Part II, Item 14

We propose to eliminate the requirement set forth in Part II, Item 14 of Form ADV that an adviser with custody must include in its brochure a balance sheet audited by an independent public accountant.[95] This would reduce paperwork burden for advisers that have custody of client assets. We would continue to require an adviser to provide an audited balance sheet if the adviser requires prepayment of advisory fees of more than $500 per client and more than six months in advance.

In the currently approved annual aggregate burden of collection of information, we inadvertently failed to include an estimate of the cost advisers incur to pay their independent public accountants to prepare audited balance sheets. We estimate that the current aggregate annual cost of this requirement for advisers registered with us is $11,460,000. This aggregate is based on our estimate that (i) each adviser who must obtain an audited balance sheet in order to comply with the requirement pays approximately $15,000 on average in accounting fees, (ii) 184 advisers incur these costs under the advance fees provision, and (iii) 580 additional advisers incur these costs under the custody provision.[96]

For purposes of calculating this cost estimate under the proposed amendments, the 580 advisers that we estimate are currently incurring accountants' fees to comply with the balance sheet requirement under the custody provision will no longer incur these costs. Therefore, we estimate that the number of advisers subject to this requirement will be reduced to 184, and the aggregate annual cost of this requirement will be reduced to $2,760,000, for an average annual cost for each adviser registered with us of $364.[97]

C. Request for Comment

We request comment whether these estimates are reasonable. Any information received by the Commission related to the proposed rule amendments would not be kept confidential. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and
- Determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, Washington, DC 20503, and also should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609 with reference to File No. S7–28–02. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives the comment within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–28–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549.

VI. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') regarding proposed rule 206(4)–2 in accordance with section 3(a) of the Regulatory Flexibility Act.[98]

A. Reasons for Proposed Action

Rule 206(4)–2 seeks to protect clients' assets in the custody of advisers by requiring advisers to deposit client funds in bank accounts and to segregate and identify client securities and hold them in safekeeping. The rule also protects custodied assets by requiring advisers to send each client quarterly account statements and to have an independent public accountant conduct an annual surprise examination of the custodied assets. We have not amended the rule substantively since we adopted it over 40 years ago. Since then, custodial practices have changed and, as a result, portions of the rule have become outdated or inconsistent with modern custodial practices. Advisers' business practices have also evolved, increasing the likelihood that advisers may obtain custody of client assets in circumstances that we may not have anticipated in 1962.

[91] As noted, supra note 90, the total hour burden is estimated at 72,112.5, rounded up to 72,113 hours. Adding 0.5 hours brings the total to 72,113, leaving the rounded number unchanged.

[92] 36 advisers × $8,000 accounting fees = $288,000.

[93] 675 advisers × $1,000 accounting fees = $675,000.

[94] $288,000 + $675,000 = $963,000.

[95] *See supra* Section II. E. of this Release.

[96] $15,000 fees × (184 advisers with advance fees + 580 additional advisers with custody) = $11,460,000. According to our records, 184 advisers registered with us require prepayment of fees, and 887 advisers registered with us provide an audited balance sheet to their clients under Part II, Item 14 of Form ADV. (Because advisers are not presently required to file Part II of ADV with the Commission, the 887 figure is from data collected before January 1, 2001.) Since 867 advisers report having custody of their clients' assets, and this number of advisers combined with those who require prepayment of fees exceeds the 887 providing balance sheets by 164, we estimate that 164 of the advisers with custody also require prepayment of fees. Of the 703 advisers providing balance sheets because of the custody provision (867 advisers with custody − 164 also requiring prepayment of fees = 703), 123 are also broker-dealers that are required to maintain audited financial statements under other rules, and only the remaining 580 advisers incur accountants' fees to comply with the balance sheet requirement under the custody provision.

[97] (184 × $15,000)/7,583 = $364.

[98] 5 U.S.C. 603(a).

As part of our ongoing effort to review and modernize federal securities law, we are proposing comprehensive amendments to rule 206(4)–2. These amendments are designed to harmonize the rule with current custodial practices, enhance the protections afforded to client assets, and clarify circumstances under which advisers have custody of client assets. The amendments would require advisers to maintain client funds and securities with a broker-dealer, bank, or other ''qualified custodian.'' If the qualified custodian sends monthly account statements directly to an adviser's clients, the adviser would be relieved from sending its own account statements and from undergoing an annual surprise examination of those clients' accounts. The proposed amendments would exempt advisers from the rule with respect to clients that are registered investment companies, as well as with respect to limited partnerships and other pooled investment vehicles that are subject to annual audit by an independent public accountant.

The proposed amendments would add a definition of ''custody'' to the rule and illustrate the circumstances under which an adviser has custody of client assets. Advisers will benefit from this transparency because they (or their counsel) will no longer need to refer to other materials such as staff no-action letters for these examples. Finally, the proposed amendments would eliminate the requirement in Form ADV that advisers with custody include an audited balance sheet in their disclosure brochures to clients; other disclosures now provide clients with information that is likely to be more helpful to them in this regard.

B. Objectives and Legal Basis

The objectives of the proposed amendments to rule 206(4)–2 are threefold. First, the amendments would enhance the protections afforded to client assets. The proposed amendments would exempt advisers from the requirements to send each client account statements and to undergo annual surprise examinations of the client's account if the qualified custodian sends account statements directly to the advisory client monthly. Qualified custodians' delivery of account statements directly to clients should provide clients with confidence that any erroneous or unauthorized transactions by an adviser have been reflected. We believe nearly all advisers already maintain their clients' assets with qualified custodians, and will avail themselves of the option to avoid the costs of preparing statements and surprise examinations by electing to have the qualified custodian send account statements directly to the client.

Second, the amendments would harmonize the rule with current custodial practices. For example, the requirement under the current rule for advisers to segregate, identify, and safe-keep client securities assumes that securities are held as physical certificates. Now that most securities are held in book-entry form, the proposed amendments' requirement to maintain the securities with a qualified custodian would better reflect modern market practices.

Third, the amendments clarify circumstances under which advisers have custody of client assets, by providing a definition of custody that includes examples illustrating application of the definition. Advisers will benefit from this transparency because they (or their counsel) will no longer need to refer to other materials such as staff no-action letters for these examples.

The Commission is proposing to amend rule 206(4)–2 pursuant to the authority set forth in sections 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–6(4) and 80b–11(a)]. Section 206(4) gives us authority to issue rules designed to prevent fraudulent, deceptive, or manipulative acts or practices. Section 211 gives us authority to clarify, by rule, persons and matters within our jurisdiction and to prescribe different requirements for different classes of persons, as necessary or appropriate to the exercise of our authority under the Act.

C. Small Entities Subject to Rule

Under Commission rules, for the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last day of its most recent fiscal year.[99] The Commission estimates that as of May 21, 2002 approximately 28 SEC-registered investment advisers that have custody of client assets were small entities.[100]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule would impose no new reporting and recordkeeping requirements. In addition, we believe that most advisers that maintain custody of client assets, including advisers that are small entities, already maintain these assets with qualified custodians. Therefore, the proposed amendments would not materially increase the effort necessary on advisers' behalf to comply with the Commission's rules. To the contrary, the proposed amendments provide advisers with the opportunity to eliminate costs they incur complying with the present rule's requirements to send account statements to clients and undergo an annual surprise examination.[101] In addition, we are proposing to amend Form ADV to eliminate the requirement that an adviser with custody of client assets provide its clients with a copy of its audited balance sheet, thereby further reducing advisers' compliance costs.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed rule.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed rule, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for such small entities.

The overall impact of the proposed amendments is to decrease regulatory burdens on advisers, and small advisers, as well as large ones, will benefit from

[99] 17 CFR 275.0–7(a).

[100] This estimate is based on the information provided submitted by SEC-registered advisers in Form ADV, Part 1A [17 CFR 279.1].

[101] Under the proposed amendments, an adviser would not be required to send quarterly account statements or undergo a surprise examination with respect to accounts for which a qualified custodian that sends monthly account statements directly to clients.

the proposed rule. Moreover, the proposed amendments achieve the rule's objectives through alternatives that are already consistent in large part with advisers' current custodial practices. Therefore, the potential impact of the amendments on small entities should not be significant. For these reasons, alternatives to the proposed amendments, such as differing compliance or reporting requirements, simplification of compliance and reporting requirements, or the use of performance rather than design standards, are unlikely to minimize any impact that the proposed rule may have on small entities. Regarding exemption from coverage of the rule amendments, or any part thereof, for small entities, such an exemption would deprive small entities of the burden relief provided by the amendments. Moreover, since the protections of the Advisers Act are intended to apply equally to clients of both large and small advisory firms, it would be inconsistent with the purposes of the Act to specify different requirements for small entities or to establish different compliance or reporting requirements for small entities with regard to this requirement.

G. Solicitation of Comments

We encourage written comments on matters discussed in this IRFA. In particular, the Commission seeks comment on:

- The number of small entities that would be affected by the proposed rule; and
- Whether the effect of the proposed rule on small entities would be economically significant.

Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of the effect.

VII. Statutory Authority

We are proposing amendments to rule 206(4)–2 pursuant to our authority set forth in sections 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–6(4) and 80b–11(a)].

We are proposing amendments to Part II of Form ADV pursuant to the authority set forth in sections 203(c)(1), 204, and 211(a) of the Advisers Act [15 U.S.C. 80b–3(c)(1), 80b–4 and 80b–11(a)].

Text of Proposed Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

2. Section 275.206(4)–2 is revised to read as follows:

§ 275.206(4)–2 Custody of funds or securities of clients by investment advisers.

(a) *Safekeeping required.* If you are an investment adviser registered or required to be registered under Section 203 of the Act (15 U.S.C. 80b–3), it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of Section 206(4) of the Act (15 U.S.C. 80b–6(4)) for you to have custody of client funds or securities unless:

(1) *Qualified custodian.* A qualified custodian maintains those funds and securities:

(i) In a separate account for each client under that client's name; or

(ii) In accounts that contain only your clients' funds and securities, under your name as agent or trustee for the clients;

(2) *Notice to clients.* If you open an account with a qualified custodian on your client's behalf, either under the client's name or under your name as agent, you notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information; and

(3) *Account statements to clients.* (i) *By qualified custodian.* You have a reasonable basis for believing that the qualified custodian sends, to each of your clients for which it maintains funds or securities, a monthly account statement, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or

(ii) *By adviser.* (A) You send a quarterly account statement to each of your clients whose funds or securities are maintained with a qualified custodian, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period;

(B) An independent public accountant verifies all of those funds and securities by actual examination at least once each calendar year at a time chosen by the accountant without prior notice to you, and files a certificate on Form ADV–E (17 CFR 279.8) with the Commission within 30 days after the examination, stating that it has examined the funds and securities and describing the nature and extent of the examination; and

(C) The independent public accountant, upon finding any material discrepancies during the course of the examination, notifies the Commission within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Director of the Office of Compliance Inspections and Examinations.

(iii) *Special rule for limited partnerships and limited liability companies.* If you are a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under paragraphs (a)(3)(i) or (a)(3)(ii) of this section must be sent to each limited partner (or member or other beneficial owner), or to their independent representative.

(b) *Exceptions.* You are not required to comply with this section (17 CFR 275.206(4)–2) with respect to the account of:

(1) An investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 to 80a–64); or

(2) A limited partnership (or limited liability company, or another type of pooled investment vehicle) that has its transactions and assets audited (as defined in Section 2(d) of Article 1 of Regulation S–X (17 CFR 210.1–02(d)) at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 90 days of the end of its fiscal year.

(c) *Definitions.* For the purposes of this section:

(1) *Custody* means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them. *Custody* includes:

(i) Possession or control of client funds (but not of checks drawn by clients and made payable to third parties) or securities, unless you receive them inadvertently and you return them to the sender within one business day of receiving them;

(ii) Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and

(iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives you legal ownership of or access to client funds or securities.

(2) *Independent representative* means a person that:

(i) Acts as agent for limited partners of a limited partnership (or members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle) and by law or contract is obliged to act in the best interest of the limited partners (or members, or other beneficial owners);

(ii) Does not control, is not controlled by, and is not under common control with you; and

(iii) Does not have, and has not had within the past two years, a material business relationship with you.

(3) *Qualified custodian* means:

(i) A bank as defined in section 202(a)(2) of the Advisers Act (15 U.S.C. 80b–2(a)(2));

(ii) A savings association as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)) that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811);

(iii) A broker-dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(1)), holding the client assets in customer accounts;

(iv) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)), holding the client assets in customer accounts; and

(v) With respect to securities for which the primary market is in a country other than the United States, and cash and cash equivalents reasonably necessary to effect transactions in those securities, a financial institution that customarily holds financial assets in that country and that holds the client assets in customer accounts segregated from its proprietary assets.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

3. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*, unless otherwise noted.

4. By amending Item 14 of Part II of Form ADV (referenced in § 279.1) by adding ''(unless applicant is registered or registering only with the Securities and Exchange Commission),'' after the words ''client funds or securities''.

Dated: July 18, 2002.
By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18698 Filed 7–24–02; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. PL02–6–000]

Notice of Inquiry Concerning Natural Gas Pipeline Negotiated Rate Policies and Practices

July 17, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this Notice of Inquiry to seek comments on its negotiated rate policies and practices, established in Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Regulation of Negotiated Transportation Services of Natural Gas Pipelines, Statement of Policy and Request for Comments, 74 FERC ¶ 61,076 (1996). Specifically, the Commission is undertaking a review of the recourse rate as a viable alternative and safeguard against the exercise of market power of interstate gas pipelines, as well as the entire spectrum of issues related to its negotiated rate program, and welcomes comments on these issues.

DATES: Written comments must be received by the Commission by August 26, 2002. Reply comments must be received by the Commission 30 days after the filing date for initial comments.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael G. Henry, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (202) 208–0532.

SUPPLEMENTARY INFORMATION:

Natural Gas Pipeline Negotiated Rates Policies and Practices

1. In this notice of inquiry (NOI), the Federal Energy Regulatory Commission (Commission) presents an opportunity for comments regarding its Negotiated Rates Policies and Practices, established in Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Regulation of Negotiated Transportation Services of Natural Gas Pipelines, Statement of Policy and Request for Comments, 74 FERC ¶ 61,076 (1996). Specifically, the Commission is undertaking a review of the recourse rate as a viable alternative and safeguard against the exercise of market power of interstate gas pipelines, as well as the entire spectrum of issues related to its negotiated rate program, and welcomes comments on these issues.

Background

2. Since 1996 pipelines have had the option to use negotiated rates as an alternative to cost-of-service ratemaking. The Commission introduced negotiated rates to allow pipelines choosing not to seek market base rates by establishing a lack of market power or to undertake an incentive rate program, to adopt another alternative to traditional cost-of-service regulation. The original program was developed at a time when there was a great deal of concern about capacity ''turnback'' as a result of Order Nos. 436 and 636, and other factors.[1] Because the industry was shifting from traditional supply sources to other sources, many existing pipeline shippers no longer needed the same amount of firm capacity from their traditional pipeline's supply regions, and as a result sought to ''turn back'' transmission capacity when their transportation contracts expired. The negotiated rates program was thus developed to help pipelines market that turned-back capacity to new shippers, such as electric generators, as well as to help retain local distribution customers whose existing contracts were expiring.

3. Under the negotiated rates program, instead of cost-of-service regulation, the pipeline and a shipper may negotiate rates that vary from the pipeline's otherwise applicable tariff. A recourse rate that is on file in the pipeline's tariff is always available for those shippers preferring traditional cost-of-service rates. The Commission recognized, however, that potential problems could occur if capacity became constrained, as for example, if shippers that were willing to pay more than the maximum rate through a negotiated rate were bidding against shippers that were bidding the maximum recourse rate. The Commission required that, in those situations, customers bidding more than the maximum rate would be treated as

[1] *See, e.g.,* 74 FERC ¶ 61,079 at 61,225–26 (1996).

if they were bidding the recourse rate, and capacity was to be allocated *pro rata* among the negotiated rate bidder and recourse rate bidders. This, it was thought, would remove an incentive for negotiated rate shippers to bid more than the maximum recourse rates when capacity is constrained, because the shipper would have known it was paying more than was necessary to get the capacity.[2] In the last several years, there has been a significant increase in the reliance on negotiated rates to price natural gas transportation service. More recently, negotiated rate transactions based on price-index differentials have developed. These types of transactions, in particular, have raised serious concerns regarding the breadth and direction of the Commission's negotiated rate program.[3]

4. When the Commission introduced negotiated rates, at the suggestion of certain industry participants, it expected that negotiated rates would help achieve flexible, efficient pricing when market-based rates are not appropriate. Negotiated rates offered greater rate flexibility while limiting market power through the availability of the recourse rate.[4] The recourse rate option, the Commission explained, ''would prevent pipelines from exercising market power by assuring that the customer can fall back to cost-based, traditional service if the pipeline unilaterally demands excessive prices or withholds service.'' [5]

5. So important was the availability of the recourse rate option that, as the Commission explained, the success of the negotiated rate policy relied upon the recourse rate ''remain[ing] a viable alternative to negotiated service.'' [6] The failure of the recourse rate option to remain viable was an ''impermissible'' result.

6. Accordingly, the Commission finds that it is an appropriate time to assess the value and viability of its negotiated rate program. The Commission is seeking comments from all segments of the industry on these matters.

[2] *Id.* at 61,241.

[3] *See, e.g.,* Transwestern Pipeline Co., 94 FERC ¶ 61,233 (2001), *order to show cause,* 94 FERC ¶ 61,337 (2001), 95 FERC ¶ 61,143 (2001), and PG&E Gas Transmission, Northwest Corp., *order establishing hearing procedures,* 96 FERC ¶ 61,276 (2001).

[4] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Statement of Policy and Request for Comments, 74 FERC ¶ 61,076 at 61,240, *order on clarification,* 74 FERC ¶ 61,194, *reh'g denied,* 75 FERC ¶ 61,024 (1996).

[5] *Id.*

[6] *Id.*

Questions for Response

7. The Commission seeks responses to the following questions:

(A) Has the negotiated rate program been generally successful or unsuccessful in granting pipelines needed flexibility to serve new natural gas markets and retain existing markets? (Please support position taken with concrete specifics as much as possible.)

(B) Should the Commission modify its negotiated rate program?

(C) Do the negotiated rate filing requirements provide sufficient information for necessary transparency of the transactions? Should the Commission require pipelines to file negotiated rates on thirty days notice before such rates are implemented?

(D) Does the recourse rate option effectively mitigate pipeline market power? Are further mitigation measures necessary? And if so, which measures?

(E) Should the Commission disallow negotiated rates above the maximum recourse rate? Should the negotiated rate be limited to a certain multiple of the maximum recourse rate? Should the negotiated rate be limited to adjusting the levels of the reservations demand and commodity rate components, but the total revenue responsibility over the term of the contract remain equal the revenue responsibility under the recourse rate?

(F) Should the Commission disallow negotiated transportation rate deals based on price differentials of delivered gas between hubs?

(G) If such index price differential rates continue to be allowed, should some limits or restraints be placed on them? If so, what limits might be useful or appropriate?

Public Comment Procedure

8. The Commission invites interested persons to submit written comments on the matters and issues raised in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Upon evaluation of those comments, the Commission will determine what further action, if any, will be appropriate. Comments are due August 26, 2002. Comments must refer to Docket No. PL02–6–000, and may be filed either in electronic or paper format. Those filing electronically do not need to make a paper filing.

9. Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Real Text Format, or ASCII format, as listed on the Commission's Web site at *http://ferc.gov*, under the e-filing link. The e-filing link provides instructions for how to Login and complete an electronic filing. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at 202–208–0258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

10. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

11. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's home page using the FERRIS link.

Document Availability

12. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's home page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

13. From FERC's home page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

14. User assistance is available for FERRIS and the FERC's Web site during normal business hours from our Help line at (202) 208–2222 or the Public Reference Room at (202) 208–1371 Press 0, TTY (202) 208–1659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

By direction of the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18782 Filed 7–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 146

RIN 1515–AC74

Expanded Weekly Entry Procedure for Foreign Trade Zones

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations, in conformance with the Trade and Development Act of 2000, to expand the weekly entry procedure for foreign trade zones to include merchandise involved in activities other than exclusively assembly-line type production operations. Under both the expanded procedure as well as the existing procedure for assembly-line type production operations, weekly entries covering estimated removals of merchandise from a foreign trade zone for any consecutive 7-day period, and the associated entry summaries, would have to be filed exclusively through the Automated Broker Interface, with duties, fees and taxes being scheduled for payment through the Automated Clearinghouse. The weekly entry is treated as a single entry or release of merchandise for purposes of the merchandise processing fee (MPF) that Customs assesses on importers in order to offset administrative costs incurred in processing imported merchandise that is formally entered or released.

DATES: Comments must be received on or before September 23, 2002.

ADDRESSES: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW., Washington, DC during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Debbie Scott, Office of Field Operations, (202–927–1962).

SUPPLEMENTARY INFORMATION:

Background

The Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81a–u) (the ''FTZA''), provides for the establishment and regulation of foreign trade zones. Foreign trade zones are secured areas to which foreign and domestic merchandise (except that prohibited by law) may be brought for the purposes enumerated in the FTZA without being subject to the customs laws of the U.S. Foreign trade zones, by virtue of being exempt from the customs laws, are intended to attract and promote international trade and commerce. Part 146, Customs Regulations (19 CFR part 146), sets forth the documentation and recordkeeping requirements governing, among other things, the admission of merchandise into a zone, its manipulation, manufacture, storage, destruction, or exhibition while in the zone, and its entry or removal from the zone.

Generally speaking, the FTZA provides that when foreign merchandise is sent from a zone into customs territory, it is subject to the laws and regulations of the United States affecting imported merchandise (19 U.S.C. 81c(a)). This would include customs law governing the entry of imported merchandise. To this end, section 1484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), sets forth the procedures generally governing the entry of imported merchandise for customs purposes.

Under 19 U.S.C. 1484, Customs has permitted a limited weekly entry procedure for foreign trade zones since May 12, 1986 (as authorized in T.D. 86–16, 51 FR 5040). This limited weekly entry procedure, appearing in § 146.63(c)(1), Customs Regulations (19 CFR 146.63(c)(1)), is restricted to merchandise that was manufactured or changed into its final form just shortly (within 24 hours) before physical transfer from the zone.

It is noted that further general support for the weekly entry procedure was furnished when 19 U.S.C. 1484 was subsequently amended by section 637 of the Customs Modernization Act (included as Title VI of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, enacted on December 8, 1993).

Expanded Weekly Entry Procedure; Amendment of Section 1484 by Trade and Development Act of 2000

The Customs entry law, 19 U.S.C. 1484, has now been further amended by section 410 of the Trade and Development Act of 2000 (Pub. L. 106–200, 114 Stat. 251, enacted on May 18, 2000). Section 410 of this Act adds a new paragraph (i) to section 1484 (19 U.S.C. 1484(i)), that specifically provides for an expanded weekly entry procedure for foreign trade zones under certain limitations. The expanded weekly entry procedure under the statute is inextricably tied, as further discussed below, to the assessment of the merchandise processing fee which only applies to merchandise entered for consumption; thus, this entry procedure is limited to merchandise that is to be removed from a zone for consumption.

Under 19 U.S.C. 1484(i)(1), the expanded weekly entry procedure covers all merchandise (including merchandise of different classes, types and categories), with the exception of merchandise the entry of which is prohibited by law and merchandise for which the filing of an entry summary is required before it may be released from customs custody. The effect of section 1484(i) is to expand the weekly entry system beyond its current coverage, primarily to allow goods stored in a zone for the purpose of warehouse and distribution to be removed from the zone under a weekly entry process.

Thus, merchandise falling within the expanded procedure of section 1484(i)(1) that is to be removed from a zone during any 7-day period (not limited to a calendar week) may be the subject of a single estimated entry or release.

In accordance with 19 U.S.C. 1484(i)(2)(A)(i) and (ii), weekly entries under the expanded weekly entry program would be required to be filed electronically through the Automated Broker Interface (ABI). The party making entry who chooses to file a weekly entry from a zone would have to do so using ABI, or employ an ABI-qualified Customs broker for this purpose.

The electronic entry would have to contain the data equivalent to that required on Customs Form 3461 for the estimated removals of merchandise intended to occur during the related 7-day period. As provided in section 1484(i)(1), this estimated entry would need to be filed on or before the first day of the 7-day period in which the merchandise is to be removed from the zone.

An electronic entry summary containing the data equivalent to that required on Customs Form 7501 would be filed within 10 working days after the first day of the 7-day period covered by the electronic entry, with payment of applicable duties and taxes likewise scheduled for no later than 10 working days after the date of entry, using the Automated Clearinghouse (ACH) as prescribed in § 24.25, Customs Regulations (19 CFR 24.25).

In addition, under 19 U.S.C. 1484(i)(2)(B), the operator and/or the user of the zone, as applicable, would be required to provide accounting, transportation, and related controls over

merchandise subject to the weekly entry procedure that are adequate to protect the revenue and meet the requirements of other Federal agencies.

In the case of a general-purpose zone with multiple users, the operator of the zone, in compliance with § 146.4, Customs Regulations (19 CFR 146.4), would have to supervise and monitor the movement of merchandise, and provide for its proper storage and handling in the zone. The operator would also be required to maintain inventory records that accurately accounted for all transfers of merchandise from the zone related to the respective weekly entry of each person (zone user) using the procedure and otherwise comply with the requirements of § 146.4 and subpart B, Customs Regulations (19 CFR part 146, subpart B). Also, the person making entry (zone user) would have to keep inventory records with respect to the merchandise and its handling and/or processing in the zone that, if not computerized, would need to be maintained in an organized and readily retrievable manner, and be capable of being produced within a reasonable time after due notice.

Application of Merchandise Processing Fee to Weekly Entry

The estimated weekly entry or release is treated under section 1484(i)(1) as a single entry or release for purposes of the assessment of the merchandise processing fee (MPF) under section 13031(a)(9)(A) of the Consolidated Budget Reconciliation Act of 1985 (COBRA) (19 U.S.C. 58c(a)(9)(A)), and all fee exclusions and limitations of section 13031 of the COBRA also apply to the weekly entry or release, including the maximum and minimum fee amounts under section 13031(b)(8)(A)(i) (19 U.S.C. 58c(b)(8)(A)(i)).

Under 19 U.S.C. 58c(a)(9)(A), the MPF is the fee that Customs assesses on importers in order to offset administrative costs (salaries and expenses) that Customs incurs in connection with the processing of imported merchandise that is formally entered or released. Except as otherwise provided, merchandise that is formally entered or released is currently subject to an ad valorem MPF of .21 percent (19 U.S.C. 58c(a)(9)(A); and § 24.23(b)(1)(i)(A), Customs Regulations (19 CFR 24.23(b)(1)(i)(A))). However, on any one weekly entry or release, the MPF may not exceed the maximum amount of $485, subject to certain provisions not here relevant (19 U.S.C. 58c(a)(9)(B)(i); 19 U.S.C. 58c(b)(8)(A)(i); and § 24.23(b)(1)(i)(B), Customs Regulations (19 CFR 24.23(b)(1)(i)(B))).

It should be observed in this regard that, by a document published in the **Federal Register** (62 FR 12129) on March 14, 1997, Customs had previously proposed a similar expansion of the weekly entry procedure for foreign trade zones, under the then-existing general authority of 19 U.S.C. 1484; but, by a document published in the **Federal Register** (64 FR 13142) on March 17, 1999, Customs withdrew this proposal.

Conclusion

Accordingly, based upon the foregoing, this document proposes to amend § 146.63(c), Customs Regulations (19 CFR 146.63(c)), to implement 19 U.S.C. 1484(i), by adding a provision covering the expanded weekly entry procedure for foreign trade zones. The principal purpose of this proposed rule is to require electronic entry filing under the expanded procedure pursuant to 19 U.S.C. 1484(i)(2)(A). In addition, for the sake of consistency and administrative efficiency, Customs has determined that the existing weekly entry procedure for certain manufactured articles in § 146.63(c)(1) should similarly be revised to require electronic entry filing and to provide that a weekly entry under § 146.63(c)(1) may cover any 7-day period, and need no longer be confined to a calendar week. Also, under the proposed rule, if requested by Customs, the electronic data submitted would need to include the equivalent of a *pro forma* invoice or schedule, showing the estimated number of units of each type of merchandise to be removed during the weekly period and their zone and dutiable values.

Comments

Before adopting this proposed rule as final, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), at the U.S. Customs Service, 799 9th Street, NW., Washington, DC during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

The Regulatory Flexibility Act and Executive Order 12866

The proposed amendments are essentially intended to conform the Customs Regulations with statutory law, including the provision in the law that allows a requirement for electronic entry filing. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do the proposed amendments meet the criteria for a ''significant regulatory action'' under E.O. 12866.

Paperwork Reduction Act

The collections of information contained in this proposed rule have already been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned the following OMB Control Numbers: 1515–0065 (Requirement to make entry; Entry summary and continuation sheet); and 1515–0214 (General recordkeeping and record production requirements). This proposed rule would not make any substantive changes to the existing approved information collections.

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 control number.

List of Subjects in 19 CFR Part 146

Customs duties and inspection, Exports, Foreign trade zones, Imports, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Part 146, Customs Regulations (19 CFR part 146), is proposed to be amended as set forth below.

PART 146—FOREIGN TRADE ZONES

1. Revise the authority citation for part 146 to read as follows:

Authority: 19 U.S.C. 66, 81a-u, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1484(i), 1623, 1624.

2. Amend § 146.63 by revising paragraph (c) to read as set forth below:

§ 146.63 Entry for consumption.

* * * * *

(c) *Estimated activity.*—(1) *Weekly manufacturing.*—(i) *Electronic entry*

required. When any merchandise is manufactured or its physical condition as entered is otherwise changed (exclusive of packing) in a zone within 24 hours before physical transfer from the zone for consumption, the person making entry may file an entry for the estimated removals of such merchandise during any consecutive 7-day period. The 7-day period is not limited to being a calendar week. The entry must be filed through the Automated Broker Interface on or before the first day of the 7-day period in which the merchandise is to be removed from the zone. The electronic entry must contain data equivalent to that required on Customs Form 3461 for the estimated removals of merchandise intended to occur during the related 7-day period.

(ii) *Invoice upon request.* If requested by Customs, the electronic data submitted must include the equivalent of a *pro forma* invoice or schedule, showing the estimated number of units of each type of merchandise to be removed during the weekly period and their zone and dutiable values.

(2) *Other weekly entries.* (i) *Electronic entry required.* In addition to the merchandise already covered under paragraph (c)(1) of this section, the person making entry may file an estimated entry for all merchandise, including merchandise of different classes, types, and categories, except as provided in paragraph (c)(2)(ii) of this section, that is to be removed from a zone during any consecutive 7-day period. The weekly period is not limited to being a calendar week. The entry must be filed through the Automated Broker Interface on or before the first day of the 7-day period in which the merchandise is to be removed from the zone. The electronic entry must contain data equivalent to that required on Customs Form 3461 for the estimated removals of merchandise intended to occur during the related 7-day period.

(ii) *Invoice upon request.* If requested by Customs, the electronic data submitted must include the equivalent of a *pro forma* invoice or schedule, showing the estimated number of units of each type of merchandise to be removed during the weekly period and their zone and dutiable values.

(iii) *Excluded merchandise.* The following merchandise is excluded from the weekly entry procedure in paragraph (c)(2)(i) of this section:

(A) Merchandise whose entry is prohibited by law; and

(B) Merchandise for which the filing of an entry summary is required before it may be released from Customs custody.

(3) *Electronic entry summary.* Under paragraph (c)(1) or (c)(2) of this section, an electronic entry summary containing data equivalent to that required on Customs Form 7501 must be filed within 10 working days after the first day of the 7-day period covered by the electronic entry. The entry summary must be filed electronically through the Automated Broker Interface, with payment of applicable duties and taxes being scheduled, through the Automated Clearinghouse, for no later than 10 working days after the date of entry (see subpart D, part 143, and § 24.25 of this chapter). All merchandise will be dutiable as provided in § 146.65 of this subpart.

(4) *Inventory control.* The operator and/or user of the zone, as applicable, must provide accounting, transportation and related controls over merchandise subject to the weekly entry procedures set forth in paragraphs (c)(1) and (c)(2) of this section that are adequate to protect the revenue and meet the requirements of other Federal agencies, as provided in paragraphs (c)(4)(i) and (c)(4)(ii) of this section.

(i) *Operator responsibilities; general-purpose zone.* In the case of a general-purpose zone with multiple users, the operator of the zone, in compliance with § 146.4 of this part, must supervise and monitor the movement of the merchandise, and provide for its proper storage and handling in the zone. The operator must also maintain inventory records that accurately account for all transfers of merchandise from the zone related to the respective weekly entry of each person (zone user) using the procedure and must otherwise comply with the requirements of § 146.4 and subpart B of this part.

(ii) *Person making entry (zone user).* The person making entry for the merchandise (the zone user) must keep inventory records with respect to the merchandise and its handling and/or processing in the zone. If not computerized, the records must be maintained in an organized and readily retrievable manner, and be capable of being produced within a reasonable time after due notice (see § 163.6(a) of this chapter).

(5) *Acceptance of weekly entry by port director.* Merchandise covered by an electronic entry made under the provisions of paragraph (c)(1) or (c)(2) of this section will be considered to be entered and may be removed from the zone only when the port director has accepted the entry. The time of entry will be determined as provided in § 141.68 of this chapter. If the actual removals will exceed the estimate for the related 7-day period, the person making entry will file an additional electronic entry as necessary to cover the additional units before their removal from the zone. When estimated removals exceed actual removals, such excess merchandise will not be considered to have been entered or constructively transferred from the zone and will not be included in the entry summary for the estimated entry or release. After acceptance of the weekly entry, and any additional entries as required, individual transfers of merchandise covered by the entry may be made from the zone.

(6) *Application of merchandise processing fee to weekly entry.* Under 19 U.S.C. 1484(i), the estimated weekly entry or release under paragraph (c)(1) or (c)(2) of this section is treated as a single entry or release for purposes of the assessment of the merchandise processing fee (MPF) under 19 U.S.C. 58c(a)(9)(A). All fee exclusions and limitations under 19 U.S.C. 58c also apply to the weekly entry or release, including the maximum and minimum fee amounts set forth in 19 U.S.C. 58c(b)(8)(A)(i) (see § 24.23(b)(1)(i) of this chapter).

* * * * *

3. In § 146.68(a), in the first sentence the reference ''§ 146.63(c)'' is removed, and the reference ''§ 146.63(c)(1)'' is added in its place.

Robert C. Bonner,

Commissioner of Customs.

Approved: July 19, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–18665 Filed 7–24–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–165706–01]

RIN 1545–BA46

Obligations of States and Political Subdivisions; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed rulemaking relating to the obligations of States and political subdivisions.

DATES: The public hearing originally scheduled for Wednesday, August 7, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Guy Traynor of the Regulations Unit, Associate Chief Counsel, (Income Tax & Accounting), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on April 10, 2002 (67 FR 17309), and amended on June 28, 2002 (67 FR 43574), announced that a public hearing was scheduled for August 7, 2002 at 10 a.m., in Room 2615, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is proposed regulations under section 150 of the Internal Revenue Code. The public comment period for these proposed regulations expired on July 9, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of topics to be addressed. As of July 18, 2002, no one has requested to speak. Therefore, the public hearing scheduled for August 7, 2002, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax & Accounting).

[FR Doc. 02–18791 Filed 7–24–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 948]

RIN 1512–AC71

Proposed Establishment of Capay Valley Viticultural Area (99R–449P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms requests comments concerning the proposed establishment of the ''Capay Valley'' viticultural area in northwest Yolo County, California. The proposed Capay Valley viticultural area covers approximately 150 square miles or about 102,400 acres. Approximately 25 acres are currently planted to wine grapes.

DATES: Written comments must be received by September 23, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attention: Notice No. 948). *See* the ''Public Participation'' section of this notice for instructions if you want to comment by facsimile or e-mail.

FOR FURTHER INFORMATION CONTACT: Kristy Colón, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

What Is ATF's Authority To Establish a Viticultural Area?

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of deceptive information on such labels. The FAA Act also authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF) to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. A list of approved viticultural areas is contained in 27 CFR part 9, American Viticultural Areas.

What Is the Definition of an American Viticultural Area?

Section 4.25(e)(1), title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Viticultural features such as soil, climate, elevation, and topography distinguish it from surrounding areas.

What Is Required To Establish a Viticultural Area?

Section 4.25a(e)(2), title 27, CFR outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition must include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical features (climate, soil, elevation physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Capay Valley Petition

ATF has received a petition from Tom Frederick and Pam Welch of Capay Valley Vineyards proposing to establish a viticultural area known as ''Capay Valley'' in northwestern Yolo County, California. The valley has several wine grape growers, including one who recently received awards for his wines. The petitioners state that the proposed Capay Valley viticultural area covers approximately 150 square miles or about 102,400 acres. Approximately 25 acres are currently planted to wine grapes.

What Name Evidence Has Been Provided?

The petitioners submitted as evidence an excerpt from the book ''Capay Valley: The Land & The People,'' by Ada Merhoff. The information provided states the name ''Capay Valley'' was used in the late 1840's to identify the area when Pio Pico, Governor of the territory of Alta California, granted nine square leagues of land called the Rancho Canada de Capay to three Berryessa brothers. The book also contains a copy of an 1857 map of the valley, titled ''Map of the Rancho Cañada De Capay.'' A copy of a map titled ''Property owners 1858 Canada de Capay Grant'' on page 6 of the book shows further subdivisions as lands were sold.

In addition, Merhoff's book mentions the Adobe Ranch, a 19th century Capay Valley ranch owned by John Gillig which also contained a vineyard and winery. Merhoff references other works that also mention Gillig's ranch. ''The Western Shore Gazeteer & Commercial Directory for the State of California—Yolo County'' by C.P. Sprague and H.W. Atwell stated in 1869 that the Capay Valley Winery at Gillig's ranch processed grapes from his and several other small vineyards in the vicinity that yielded 30,000 gallons of wine in both red and white varieties. Frank T.

Gilbert's ''The Illustrated Atlas and History of Yolo County'' stated in 1879 that Gillig's vineyard was ''awarded the premium in 1861 for having the finest vineyard in the state.'' Merhoff's book also states that the word ''Capay'' comes from the Wintun Indian's word ''capi'', which means stream in their Native American language.

What Boundary Evidence Has Been Provided?

According to the petitioners, the proposed ''Capay Valley'' viticultural area is located in northwest Yolo County and borders Napa, Lake, and Colusa Counties. The natural boundaries of the valley are formed by the Blue Ridge Mountains to the west and the Capay Hills to the east. Additionally, Cache Creek runs the entire length of the valley. The boundaries of the petitioned viticultural area generally follow these natural physical boundaries. These also coincide with the boundaries of the Capay Valley General Plan, which is a subset of the Yolo County General Plan.

In addition to the required U.S.G.S. map, the petitioner provided a set of maps of Yolo County, California compiled in 1970 as part of a soil survey by the United States Department of Agriculture, Soil Conservation Service, and the University of California Agricultural Experiment Station. These maps show in further detail the boundaries of the proposed Capay Valley viticultural area.

What Evidence Relating to Geographical Features Has Been Provided?

Soils

The petitioners assert that the soils of the proposed ''Capay Valley'' viticultural area range from Yolo-Brentwood, which is a well-drained, nearly level, silty clay loam on alluvial fans, to Dibble-Millsholm, which is a well drained, steep to very steep loam to silty clay loam over sandstone.

Some areas have clay soils with creek rock and debris intermixed. Volcanic ash is also found in some areas, primarily in the rolling hills in the center of the valley. The petitioners contend that these clay soils intermixed with creek rock and volcanic ash, add a distinctive viticultural aspect to the area.

The petitioners state that one of the major soil differences between Capay Valley and the adjacent Central Valley area is the abundance of calcareous soils. This supply of calcium makes the clay soils of the Capay Valley less binding and allows grapevine roots to penetrate through the soils more easily. Water usage is therefore less than would be expected given the warm climatic conditions. The calcium-magnesium ratio in the soils is easier to manage because it is easier to add magnesium than calcium.

Elevation

The petitioners state that the elevation boundaries of the proposed Capay Valley viticultural area range from 100 meters on the valley floor, to 750 meters at the top of the Blue Ridge and 550 meters at the top of the Capay Hills.

Climate

According to the petitioners, hot, dry summers and a long growing season characterize the climate of the proposed Capay Valley viticultural area. Portions of the valley receive moderating breezes from the Sacramento Delta and San Francisco Bay. Fog creeps over the tops of the Blue Ridge during heavy fog periods in the bay, but the valley is shielded from the ground fog that is pervasive in the Sacramento Valley. Winters are moderate and late spring frosts are occasional enough to negate the need for active frost protection.

Also, the petitioners state that the Capay Valley climate is warmer than the Napa Valley to the west. This allows the Capay Valley to avoid the frost problems that are common in Napa and also offers an earlier growing season, typically 3–4 weeks. This warmer climate also reduces the need for as many sulfur sprays throughout the growing season.

Additionally, the petitioners state that the Capay Valley differs from its Central Valley neighbors to the east in that, while they share a warmer climate, Capay Valley's bud-break is typically 1–2 weeks later.

Regulatory Analyses and Notices

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

ATF determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

ATF certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of a proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because the proposed regulation is not proposing new or revised record keeping or reporting requirements.

Public Participation and Request for Comments

Who May Comment on This Notice?

ATF requests comments from all interested parties. In addition, ATF specifically requests comments on the clarity of this proposed 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. However, assurance of consideration can only be given to comments received on or before the closing date.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Can I Review Comments Received?

Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection by appointment at the ATF Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. To make an appointment, telephone 202–927–7890. You may request copies of the full comments (at 20 cents per page) by writing to the ATF Reference Librarian at the address shown above.

Will ATF Keep My Comments Confidential?

ATF will not recognize any comment as confidential. All comments and materials will be disclosed to the public. If you consider your material to be confidential or inappropriate for

disclosure to the public, you should not include it in the comments. We will also disclose the name of any person who submits a comment.

How Do I Send Facsimile Comments?

You may submit comments by facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible.
- Reference this notice number.
- Be on paper 8½″ x 11″ in size.
- Contain a legible written signature.
- Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-Mail) Comments?

You may submit comments by e-mail by sending the comments to *nprm@atfhq.atf.treas.gov.* You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed.

We will not acknowledge receipt of e-mail. We will treat comments submitted by e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet Web site at: *http://www.atf.treas.gov.*

For the convenience of the public, ATF will post comments received in response to this notice on the ATF Web site. All comments posted on our web site will show the name of the commenter, but will have street addresses, telephone numbers, and e-mail addresses removed. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the ATF library, as noted above. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov,* and select ''Regulations,'' then ''Notices of Proposed Rulemaking (Alcohol)'' and this notice. Then click on the ''view comments'' link.

Drafting Information

The principal author of this document is Kristy Colon, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part—9

Administrative practice and procedure, Alcohol and alcoholic beverages, Consumer protection, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.176 to read as follows:

§ 9.176 Capay Valley

(a) *Name.* The name of the viticultural area described in this section is ''Capay Valley.''

(b) *Approved Maps.* The appropriate map for determining the boundary of the Capay Valley viticultural area is the United States Geological Survey (U.S.G.S.) topographic map titled: 30X60 Minute Quadrangle (Healdsburg, California 1972) (Scale: 1:100,000).

(c) *Boundaries.* The Capay Valley viticultural area is located in Yolo County, California. The beginning point is the junction of the Yolo, Napa, and Lake County lines.

(1) From the beginning point, proceed north then east along the Yolo-Lake County line;

(2) At the junction of the Yolo, Lake, and Colusa County lines, continue east along the Yolo-Colusa County line to its junction with the boundary between ranges R4W and R3W;

(3) Then south along the R4W and R3W boundary to its junction with the 250 meter contour line;

(4) Proceed generally southeast along the meandering 250 meter contour line to its junction with the T10N–T11N section line;

(5) Continue east along the T10N–T11N section line to the unnamed north-south secondary highway known locally as County Road 85;

(6) Then south along County Road 85, crossing Cache Creek, to its intersection with State Highway 16;

(7) Proceed east on Highway 16 to its junction with the unnamed north-south light duty road known locally as County Road 85B;

(8) Then south on County Road 85B to its junction with the unnamed east-west light duty road known locally as County Road 23;

(9) Proceed west on County Road 23 for approximately 500 feet to an unnamed light duty road known locally as County Road 85;

(10) Proceed south on County Road 85 until the road ends and continue south in a straight line to the T9N–T10N section line;

(11) Then west on the T9N–T10N section line to the Napa-Yolo County line;

(12) Continue northwest following the Napa-Yolo county line and return to the starting point.

Signed: July 5, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02–18554 Filed 7–24–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2002–212391]

NHTSA Vehicle Safety Rulemaking Priorities: 2002–2005

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This document announces the availability of a planning document that describes NHTSA's proposed vehicle safety rulemaking priorities through 2005. The plan includes those rulemaking actions of highest priority for the period 2002 to 2005, based primarily on the greatest potential protection of lives and prevention of injury, that fall within the immediate four-year time frame. In addition, NHTSA has considered the realistic likelihood for successful action, especially considering the reality of numerous worthwhile options competing for budgetary resources. The priorities were defined through extensive discussions within the agency, taking into account the views heard in recent years at public meetings and comments submitted to the agency via rulemaking notices and requests for comment. The results produced by previous NHTSA rulemaking priority planning exercises also provided input to this process. While the plan includes other active areas, in addition to the rulemaking priorities, it discusses only a portion of all rulemaking actions the agency plans to undertake in the coming four-plus years. The absence of a particular regulatory activity from the plan does not necessarily imply that the agency will not pursue it. Although the execution of a priority plan is affected by factors beyond its control (e.g.,

petitions, budgets, legislation), this plan provides a blueprint for regulatory action on those vehicle safety goals the agency considers its highest priorities. NHTSA seeks public review and comment on the planning document. Comments received will be evaluated and incorporated, as appropriate, into the planned agency activities.

DATES: Comments must be received no later than September 23, 2002.

ADDRESSES: Interested persons may obtain a copy of the planning document by downloading a copy of the document from the Docket Management System, U.S. Department of Transportation, at the address provided below, or from NHTSA's Web site at *http://www.nhtsa.dot.gov/cars/rules/rulings.* Alternatively, interested persons may obtain a copy of the document by contacting the agency officials listed in the section titled, ''For Further Information Contact,'' immediately below.

Submit written comments to the Docket Management System, U.S. Department of Transportation, PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should refer to the Docket Number (NHTSA–2002–212391) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard.

Comments may also be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' to obtain instructions for filing the comment electronically. In every case, the comment should refer to the docket number.

The Docket Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Docket Management System Web site at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Lawrence L. Hershman, Office of Safety Performance Standards, NPS–33, National Highway Traffic Safety Administration, Room 5104, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–4929. E-mail: *lhershman@nhtsa.dot.gov.*

SUPPLEMENTARY INFORMATION: Motor vehicle crashes killed 41,821 individuals and injured 3,189,000 others in 6.4 million crashes in 2000. In addition to the terrible personal toll, these crashes make a huge economic impact on our society with an estimated annual cost of $230.6 billion, or an average of $820 for every person living in the United States. One of the most important ways in which NHTSA carries out its safety mandate is to issue and enforce Federal Motor Vehicle Safety Standards (FMVSS). Through these rules, NHTSA strives to reduce the number of crashes and to minimize the consequences of those crashes that do occur. NHTSA's rulemaking activities, via the Safety Performance Standards Program with support from the offices of Research and Development, Safety Assurance, Plans and Policy, and Chief Counsel, identify safety problem areas, develop countermeasures, and collect and analyze information to develop new FMVSS and amendments to existing FMVSS.

In the first years of the new century, NHTSA will strive to influence the automotive industry to incorporate the rapidly accelerating pace of advances in vehicle and safety technology into new vehicles while ensuring that the use of the new technologies enhances vehicle safety. The plan outlines the highlights of NHTSA's vehicle safety rulemaking plans through 2005. Agency priorities emanate from many sources, including: The size of the safety problem and likelihood of solutions, Executive initiatives, Congressional interest and mandates, petitions to the agency for rulemaking and other expressions of public interest, interest in harmonizing safety standards with those of other nations, and changes needed as a result of new vehicle technologies. The starting point for rulemaking priorities is the quest for the greatest potential protection of lives and prevention of injury.

The plan is organized along several broad categories: Crash Prevention includes crash avoidance data, driver distraction, vehicle visibility, crash warnings, and vehicle control and handling. Occupant Protection includes advanced crash dummies and protection in frontal, side, rollover, and rear crashes. Other sections cover Incompatibility Between Passenger Cars and Light Trucks, Heavy Truck Safety, and Special Population Protection, including safety for children, people with disabilities, and older people.

The plan includes several potential rulemaking projects that require additional research to determine whether rulemaking action is needed, but are priorities based on their potential for significantly sizeable death and injury prevention benefits. The plan also contains an appendix that discusses some other regulatory activities, particularly regulatory-related research activities, that may extend beyond the four-year horizon of the plan and that the agency considers important, although not rising to the same level of immediate high priority as the activities included in the main body of the plan. Another appendix discusses upcoming milestones in consumer information activities that the agency plans to pursue in the next few years, including the New Car Assessment Program (NCAP).

This document announces the availability of the document for public review and comment. The plan will be posted on NHTSA's website on July 23, 2002. Received comments will be evaluated and incorporated, as appropriate, into planned agency activities. The agency intends to periodically update the plan. Comments that cannot be accommodated in the current plan will be reviewed and considered in the context of future updates.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2002212391) in your comments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If you submit your comments electronically, log onto the Docket Management System Web site at *http://dms.dot.gov* and click on ''Help & Information'' or ''Help/Info'' to obtain instructions.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety

Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington DC 20590.

Will the Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read the Comments Submitted By Other People?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

2. On that page, click on ''search.''

3. On the next page (*http://dms.dot.gov/search/*) type in the four-digit Docket number shown at the beginning of this document (NHTSA–2002–212391). Click on ''search.''

4. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30117, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: July 19, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–18760 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223, 224 and 226

[Docket no. 020718171–2171–01 I.D. 071002B]

[RIN 0648–ZB25]

Listing Endangered and Threatened Species: Findings on a Delisting Petition, and Two Listing Petitions, Concerning 16 Evolutionarily Significant Units of Pacific Salmon and Steelhead

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

ACTION: Notice of findings; request for comments.

SUMMARY: SUMMARY: The National Marine Fisheries Service (NMFS) has received a delisting petition, as well as two listing petitions, concerning a total of 16 Evolutionarily Significant Units (ESUs) of chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*O. kisutch*), chum salmon (*O. keta*), and steelhead (*O. mykiss*) currently listed as threatened or endangered under the Endangered Species Act of 1973, as amended (ESA). NMFS finds that these three petitions present substantial scientific and commercial information to suggest that the petitioned actions may be warranted.

DATES: Written comments on these petition findings must be received by August 26, 2002.

ADDRESSES: Information or comments on this action should be submitted to the Assistant Regional Administrator, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments will not be accepted if submitted via e-mail or the Internet. However, comments may be sent via facsimile to (503) 230–5435.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region, (503) 231–2005; Craig Wingert, NMFS, Southwest Region, (562) 980–4021; or Chris Mobley, NMFS, Office of Protected Resources, (301) 713–1401. Additional information, including the petitions addressed in this notice, are available on the Internet at *www.nwr.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Salmon and Steelhead ESUs

NMFS is responsible for determining whether species, subspecies, or distinct population segments (DPSs) of Pacific salmon and steelhead are threatened or endangered species under the ESA. NMFS has determined that DPSs are represented by ESUs of Pacific salmon and steelhead, and treats ESUs as a ''species'' under the ESA (ESU policy; 56 FR 58612, November 20, 1991). To date, NMFS has completed comprehensive coastwide status reviews of Pacific salmonids and identified 51 ESUs in California, Oregon, Washington, and Idaho. Five of these ESUs are currently listed under the ESA as endangered, and 21 ESUs are listed as threatened.

Listing Factors and Basis for Petition Findings

Section 4(b)(3)(A) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving a petition for listing, reclassification, or delisting (among other things) the Secretary make a finding whether the petition presents substantial scientific information indicating that the petitioned action may be warranted. The ESA implementing regulations for NMFS define ''substantial information'' as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In evaluating a petitioned action, the Secretary must consider whether such a petition (1) clearly indicates the recommended administrative measure and the species involved, (2) contains a detailed narrative justification for the recommended measure, describing past and present numbers and distribution of the species involved and any threats faced by the species, (3) provides information regarding the status of the species over all or a significant portion of its range, and (4) is accompanied by appropriate supporting documentation (50 CFR 424.14(b)(2)). 50 CFR 424.11 describes the factors that must be considered in listing, reclassifying, or delisting a species under the ESA. Submitted petitions are considered in the context of these factors in determining whether a petition does or does not present substantial scientific and commercial information to suggest that the petitioned action may be warranted. A species may be listed or reclassified as a threatened or endangered species because of any one or a combination of the following factors: (1) The present or threatened destruction, modification, or

curtailment of a species' habitat or range; (2) overutilization for commercial, recreational, scientific or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting the species continued existence. A species may be delisted for one or more of the following reasons: (1) The species is extinct or has been extirpated from its previous range; (2) the species has recovered and is no longer endangered or threatened; or (3) investigations show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error.

Petitions Received

On March 14, 2002, NMFS received a petition from the Central Coast Forest Association (CCFA petition) to delist the threatened Central California Coast (CCC) coho salmon ESU. On April 29, 2002, NMFS received two petitions from Trout Unlimited and several co-petitioners (hereafter, Trout Unlimited petitions) to redefine and list a total of 15 ESUs currently listed as threatened or endangered. One of the Trout Unlimited petitions seeks to define the threatened Oregon coast coho ESU as including only natural fish (i.e., naturally spawned fish and their progeny, exclusive of all hatchery fish), and to list it as a threatened species under the ESA. The other Trout Unlimited petition seeks to define 14 ESUs as including only natural fish, and to list these ESUs as threatened or endangered species under the ESA. This petition addresses the naturally spawned portions of the: Puget Sound, Upper Willamette River, Snake River spring/summer, Snake River fall, Upper Columbia River spring, and Lower Columbia River chinook ESUs; Hood Canal summer and Columbia River chum ESUs; Southern Oregon/Northern California Coasts coho ESU; and the Upper Willamette River, Snake River, Middle Columbia River, Upper Columbia River, and Lower Columbia River steelhead ESUs.

Petition Findings

The petition findings on the CCFA and the Trout Unlimited petitions are informed by the September 2001 U.S. District Court ruling in *Alsea Valley Alliance* v. *Evans* (161 F. Supp. 2d 1154, D. Oreg. 2001; *Alsea* decision). The court ruled that it is arbitrary and capricious to exclude hatchery populations from listing if they are part of the same ESU as listed natural populations. The Court's ruling set aside NMFS' 1998 ESA listing of Oregon Coast coho salmon and ruled that the ESA does not allow NMFS to list a subset of an ESU by excluding hatchery fish within an ESU from listing. Although the Court's ruling affected only one ESU, the interpretive issue raised by the ruling called into question nearly all of the agency's Pacific salmonid listing determinations. In response to the *Alsea* decision, NMFS has announced that it will conduct status review updates for 25 ESUs potentially affected by the Court's ruling (67 FR 6215, February 11, 2002). Additionally NMFS announced that it would revise its policy on how it considers hatchery populations in making ESA listing determinations.

The CCFA petition seeks delisting of the CCC coho salmon ESU as a result of the *Alsea* decision. The CCC coho ESU was listed as a threatened species on October 31, 1996 (61 FR 56138). Only naturally spawned populations in the ESU were listed, and within-ESU hatchery populations were excluded from listing protection. Hence, the ESA interpretive issue raised by the Alsea decision pertains to the listing determination for the CCC coho ESU. NMFS thereby concludes that the CCFA petition presents substantial scientific and commercial information indicating the petitioned action may be warranted. This determination is consistent with previous NMFS findings on several petitions seeking to delist 14 other ESUs with unlisted hatchery populations (67 FR 6215, February 11, 2002).

The Trout Unlimited petitioners assert that hatchery populations are functionally distinct from naturally spawned populations in the 15 petitioned ESUs, and that the ESUs should be redefined to include only the naturally spawned populations. They present information describing continued adverse impacts and threats from hatchery production to the habitat, ocean survival, and long-term genetic fitness of natural populations in these ESUs. The petitioners provide a substantial collection of technical documents from the peer-reviewed scientific literature, as well as from the gray literature (e.g., non peer-reviewed data, reports, and technical memoranda from Federal and state management agencies), addressing the ecological and genetic relationship between hatchery and naturally spawned populations. These references describe threats posed by hatchery populations to natural populations, as well as differences between hatchery and natural populations in behavior, genetic composition, and fitness. In light of the substantial scientific information provided, the petitioners further assert that the inclusion of hatchery fish in ESUs with naturally spawned fish is inconsistent with the ESA statutory language and Congressional intent, as well as with NMFS' regulatory interpretations of the ESA.

NMFS maintains that its listing determinations have been wholly consistent with the existing regulations and policies guiding its listing determinations. The Alsea decision, however, ruled that NMFS' regulations guiding its consideration of hatchery populations in listing determinations are not consistent with the ESA. As mentioned above, NMFS is in the process of revising its policy on the consideration of hatchery fish in its ESA listing determinations to be consistent with the Alsea decision, and has initiated coastwide salmonid status review updates. The Trout Unlimited petitions provide scientific information that is relevant to NMFS' consideration of the relationship between hatchery and natural populations, and the delineation of Pacific salmon and steelhead ESUs. Accordingly, NMFS finds that the Trout Unlimited petitions present substantial scientific and commercial information indicating that the petitioned actions may be warranted.

Information Solicited

NMFS has already committed to conducting status review updates for the 16 Pacific salmon and steelhead ESUs addressed in the CCFA and Trout Unlimited petitions, as well as for nine other ESUs (67 FR 6215, February 11, 2002). The agency is also in the process of clarifying its policy on how it considers hatchery populations in making ESA listing determinations. NMFS will consider the information presented and the issues raised by these petitions in the course of revising its listing policy and conducting the coastwide status review updates.

NMFS has already solicited technical information to assist in these status review updates during two 60–day comment periods ending April 12, 2002, and August 12, 2002. NMFS is now requesting information and comment on the ecological and genetic relationship of hatchery and natural populations in the 15 ESUs addressed in the Trout Unlimited petitions. Additionally, NMFS seeks information and comment on the potential risks and benefits posed by artificial propagation to naturally spawning populations, and the extent to which such efforts may contribute to, or hinder, efforts being made to protect the species.

References

The complete citations for the references used in this document can be obtained by contacting NMFS or via the Internet (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: July 19, 2002.

Rebecca Lent,

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

[FR Doc. 02–18861 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 071202A]

RIN 0648–AP41

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment 5 to the Fishery Management Plan for the Shrimp Fishery off the Southern Atlantic States

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council (Council) has submitted Amendment 5 to the Fishery Management Plan for the Shrimp Fishery off the Southern Atlantic States (FMP). This amendment would establish a limited access program for the rock shrimp fishery in the exclusive economic zone (EEZ) off Georgia and off the east coast of Florida (limited access area), establish a minimum mesh size for a rock shrimp trawl net in the limited access area, require the use of an approved vessel monitoring system (VMS) by vessels participating in the limited access program, and require an operator of a vessel in the rock shrimp fishery in the EEZ off the southern Atlantic states (North Carolina through the east coast of Florida) to have an operator permit. The intended effects are to minimize additional increases in harvesting capacity in the rock shrimp fishery; reduce the harvest of small, unmarketable rock shrimp; enhance compliance with fishery management regulations; improve protection of essential fish habitat, including an area that contains the last 20 acres of intact Oculina coral remaining in the world; and ensure the long-term economic viability of the rock shrimp fishery.

DATES: Written comments must be received on or before September 23, 2002.

ADDRESSES: Written comments on the Comprehensive SFA Amendment should be sent to Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or the Internet.

Requests for copies of Amendment 5, which includes a final supplemental environmental impact statement, initial regulatory flexibility analysis, regulatory impact review, and a social impact assessment/fishery impact statement, should be sent to the South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, South Carolina 29407–4699, Email: safmc@safmc.net.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, telephone: 727–570–5305; fax: 727–570–5583; e-mail: Peter.Eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION: The shrimp fishery off the Southern Atlantic States in the EEZ is managed under the FMP approved by NMFS, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

In its preliminary qualitative analysis of Federally managed fisheries conducted in March 2001, NMFS classified the rock shrimp fishery off the southern Atlantic states as one of the fisheries where there are indications of over-capacity. With over-capacity and open access to the fishery, any gains in the health of the stocks would likely attract new entrants and an increase in harvesting capacity. Accordingly, Amendment 5 proposes a limited access program for the fishery off Georgia and the east coast of Florida. The intended effects are to minimize additional increases in harvesting capacity in the rock shrimp fishery; reduce the bycatch of small, unmarketable rock shrimp; enhance compliance with fishery management regulations; improve protection of essential fish habitat, including an area that contains the last 20 acres of intact Oculina coral remaining in the world; and ensure the long-term economic viability of the rock shrimp industry.

The current requirement for a Federal vessel permit for the rock shrimp fishery remains in effect. However, in addition, to participate in the fishery off Georgia and the east coast of Florida, a limited access endorsement for South Atlantic rock shrimp would be required. Initially, NMFS would issue a limited access endorsement to the owner of a vessel that had a valid Federal permit for South Atlantic rock shrimp on or before December 31, 2000, and that had landings of at least 15,000 lb of rock shrimp from the South Atlantic EEZ during one of the calendar years 1996 through 2000. A vessel that had a Federal permit for South Atlantic rock shrimp would be determined solely from NMFS' permit records. Claimed landings would be verified from landings data in state or Federal database systems; the landings must have been submitted on or before January 31, 2001. For the purpose of initial eligibility for a limited access endorsement, the owner of a vessel that had a permit for rock shrimp during the qualifying period would retain the rock shrimp landings record of that vessel during the time of his/her ownership, unless a sale of the vessel included a written agreement that credit for qualifying landings was transferred to the new owner.

An owner issued a limited access endorsement could request that the permit be transferred to another vessel or to another vessel owner by submitting an application for transfer to the Regional Administrator (RA). An owner must report any costs associated with such transfer on the application for transfer. A transfer of a limited access endorsement to a new owner would include the transfer of the vessel's entire catch history of South Atlantic rock shrimp to the new owner.

The RA would not reissue a limited access endorsement for South Atlantic rock shrimp if the permit is revoked or if a required application for renewal of the permit is not received within 1 year after the permit's expiration date. Additionally, a limited access endorsement for rock shrimp that is inactive for a period of 4 consecutive calendar years would not be renewed.

Historically, the cod end mesh size commonly used in the rock shrimp fishery was 1 7/8 to 2 inches (4.76 to 5.08 cm) stretched mesh. Some fishermen are now using smaller mesh or are putting a bag liner inside the cod end. This results in the catch of juvenile rock shrimp, some of which are unmarketable and are discarded dead. This Amendment would establish a minimum mesh size for the cod end of 1 7/8 inches (4.76 cm) and prohibit the

use of smaller-mesh bag liners. This would allow escapement of juvenile rock shrimp. There is virtually no information available on either the extent of escapement of juvenile rock shrimp or on the quantity of other bycatch; thus, NMFS has initiated 100 days of observer coverage on this fishery to obtain such information. This information should be available for inspection in about a year.

This Amendment would require the use of a NMFS-approved vessel monitoring system (VMS) by each vessel that has been issued a limited access endorsement for South Atlantic rock shrimp when such vessel is on a trip off the southern Atlantic states (North Carolina through the east coast of Florida). The VMS would consist of a mobile transmitting unit placed on each vessel and an associated communication service provider that supplies the link between the unit and NMFS. The VMS would advise NMFS when and where a vessel was fishing or had been fishing. Thus, it would provide effort data and would significantly aid in enforcement of areas closed to trawling, particularly the Oculina Bank habitat area of particular concern. There is a critical need to increase the level of surveillance in this area because it contains the last 20 acres of intact Oculina coral remaining in the world.

NMFS would publish in the **Federal Register** a list of approved VMS mobile transmitting units and associated communications service providers that meet the minimum standards for the rock shrimp fishery. A vessel that has been issued a limited access endorsement for the South Atlantic rock shrimp fishery would be required to have an operating VMS commencing 270 days after the final rule implementing this amendment is published.

To enhance enforcement of fishery regulations, the Amendment proposes to require operator permits in the South Atlantic rock shrimp fishery. ''Operator'' is defined as the master or other individual aboard and in charge of a vessel. Each vessel that has a Federal permit for the fishery would be required to have on board at least one person who has an operator permit when the vessel is at sea or offloading. In addition to penalties that currently exist for violations of the regulations, an operator permit could be sanctioned. For example, an operator whose permit is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904 would not be allowed aboard any vessel subject to Federal fishing regulations in any capacity, if so sanctioned by NOAA, while the vessel is at sea or offloading. To enhance enforceability of this measure, a vessel's owner and operator would be responsible for ensuring that a person with such suspended, revoked, or modified operator permit is not aboard his/her vessel. A list of operators whose permits are revoked, suspended, or modified would be readily available from the RA. In general, an operator permit would be valid for a period of 3 years, expiring at the end of the individual's birth month.

Comments received by September 23, 2002, whether specifically directed to those management measures in Amendment 5 or to the proposed rule that NMFS plans to publish that would implement Amendment 5, will be considered by NMFS in its decision to approve, disapprove, or partially approve the proposed measures. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 5 or the proposed rule during their respective comment periods will be addressed in the preamble of the final rule.

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

Dated: July 18, 2002.

Virginia M. Fay,

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

[FR Doc. 02–18857 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020412085–2085–01; I.D. 022102B]

RIN 0648–AP66

Fisheries of the Exclusive Economic Zone Off Alaska; Electronic Reporting Requirements

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to amend regulations governing the North Pacific Groundfish Observer Program (Observer program). This action is necessary to refine requirements for the facilitation of observer data transmission and improve support for observers. The proposed rule is intended to ensure continued timely transmission of high-quality observer data to support the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (groundfish FMPs) for those industry sectors already subject to such requirements. It would improve the timely transmission of high-quality observer data for a sector of catcher vessels in these fisheries.

DATES: Comments on this proposed rule must be received by August 26, 2002.

ADDRESSES: Comments should be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this proposed regulatory action may be obtained from the same address. Send comments on information collection requests to NMFS and to OMB, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Bridget Mansfield, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands management areas in the Exclusive Economic Zone (EEZ) under the groundfish FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations at 50 CFR part 679 implement the FMPs. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. Regulations implementing the interim Observer Program were published November 1, 1996 (61 FR 56425), amended December 30, 1997 (62 FR 67755) and December 15, 1998 (63 FR 69024), and extended through 2002 under a final rule published December 21, 2000 (65 FR 80381). The Observer Program provides for the collection of observer data necessary to manage the Alaska groundfish fisheries by providing information on total catch estimation, discard, prohibited species catch (PSC) and biological samples that are used for stock assessment purposes.

The observers also provide information related to compliance with regulatory requirements.

The regulations implementing the Observer Program at § 679.50 require observer coverage aboard fishing vessels and shoreside processors that participate in the Alaska groundfish fisheries. Timely communication between the fishing industry and NMFS through catch reports submitted to NMFS by both industry and observers is crucial to the effective in-season monitoring of the groundfish quotas and PSC allowances. At its June 1995 meeting, the Council recommended that NMFS issue regulations that would require all catcher/processors, motherships, and shoreside processors that process groundfish to have computer hardware and software that would enable observers to send electronic data to NMFS. Catcher/processors and motherships were recommended to have satellite communications technology to allow transmission of the data from the vessel.

Regulations requiring electronic submission of observer reports were implemented in 1995 at § 679.50(f) for catcher/processors, motherships and shoreside processors through the application of an observer communications system (OCS), previously referred to as the ''ATLAS'' system. This system is composed of specified electronic hardware supplied by the vessel or shoreside processor and dedicated software provided by NMFS that together allow observers to communicate daily with NMFS, including transmitting data. This permits real-time data processing, improves timeliness of making data available to managers, and allows managers to assess daily activities of the fishing fleet. These data have led to fishery closures that more accurately reflect actual catch levels and facilitate conservation and optimal management of this valuable living marine resource.

In a letter dated February 7, 2000, NMFS informed the Council that the agency intended to initiate rulemaking that would implement upgrades in the specifications for required hardware and software that support the OCS, and would extend these requirements to some catcher vessels. At its February 2000 meeting, the Council noted its support for this initiative.

NMFS proposes to require operations already subject to OCS requirements to adopt hardware upgrades to meet current technology standards necessary to support the OCS software and to require hardware installed in vessels to be maintained in a functional mode. NMFS further proposes to exclude some catcher vessels from the requirements, thereby amending an error in the final rule implementing the 1995 OCS requirements, which erroneously included all catcher vessels. This proposed rule would, however, require all catcher vessels required to carry observers during 100 percent of their fishing days to comply with the regulations at § 679.50(f) governing the installation and maintenance of necessary equipment supporting the OCS system.

Hardware Upgrades. Current regulations stipulate that any vessel required to carry one or more observers must facilitate transmission of observer data to NMFS by providing equipment consisting of a computer and communications equipment that meet certain specifications. Hardware requirements specified in these regulations to support OCS were considered state of the art at the time they were implemented in 1995. Computer technology has advanced at a rapid rate since then. As a result, the current minimum hardware requirements are technologically out of date and are difficult to maintain or even obtain. The OCS software application developed by NMFS to effect at-sea communication with observers has been updated recently to be more effective and now requires more powerful computers on which to run. Requiring the updated hardware is necessary to meet current technology standards.

Included in this hardware update is a requirement that allowable communications equipment provide point-to-point communications, which is a necessary function to support all of the operations that OCS requires. A point-to-point communications system allows the computer with OCS software to connect directly to the NMFS host computer and modem. Point-to-point communication connections would allow direct confidential communication between NMFS and observers, which has been shown to be necessary for effective problem solving in various at-sea situations. Examples of communication systems that provide point to point communications are INMARSAT Standard-A, Standard-B, mini-M, and Iridium. Vessels using INMARSAT Standard C terminals and associated software to transmit data, which are allowed under current regulations, do not provide point-to-point communication connections and would not meet the hardware requirement proposed in this rule. The inability of INMARSAT Standard C to allow observers and NMFS to maintain secure communications without interfacing with vessel personnel is of particular concern.

Functionality. Current regulations requiring the communications equipment aboard vessels to support OCS do not require that the hardware be functional. The equipment would be considered functional when specified equipment aboard a vessel can initiate a data transmission to a device, such as a satellite, that provides a point-to-point communication connection with minimum specifications outlined in the regulations. The vessel would not be responsible for ensuring the actual reception of the data by the satellite or other device. Regulations for shoreside processor communication equipment do require the equipment to be maintained in a functional mode.

The inadvertent omission of an equipment functionality requirement for vessels has resulted in NMFS' lack of ability to receive electronic observer data from up to nine catcher processors (approximately 10 percent of all catcher processors required to have this equipment) that have not properly installed or maintained the communications equipment. Additionally, other vessels have taken up to 7 months to repair or complete initial installation of functional equipment. This has compromised in-season monitoring of harvest quotas and has resulted in or contributed to events leading to quotas being exceeded. Therefore, NMFS proposes to amend the regulations to require that equipment be functional.

Catcher Vessels Requirements. Current regulations stipulate that any vessel required to carry one or more observers must facilitate transmission of observer data to NMFS by providing equipment meeting specifications outlined by regulations cited above. The original intent of the regulations was to apply these requirements to all catcher/processors, motherships, and shoreside processors subject to observer coverage requirements. Catcher-only vessels were not intended to be included in these requirements. The proposed rule for implementing these regulations (60 FR 45393, August 31, 1995) and the preamble to the final rule (61 FR 63759, December 2, 1996) correctly reflect the original intent to restrict the requirements to catcher/processor vessels, motherships, and shoreside processors. However, the regulatory language in the final rule incorrectly extends the regulations to all vessels subject to observer coverage, including all catcher vessels. This proposed rule would correct that error by amending the requirement so that it would not include indiscriminately all catcher

vessels but would require all catcher vessels that are required to maintain 100–percent observer coverage as specified in regulations at § 679.50(c)(1)(iv) to install and maintain hardware and software supporting the OCS communications system as amended in this proposed rule.

Prior to 2000, all shoreside harvest data from processors were faxed to NMFS in a weekly production report. Weekly submission of these reports roughly matched the availability of observer data from shoreside processors. In 2000, an electronic reporting system (distinct from OCS) was implemented to replace the weekly production report. Daily electronic reports from shoreside processors of shoreside deliveries provide NMFS with landings information within one day of a delivery. This allows for partial real-time management of the groundfish species such as pollock that are specifically allocated to the inshore sector or of harvest restrictions specific to catcher vessels under the American Fisheries Act sideboard provisions. However, availability to NMFS of observer PSC and discard data for a given delivery does not match the timeliness of the landings data.

The necessary timely monitoring for in-season management of PSC and discard data is not possible under the observer data reporting system currently used by catcher vessels delivering to inshore processors. Shoreside catcher vessel observers opportunistically transmit data via fax to NMFS from a shoreside processor, which can be between 5 and 14 days after a given haul is made. This delay is caused in part by the fact that an observer usually must return to sea immediately upon completion of the delivery, leaving no time for the observer to compile data into a format appropriate for fax transmission to NMFS, most often several hours worth of work. Once received by NMFS, the faxed data subsequently must be hand entered into an electronic database, further delaying the availability to in-season managers. Even if a catcher vessel observer had time available for data compilation and transmission from the shoreside processor, logistical problems remain. Shoreside processors do support OCS communication systems for transmission of observer data. However, OCS software on these systems is designed specifically for shoreside processor applications and does not support observer data collected at sea. While the shoreside system could be adapted to support data collected by vessel observers, other logistical problems prevent reliable use of these systems by catcher vessel observers. These difficulties include vessel observers having to return to sea prior to data input and transmission via the OCS communications system, as well as the lack of reliance on access to shoreside computers and communications equipment that support the OCS system. Offices that house this equipment at the shoreside processors generally are not open 24 hours a day, while deliveries may be completed at any time during the day.

Installation of OCS software, in combination with point-to-point modem communication capability aboard shoreside catcher vessels would allow daily electronic transmission of catch data. This would provide NMFS with observer data from catcher vessels within 24 hours of receiving their delivery reports from the shoreside processor. At-sea discards and PSC could then be accounted for together with the landings data in real-time for each OCS-equipped vessel. Such real-time, in-season management would be expected to result in fisheries closures that better approximate actual quotas.

Additionally, observer data quality problems can have a significant impact on PSC estimates and fishery closure projections. Resulting management errors can include early closure of a fishery, which results in direct lost revenue to the fleet, or over-harvest of a PSC fishery allowance, which can impact other fisheries as the total annual PSC limit is reached.

The OCS program provides several advantages and improvements to NMFS' current management systems which result in higher quality data. These include:

Improved data recording efficiency. Observers using OCS initially record data on deck forms. These data are then entered into the vessel's computer and sent electronically to NMFS. Data received by NMFS are automatically screened for errors and may be accessed by users in a database in a timely manner. Without OCS, data are transcribed from deck forms to paper and faxed to NMFS for subsequent electronic entry. Less paperwork provides observers with more time to dedicate to sampling.

Consistent, secure communications with observer program staff and a reduction in the overall frequency of errors. OCS communications allow NMFS to assign to each deployed observer an in-season advisor who screens data for errors and advises the observer throughout their deployment, resulting in improved observer performance and a reduction in errors. The quality of timely data available for in-season management decisions is thus greatly improved.

Faster, more efficient, and higher quality debriefing. The OCS application automatically screens out many potential data errors at the point of entry. These data are further screened by the in-season advisor, and all data are again screened by computer programs and corrected at the point of debriefing. These processes eliminate hand checking of paper data forms, further reducing debriefing time and allowing for faster availability of the final data.

Installation and maintenance of OCS aboard catcher vessels requiring 100-percent observer coverage would eliminate 1,100 faxed observer reports and the associated processing per year. Availability of timely data on PSC by this sector of the fleet, which is largely made up of American Fisheries Act-qualified catcher vessels that are members of inshore cooperatives, would improve in-season management of the BSAI pollock and Pacific cod trawl fisheries. In the BSAI pollock trawl fishery, salmon and herring PSC are of concern, and in the BSAI Pacific cod trawl fishery, halibut bycatch is of concern. Although the few Pacific cod trawl fishery closures that have occurred since 1998 have been based primarily on TACs being reached, prior to 1998, BSAI Pacific cod trawl fishery closures were based on halibut bycatch allowances being caught before the TAC was reached. Improved timeliness of PSC data transmission would allow NMFS resources to be reallocated to processing faxed data received from observers aboard vessels that are subject to 30-percent coverage requirements. Overall, this would result in the expedited availability to managers and improved quality of all in-season data from all catcher vessels in the BSAI and the Gulf of Alaska (GOA). This timely information is also of benefit to industry through access via NMFS web sites. Fleets coordinate their activity to avoid bycatch hot spots, reducing costly PSC closures. This can only work where rapid access to the information is available.

Additional need for more timely harvest data from catcher vessels comes from management measures implemented to temporally and spatially disperse some groundfish fisheries in near shore areas of the EEZ off Alaska (67 FR 956, January 8, 2002). These measures were developed in response to a Biological Opinion initiated as part of a formal consultation under section 7 of the Endangered Species Act on the impact of federally managed groundfish fisheries on

endangered Steller sea lions in Alaska. The measures involve some time-area restrictions for the pollock, Pacific cod and Atka mackerel fisheries including harvest limits in Steller sea lion critical habitat. To ensure compliance with these measures, levels of groundfish harvest must be monitored on a real-time basis.

Catcher vessels delivering to catcher/processors and motherships deliver unsorted codends with no fish retained aboard the catcher vessel. They, therefore, require no observer coverage. These catcher vessels would not be required to install and maintain the OCS on board. Catcher vessels greater than 60 ft (18.3 m) LOA fishing for groundfish using pot gear are subject to 30–percent observer coverage during a calendar quarter and would therefore be unaffected by this proposed rule.

Shoreside Processor Requirements. Shoreside processor responsibilities are clarified. Specifically, all shoreside processors required to maintain observer coverage at any time during the year are also required to install and maintain electronic reporting equipment—hardware and software—as specified in the rule.

Classification

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

NMFS prepared an RIR/IRFA, which describes the impact this proposed rule would have on small entities, if adopted.

An estimated five to 10 catcher/processors or motherships vessels would be required to upgrade their computers to meet the requirements in this proposed rule. Current market prices for a reliable computer at this level are about $800. An estimated 22 vessels would be required to upgrade their communications systems from INMARSAT Standard C communications hardware and would have to choose between Standard B hardware at about $20,000 per unit, Mini-M hardware at about $4,500, or Iridium at $2,200. The initial investment from all catcher processors and motherships required by these proposed requirements would be approximately $56,000, with annual maintenance and data transmission savings of $1,000. These savings relate to aggregate maintenance and data transmission costs for the catcher/processor or mothership class of vessels. The net savings of about $1,000 represent aggregate data transmission savings of about $2,263 minus aggregate additional annual maintenance costs of about $1,208.

Of the 27 shoreside processors that would be subject to requirements in this proposed rule, 15 are estimated to already be capable of using the new system. Eleven of the remaining shoreside processors need to install both the computer and the communications system; one shoreside processor needs to upgrade its computer. The initial investment from this sector as a whole would be approximately $34,000, with little change in annual maintenance and data transmission costs.

Assuming that none of the 31 catcher vessels required to carry an observer for 100 percent of their fishing days have installed the necessary communications equipment, but that approximately 30 percent of them have computers compatible with OCS specifications, the initial investment from this sector as a whole would be approximately $86,000, with annual maintenance and data transmission costs of about $19,000.

Catcher vessels requiring 30–percent observer coverage that deliver to shoreside processors would not be required by this proposed rule to install and maintain hardware and software needed to support the OCS. Although catcher vessels are not covered, had they been included in these requirements, the estimated initial investment from this sector as a whole would have been approximately $311,000, with annual maintenance and data transmission costs of $9,000. The $9,000 cost figure would have represented the aggregate cost for maintenance on catcher vessels requiring 30–percent observer coverage. Because the proposed rule does not apply to such catcher vessels, these costs are not incurred.

However, the benefits of real-time data reporting that the OCS would afford are significant. More timely availability of halibut PSC data from the GOA deep and shallow trawl complexes, as well as from the GOA Pacific cod hook-and-line gear fishery, is needed to improve the accuracy of those fisheries' closures. Catcher vessels subject to 30–percent observer coverage requirements are a considerable component of the fleets in these fisheries. Closures in the flatfish trawl fisheries in the GOA are based entirely on halibut caps being reached, and the lack of timely halibut bycatch data is a significant contributor to GOA trawl halibut mortality caps being frequently exceeded. The GOA Pacific cod hook-and-line gear fishery closures have been based on halibut caps, but those caps are often reached nearly concurrently with the TAC. However, availability of observer halibut bycatch data in this fishery is critical, because a significant portion of this fleet is less than 60 ft (18.3 m) LOA, and therefore not subject to any observer coverage.

NMFS is seeking to eventually fully implement electronic reporting of observer data fleet-wide for those operations subject to observer coverage requirements in a practicable manner. Methods to implement this will be considered in the next few years. Options for consideration will include equipping observers with their own laptop computers or other electronic devices capable of supporting the OCS software, as well as options for linking the observer OCS with electronic logbook reporting requirements that are currently being considered for fleet-wide implementation. NMFS is specifically seeking comments on this issue.

An Initial Regulatory Flexibility Analysis (IRFA) was conducted in accordance with the Regulatory Flexibility Act of 1980 (RFA) and the Small Business Regulatory Enforcement Fairness Act of 1996.

In the IRFA, the proposed alternatives could affect the following estimated numbers of small regulated entities: 38 small catcher/processors, no motherships, 5 processing plants, 31 catcher vessels with 100-percent observer coverage, 389 catcher vessels with 30-percent observer coverage, and 6 community development quota groups representing 65 western Alaska communities. The preferred alternative, Alternative C, would affect 38 small catcher/processors, no motherships, 5 processing plants, 31 catcher vessels with 100–percent observer coverage, and no catcher vessels with 30–percent observer coverage.

Under the preferred alternative (Alt. C), small catcher/processors would incur average investment expenses equal, on average, to about 0.2 percent of one year's gross revenues, and no additional annual operating expenses. Small catcher vessels required to have 100-percent coverage would incur average investment expenses equal, on average, to about 0.3 percent of one year's gross revenues and average annual expenditures equal to about 0.1 percent of a year's gross revenues. Small shoreside processors would incur average investment expenses equal to about 0.1 percent of annual gross revenues, and no significant additional expenses. The CDQ groups would be affected by the investments and joint ventures in catcher/processors, catcher vessels, and shoreside plants. The impacts on these entities were described above.

The RFA requires that the IRFA describe significant alternatives to the

proposed rule that accomplish the stated objectives of the applicable statutes and minimize any impact on small entities. The IRFA must discuss significant alternatives to the proposed rule such as (1) establishing different reporting requirements for small entities that take into account the resources available to small entities; (2) consolidating or simplifying reporting requirements; (3) using performance rather than design standards; and (4) allowing exemptions from coverage for small entities.

An additional alternative that would have further reduced the burden on small entities was considered for implementation but was rejected. This alternative would have increased data entry staff at NMFS to ensure speedier input of faxed data into the electronic database for availability to in-season managers. However, this alternative would not sufficiently address the timeliness of data availability and could not match the inherent data quality control of the OCS.

Additionally, the overall implementation of the Interim Observer Program includes measures that minimize the significant economic impacts of observer coverage requirements on at least some small entities. Vessels less than 60 ft (18.3 m) LOA are not required to carry an observer while fishing for groundfish. Similarly, vessels 60 ft (18.3 m) and longer, but less than 125 ft (38.1 m) LOA, have lower levels of observer coverage than those 125 ft (38.1 m) LOA and above. These requirements, which have been incorporated into the requirements of the North Pacific Groundfish Observer Program since its inception in 1989, effectively mitigate the economic impacts on some small entities without significantly adversely affecting the implementation of the conservation and management responsibilities under the Magnuson-Stevens Act. A copy of this analysis is available from NMFS (see **ADDRESSES**).

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0318.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 19, 2002.

Rebecca Lent

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

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.50, paragraphs (f)(1)(iii)(A), (f)(1)(iii)(B), (f)(1)(iii)(C), (f)(2) introductory text, (f)(2)(iii)(B), and (f)(2)(iii)(C) are revised and paragraph (f)(3) is added to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2002.

* * * * *

(f) * * *

(1) * * *

(iii) * * *

(A) *Observer use of equipment.* Allowing NMFS-certified observers to use the vessel's communications equipment and personnel, on request, for the confidential entry, transmission, and receipt of work-related messages, at no cost to the NMFS-certified observers or the nation.

(B) *Communication equipment requirements.* In the case of an operator of a catcher/processor or mothership that is required to carry one or more observers, or a catcher vessel required to carry an observer as specified in paragraph (c)(1)(iv) of this section:

(*1*) *Hardware and software.* Making available for use by the observer a personal computer in working condition that contains a full Pentium 120 Mhz or greater capacity processing chip, at least 32 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 9x or NT compatible operating system, an operating mouse, and a 3.5-inch (8.9 cm) floppy disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8 cm) and minimum display settings of 600 x 800 pixels. The computer equipment specified in paragraph (f)(1)(iii)(B) of this section must be connected to a communication device that provides a point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Processors utilizing a modem must have at least a 28.8kbs Hayes-compatible modem.

(*2*) *NMFS-Supplied software.* Ensuring that the catcher/processor, mothership, or catcher vessel specified in paragraph (f)(1)(iii)(B) of this section obtains and has installed the data entry software provided by the Regional Administrator for use by the observer.

(C) *Functional and operational equipment.* Ensuring that the communications equipment required at paragraph (f)(1)(iii)(B) of this section, and that is used by observers to enter and transmit data, is fully functional and operational, where ''functional'' means that data transmissions to NMFS can be initiated effectively aboard the vessel by such communications equipment.

* * * * *

(*2*) *Shoreside processor responsibilities.* A manager of a shoreside processor that is required to maintain observer coverage as specified under (d) of this section must:

(iii) * * *

(B) *Communication equipment requirements*—(*1*) *Hardware and software.* Making available for use by the observer a personal computer, in working condition, with a full Pentium 120 Mhz or greater capacity processing chip, at least 32 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 9x or NT compatible operating system, an operating mouse, and a 3.5-inch (8.9 cm) floppy disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8 cm) and minimum display settings of 600 x 800 pixels. The computer equipment specified in this paragraph must be connected to a communication device that provides a point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Processors utilizing a modem must have at least a 28.8kbs Hayes-compatible modem.

(*2*) *NMFS-supplied software.* Ensuring that the shoreside processor obtains and installs the data entry software provided by the Regional Administrator for use by the observer.

(C) *Functional and operational equipment.* Ensuring that the communications equipment required at paragraph (f)(2)(iii)(B) of this section and that is used by observers to enter

and transmit data, is fully functional and operational, where functional means that data transmissions to NMFS can be initiated effectively by that equipment.

* * * * *

(3) The owner of a vessel, shoreside processor, or buying station is responsible for compliance and must ensure that the operator or manager of a vessel or shoreside processor required to maintain observer coverage under paragraphs (c) or (d) of this section complies with the requirements given in paragraphs (f)(1) and (f)(2) of this section.

* * * * *

[FR Doc. 02–18862 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 143

Thursday, July 25, 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

Animal and Plant Health Inspection Service

[Docket No. 02–060–1]

Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to the control of rush skeletonweed, *Chondrilla juncea* (Asteraceae). The environmental assessment considers the effects of, and alternatives to, the release of a nonindigenous organism, *Bradyrrhoa gilveolella* (Treitschke) (Lepidoptera: Pyralidae), into the environment for use as a biological control agent to reduce the severity of rush skeletonweed infestations. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before August 26, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–060–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No.02–060–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–060–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Tracy A. Horner, Entomologist, Biological and Technical Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1228; (301) 734–5213.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is considering an application from the University of Montana for a permit to release a nonindigenous organism, *Bradyrrhoa gilveolella* (Treitschke) (Lepidoptera: Pyralidae), to reduce the severity of rush skeletonweed, *Chondrilla juncea* (Asteraceae), in the continental United States.

Native to Eurasia, rush skeletonweed has become established in the District of Columbia and several States including California, Delaware, Georgia, Idaho, Indiana, Maryland, Michigan, Montana, New Jersey, New York, Oregon, Pennsylvania, Virginia, Washington, and West Virginia. This invasive weed infests roadsides, railways, rangelands, pastures, grain fields, coastal sand dunes, and shaley hillsides in mountainous regions. Rush skeletonweed causes losses in infested grain fields, reduces rangeland forage production, and reduces plant and animal diversity.

While chemical, mechanical, and cultural methods are available to control rush skeletonweed, these methods may damage the environment. In addition, the effectiveness of biological control agents that are currently used to control rush skeletonweed appears to vary depending upon the location; e.g., in California, a rust (*Puccinia chondrillina*) appears to be more effective in controlling rush skeletonweed, and in eastern Washington, a gall mite (*Aceria chondrillae*) appears to be more effective in controlling it.

The biological control agent *B. gilveolella* has the potential to suppress rush skeletonweed populations in the continental United States. *B. gilveolella* larvae feed on the roots of rush skeletonweed, causing the plant to die or increasing its susceptibility to pathogenic fungi. APHIS has completed an environmental assessment that considers the effects of, and alternatives to, releasing *B. gilveolella* into the environment for the biological control of rush skeletonweed infestations.

APHIS' review and analysis of the potential environmental impacts associated with releasing *B. gilveolella* into the environment are documented in detail in the environmental assessment, entitled ''Field Release of *Bradyrrhoa gilveolella* (Lepidoptera: Pyralidae), for Biological Control of Rush Skeletonweed, *Chondrilla juncea* (Asteraceae)'' (May 2002). We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive by the date listed under the heading **DATES** at the beginning of this notice.

The environmental assessment may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/* by accessing ''Document/Forms Retrieval System,'' then ''3-Permits-Pests''; the environmental assessment is document number 0032. You may request copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the environmental assessment when requesting copies. The environmental assessment is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for

implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 19th day of July 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–18845 Filed 7–24–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–065–1]

Availability of an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the control of Siam weed, *Chromolaena odorata,* in Guam and the Northern Mariana Islands. The environmental assessment considers the effects of, and alternatives to, the release of a nonindigenous fly, *Cecidochares (Procecicidochares) connexa,* into the environment for use as a biological control agent to reduce the severity of Siam weed. The environmental assessment provides a basis for our conclusion that the issuance of a permit for the field release of *Cecidochares (Procecicidochares) connexa* into the environment will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Tracy A. Horner, Entomologist, Biological and Technical Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1228; (301) 734–5213.

SUPPLEMENTARY INFORMATION:

Background

Siam weed, *Chromolaena odorata*, is a perennial shrub native to South America and Central America where it is controlled by competing plants and natural enemies. However, Siam weed has become an invasive weed in much of tropical Asia, Africa, and the western Pacific including Guam and the Northern Mariana Islands. It becomes the dominant vegetation in abandoned fields, vacant lands, disturbed forests, and roadsides, suppressing native vegetation and preventing the natural reseeding of forest trees. In addition, it interferes with the cultivation of crops such as rubber, oil palm, coffee, cocoa, teak, cashew, and coconut. During the dry season, Siam weed can become a fire hazard. The tangled thickets of this weed interfere with wildlife movement in forests, and the leaves of Siam weed are toxic to livestock.

Chemical, mechanical, and biological control methods are available to control Siam weed, but these methods have limitations. For instance, chemical and mechanical control methods are expensive, and chemical control method poses some environmental concerns. Of the four insects released in Guam for the biological control of Siam weed, only one insect has become established, with limited effectiveness. The effectiveness of the tiger moth, *Pareuchaetes pseudoinsulata*, has been limited to areas of dense thickets. A nonindigenous fly, *Cecidochares (Procecidochares) connexa* Macquart (Diptera: Tephritidae), would potentially complement the tiger moth in the control of Siam weed because *C. connexa* has the ability to locate, and become established within, patchy distributions of Siam weed.

The Animal and Plant Health Inspection Service (APHIS) received a permit application from the University of Guam to release *C. connexa* into the environment to reduce the severity of Siam weed infestations in Guam and the Northern Mariana Islands. APHIS prepared an environmental assessment entitled ''Field Release of *Cecidochares (Procecidochares) connexa* Macquart (Diptera: Tephritidae), a non-indigenous, gall-making fly for control of Siam weed, *Chromolaena odorata* (L.) King and Robinson (Asteraceae) in Guam and the Northern Mariana Islands'' (February 2002). The notice of availability and request for comments on the environmental assessment was published in the *Pacific Daily News,* March 7–9, 2002, the *Saipan Tribune,* March 5–7, 2002, and the *Honolulu Advertiser,* March 1, 2002. We received no comments on the environmental assessment.

We are advising the public of APHIS' record of decision and finding of no significant impact regarding the issuance of a permit for the field release of *C. connexa*, without conditions, for use as a biological control agent to reduce the severity of Siam weed infestations.

The environmental assessment and finding of no significant impact may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/* by accessing ''Document/Forms Retrieval System,'' then ''3-Permits-Pests,'' and document number 0031. You may request copies of the environmental assessment and finding of no significant impact by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the environmental assessment when requesting copies. The environmental assessment and finding of no significant impact are also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

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

Done in Washington, DC, this 19th day of July 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–18846 Filed 7–24–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review.

SUMMARY: On January 17, 2002, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on pencils from the People's Republic of China (PRC). The merchandise covered by this order is certain cased pencils (pencils). We initiated this review on 39 named respondents.[1] Three of the named respondents actively participated in this review: China First Pencil Company, Ltd. (CFP), Shanghai Foreign Trade Corporation (OIHSFTC), Kaiyuan Group Corporation (Kaiyuan) and their producers/suppliers. The period of review (POR) is December 1, 1999, through November 30, 2000.

Based on our analysis of the comments received, we have made changes in our margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed companies are listed below in the section entitled ''Final Results of Review.'' For details regarding these changes, see the section of the notice entitled ''Changes Since the Preliminary Results.''

EFFECTIVE DATE: July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, Michele Mire, or Crystal Crittenden, Office of AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4474, (202) 482–4711, or (202) 482–0989, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2000).

Background

On January 17, 2002, the Department published the preliminary results of the administrative review of the antidumping duty order on pencils from the PRC. *See Certain Cased Pencils From the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 2402 (January 17, 2002). We invited parties to comment on our preliminary results of review.

Since the publication of the preliminary results, the following events have occurred. During January and February 2002 we conducted verification of the questionnaire responses of CFP, Shanghai Three Star Stationery Company, Ltd. (Three Star), Guangdong Provincial Stationary & Sporting Goods Import and Export Corporation (Guangdong), Kaiyuan, and its supplier, Laizhou Pencil Making Factory (Laizhou). During March, and April, 2002 interested parties submitted publicly available information, comments and rebuttal comments regarding surrogate values. On May 8, 2002, the Department extended the time limit for completion of the final results until no later than July 16, 2002. *See Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review*, 67 FR 35790 (May 21, 2002). During April and June, petitioners and respondents submitted factual information regarding CFP's relationship with Three Star. Interested parties submitted case briefs and rebuttal briefs during June, 2002.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this order are classified under item number 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of this order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks.

Although the HTSUS item number is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Final Partial Rescission

The Department verified that Laizhou City Guangming Pencil-Making Lead Co., Ltd. (Laizhou) did not export subject merchandise to the United States during the POR. Therefore, we are rescinding this review with respect to Laizhou.

Period of Review

The POR is December 1, 1999 to November 30, 2000.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (*Decision Memorandum*) from Bernard T. Carreau, Deputy Assistant Secretary, Important Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby

[1] We initiated this administrative review on 39 parties. The following three companies actively participated in this review: China First Pencil Company, Ltd.; Shanghai Foreign Trade Corporation; and Kaiyuan Group Corporation. The following three companies stated that they made no sales of subject merchandise during the POR: Guangdong Provincial Stationery & Sporting Goods Import & Export Corporation; Shanghai Three Star Stationery Company, Ltd.; and Laizhou City Guangming Pencil-Making Lead Co., Ltd. We sent questionnaires to the following 16 companies and received no response: Anhui Light Industrial Products I/E Corporation; Anhui Provincial Imports & Exports Corporation; Anhui Import/Export Group Corporation; Beijing Pencil Factory; Beijing Light Industrial Products I/E Corp.; Dalian Light Industrial Products Import/Export Corporation; Jinan Pencil Factory; Liaoning Light Industrial Products Import/Export Corporation; Qingdao Light Industrial Products Import/Export Corporation; Shandong Light Industrial Products Import/Export Corporation; Sichuan Light Industrial Products Import/Export Corporation; Songnan Pencil Factory; Tianjin Stationery and Sporting Goods Import/Export Corporation; Tianjin Pencil Factory; Xinbang Joint Venture Pencil Factory; and Zhenjiang Foreign Trade Corporation. We could not locate addresses for the following 12 companies: Anhui Bengbu Pencil Factory; Anhui Stationery Company; China Second Pencil Company, Ltd.; Guangdong Textile Factory; Harbin Pencil Factory; Jiangsu Pencil Factory; Juihai Pencil Factory; Julong Pencil Factory; New Century; Qingdao Pencil Factory; Shanghai JV Stationery Co., Ltd./Shanghai Jay-Vee Stationery Co., Ltd.; Factory; Shanghai JV Stationery Co., Ltd./Shanghai Jay-Vee Stationery Co., Ltd.; Shenyiang Pencil Factory. Questionnaires issued to the following five parties were returned to us as undeliverable: China National Light Industrial Products Import & Export Corporation (all branches); Dalian Pencil Factory; Donghua Pencil Factory; Jiangsu Light Industrial Products Import/Export Group Corp.; Jilin Provincial Machinery & Equipment Import & Export Corporation.

adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Record Unit, room B–099 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the International Trade Administration's Web site at www.ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable.

Rescission of Review With Respect to Guangdong and Three Star

Since the preliminary results in this review, evidence has been placed on the record regarding the relationship between CFP and Three Star which supports treating these two entities as a single entity for purposes of our antidumping analysis. See the *Decision Memorandum* to Comment 12. Because we find the CFP/Three Star entity to be distinct from the Three Star entity in the Three Star/Guangdong sales chain that was excluded from the antidumping duty order, we are no longer excluding the Three Star/Guangdong sales chain from the order. Thus, we have not rescinded this review with respect to Guangdong. We will instruct U.S. Customs to begin suspending liquidation of entries of pencils identified as produced by Three Star and exported by Guangdong effective as of the date of publication of this notice. All merchandise exported by Guangdong will be subject to cash deposit requirements at the PRC-wide rate. With respect to Three Star, we note that although Three Star did not ship subject merchandise directly to the United States during the POR, we are treating CFP and Three Star as a single entity for purposes of assigning an antidumping duty rate, and thus we have not rescinded the review with respect to Three Star. We will assign the CFP/Three Star entity the antidumping duty rate calculated for CFP in this review.

Factors of Production

Based on our findings at verification, and our analysis of comments received, we made adjustments to the factors of production, surrogate values, and methodologies used to calculate margins in the preliminary results. These adjustments are listed below and discussed in detail in the *Decision Memorandum*.

Surrogate Values

The Department has determined that South Korea, Thailand, and Indonesia maintain broadly available, non-industry specific export subsidies which may benefit all exporters to all export markets. Therefore, for the final results of this review, we eliminated the quantities and values of imports from these countries from the import statistics used to calculate surrogate values. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002).

For glue, cores, and lacquer, we eliminated aberrational prices for merchandise from countries with low import volumes from the Indian import statistics used to calculate surrogate values. For respondents, other than CFP, we valued erasers using Indonesian import statistics because we found the surrogate value calculated from Indian import statistics to be aberrational. *See*OIHSFTC, CFP, and Kaiyuan Calculation Memorandums and the *Decision Memorandum* at Comment 4. For CFP, we recalculated the surrogate value for erasers using the actual purchase price paid by CFP to a market economy supplier in U.S. dollars during the POR. *See* CFP Calculation Memorandum and the Decision Memorandum at Comment 3

We recalculated the financial ratios using the financial statements of a Philippine wood products producer. See OIHSFTC, CFP, and Kaiyuan Calculation Memorandums and the *Decision Memorandum* at Comment 5.

CFP

We made minor corrections identified at verification. *See* CFP Calculation Memorandum.

OIHSFTC

We revised the methodology used to value certain pencils sold to the United States by OIHSFTC. OIHSFTC obtained finished pencils from a supplier (supplier A) which obtained raw pencils from another supplier (supplier B). In the preliminary results, we valued raw pencils as a factor of production for supplier A. For the final results of this review, we modified our approach and valued the factors of production consumed by supplier B to produce a raw pencil and the factors of production consumed by supplier A to finish the pencils it subsequently supplied to OIHSFTC.

We recalculated the dumping margin for uncooperative suppliers using partial adverse facts available. *See* OIHSFTC Calculation Memorandum and the *Decision Memorandum* at Comment 10.

We made minor corrections identified at verification. *See* OIHSFTC Calculation Memorandum.

Kaiyuan

We made minor corrections identified at verification. *See*Kaiyuan Calculation Memorandum and the *Decision Memorandum* at Comment 11.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final results. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents.

Final Results of Review

We determine that the following weighted-average percentage margins exist for the period December 1, 1999 through November 30, 2000:

Exporter/Manufacturer	Margin (percent)
China First Pencil Co.,Ltd.[2]	11.39
Shanghai Foreign Trade Corporation	14.53
Kaiyuan Group Corporation	123.11
PRC Wide-Rate.	123.11

[2] As noted above, Shanghai Three Star Stationery Company Ltd. is now considered to be part of China First Pencil Co., Ltd. Further, products produced by Shanghai Three Star Stationery

As noted in the preliminary results of review, the firms named in the notice of initiation that received, but did not respond to our questionnaire are not eligible for separate rate status and therefore will be treated as part of the PRC-wide entity. The firms named in the notice of initiation that did not receive our questionnaire have not been granted separate rate status in prior segments of this proceeding and thus will continue to be treated as part of the PRC-wide entity.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 123.11 percent; and 4) the cash deposit rate for non-PRC exporters will be the rate applicable to the PRC supplier of that exporter.

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

Assessment

The Department will determine, and the Customs Service will assess, antidumping duties on all entries of subject merchandise in accordance with these final results. For assessment purposes, we have calculated exporter-specific duty assessment rates for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR. We calculated exporter-specific assessment rates because there was no information on the record which identified the importers of record. The Department will issue appraisement instructions directly to Customs.

Reimbursement of Duties

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

Administrative Protective Orders

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

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

Dated: July 16, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

Comments

Comment 1: Whether to Rescind the Review with Respect to Guangdong/Three Star

Comment 2: The Appropriate Surrogate Values for Semi-Finished Pencils

Comment 3: Whether CFP's Erasers Should be Valued Based on Purchases

Comment 4: Whether Indian Surrogate Values for Erasers, Cores, Glue, and Lacquer are Aberrational

Comment 5: The Appropriate Surrogate Source for Financial Ratios

Comment 6: Ministerial Error in OIHSFTC's Margin Calculation

Comment 7: Whether India is the Appropriate Principal Surrogate Market Economy Country

Comment 8: The Appropriate Surrogate Source for Logs and Slats

Comment 9: The Appropriate China-Wide Rate

Comment 10: Use of Partial Adverse Facts Available with Respect to OIHSFTC's Uncooperative Producers

Comment 11: Verification Discrepancies—Kaiyuan/Laizhou

Comment 12: Whether CFP and Three Star Should be Treated as a Single Entity for Antidumping Purposes

[FR Doc. 02–18856 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071702D]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Gulf of Alaska Working Group will meet in Anchorage.

DATES: The meeting will be held on August 21, 2002, from 9:30 a.m. until 5 p.m.

ADDRESSES: The meeting will be held at the Hawthorn Suites, Ltd., 1110 West 8th Avenue, Ballroom A, Anchorage, AK 99501.

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

FOR FURTHER INFORMATION CONTACT: Council Staff at 907–271–2809.

SUPPLEMENTARY INFORMATION: On Wednesday, August 21st, the committee will meet to review Council direction on groundfish management issues related to rationalizing the Gulf of Alaska groundfish fisheries, committee assignments, and requested data reports.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: July 17, 2002.

Richard W. Surdi,

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

[FR Doc. 02–18738 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071602D]

Marine Mammals; File No. 998–1678

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Gregory D. Bossart, Harbor Branch Oceanographic Institution, Inc., 5600 U.S. 1 North, Fort Pierce, FL 34946, has applied in due form for a permit to take bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before August 26, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Trevor Spradlin or Lynne Barre, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes to conduct a health assessment of bottlenose dolphins in the Indian River Lagoon, FL and the waters near Charleston, SC that would include the capture, examination, sampling, tagging and release of up to 400 animals (200 at each site) over a 5 year period. Dolphins of all age and sex classes would be captured except female-calf pairs containing calves presumed to be less than one year of age. Some individual dolphins may be harassed more than once per day but not more than three times per day. In addition, some individual dolphins may be captured more than once during the 5-year period, but not more than three times in any given year. The applicant also proposes to incidentally harass a maximum of 1,500 additional dolphins per site (FL and SC) during the process of locating individuals for health assessment examinations.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 18, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–18860 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071202C]

Marine Mammals; File No. 782–1438

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, NMFS, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070, (Dr. Sue Moore, Principal Investigator (PI)) has been issued a minor amendment to scientific research Permit No. 782–1438.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980-4018;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 782–1438, issued on issued on May 8, 1998 (63 FR 27265) authorizes the National Marine Mammal Laboratory to take various large and small cetacean species through photographic aerial surveys (Project I); biopsy sampling, tagging and photo-identification (Project II); small cetacean species and pinnipeds through vessel surveys (Project III); gray whales through biopsy sampling, tagging, photo-id and harassment (Project IV); and beluga whales by satellite-tagging, flipper tagging, VHF radio/time depth recorder(TDR) suction cup-tagging and biopsy sampling (Project V). The amendment extends the expiration date of the permit. For Projects I, II, and III, the expiration date has been extended to September 30, 2003. For Project IV, the expiration date has been extended to June 30, 2003.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 19, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–18863 Filed 7–24–02; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Privacy Act of 1974, as Amended; System of Records

AGENCY: Corporation for National and Community Service.

ACTION: Notice of proposed new Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Corporation for National and Community Service (hereinafter the ''Corporation'') gives notice of two new Privacy Act systems of records. The Corporation seeks comment on these two new systems of record as described in this notice in accordance with the requirements of the Privacy Act.

DATES: We must receive your comments on the proposed two new systems of records included in this notice on or before September 4, 2002. The proposed new systems of records will become effective September 6, 2002, unless any comments received delay the effective date.

ADDRESSES: Address all comments on the proposed new systems of records to the Corporation for National and Community Service, Attn: Bill Hudson, Corporation Privacy Officer, Room 8204, 1201 New York Avenue, NW., Washington DC, 20525. Please be sure to specify which system of records you are commenting on. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For information regarding the ''Volunteer Service Tracking Tool'', contact the Corporation for National and Community Service, Office of Public Affairs, Attn: Ms. Christine Benero, 1201 New York Avenue, NW., Washington, DC 20525. Telephone: (202) 606–5000, Ext. 193. For information regarding the ''Join Senior Service Now'' Web-based Recruiting System (JASON), contact the Corporation for National and Community Service, National Senior Service Corps, Attn: Mr. Peter Boynton, 1201 New York Avenue, NW., Washington, DC 20525. Telephone: (202) 606–5000, Ext 499.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C., 552a, the Corporation proposes to establish the following new systems of records:

(1) Volunteer Service Tracking Tool (Corporation-19)

In his State of the Union address, President Bush called on all Americans to perform some form of service to the nation for the equivalent of two years of their life. Americans serve their country in extraordinary and countless ways. Most of our Nation's civic work is being done without the aid of the Federal Government, but we believe the Federal Government can work to enhance the opportunities for Americans to serve their neighbors and their Nation. The Administration proposes to create and expand activities that will enhance homeland security, provide additional community-based service and volunteer opportunities, and assist people around the world. In January, the President announced the creation of the USA Freedom Corps which has three major components: a newly created Citizen Corps to engage citizens in homeland security; an improved and enhanced AmeriCorps and Senior Corps, programs of the Corporation; and a strengthened Peace Corps.

In support of the President's call to service, the Corporation has created an electronic record of service that provides citizens who accept his challenge a way to track their service time and record their service hours. Use of this tracking tool is 100 percent electronic in that users will establish a user ID and password that automatically creates a ''record of service'' account which is only accessible to that particular user. This record of service account can be updated only by the user who established the account. In addition, those users who create a record of service account can, by checking various blocks, elect to receive information about USA Freedom Corps and other national and community service volunteer activities.

(2) Join Senior Service Now Web-based Recruiting System (JASON) (Corporation-20)

Senior Corps volunteers serve with local projects of the Retired and Senior Volunteer Program (RSVP), the Foster Grandparent Program (FGP) and the Senior Companion Program (SCP). Individuals learn about these opportunities through a variety of means, including public service announcements, posters, advertisements, and visits to the Corporation's Web site and Web sites of local projects. These media and others will be used to direct interested individuals to the JASON Web site at *www.joinseniorservice.org*.

When they use JASON, prospective volunteers have the opportunity to find senior service projects of interest to them in two ways:

(1) *Fast Match*. By using the system's ''Fast Match'' feature, individuals can search for projects by selecting the senior service program(s) they are interested in and providing their ZIP code and the distance they are willing to travel. They also have the option to narrow their search by selecting one or more areas of service and/or entering one or more key words. They receive a listing of opportunities within the Senior Corps grantee network that match their service, distance, and/or other specifications and preferences.

(2) *Registration*. Individual seniors can also register with the system. Registration allows individuals the option of expressing interest in volunteering with senior service projects of their choosing and of sending certain information about themselves to the volunteer recruiters of those projects.

These two new systems of records reports, required by the Privacy Act, 5 U.S.C. 552a(r), have been submitted to the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), pursuant to Appendix 1 to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated February 8, 1996.

The two proposed new systems of records, described above, are published in their entirety below.

Dated: July 17, 2002.

Wendy Zenker,

Chief Operating Officer.

CORPORATION–19

SYSTEM NAME:

USA Freedom Corps Record of Service.

SYSTEM LOCATION:

Corporation for National and Community Service, Office of Public Affairs, 1201 New York Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have recorded information on their community service participation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Participant's e-mail address, participant's length of service, and

information about the volunteer's history of service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National and Community Service Act of 1990, as amended.

PURPOSE(S):

To provide citizens a way to track their service time and record their service hours.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

See General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a database maintained by a Corporation contractor.

RETRIEVABILITY:

The participant's e-mail address retrieves records.

SAFEGUARDS:

The information is available only to Corporation and USA Freedom Corps staff. It is not available to anyone else without the express written consent from the individual to release his/her information.

RETENTION AND DISPOSAL:

These records are maintained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Webmaster, Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURE:

To determine whether there is a record in the system about an individual, a participant should contact the Corporation for National and Community Service, Attn: Webmaster, 1201 New York Avenue, NW., Washington, DC 20525, and provide his/her e-mail address.

RECORDS ACCESS PROCEDURES

See Notification procedures.

CONTESTING RECORDS PROCEDURES:

Anyone desiring to contest or amend information maintained in his/her electronic record may do so by addressing such request to the Corporation for National and Community Service, Attn: Privacy Act Officer, 1201 New York Avenue, NW., Washington, DC 20525.

RECORD SOURCE CATEGORIES:

Data is obtained from the electronic entries made by the participant into our registration system.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

CORPORATION–20

SYSTEM NAME:

Join Senior Service Now Web-based Recruiting System (JASON).

SYSTEM LOCATION:

Electronic records may be maintained by either the National Senior Service Corps (Senior Corps) or a Corporation contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective senior volunteers who voluntarily elect to use the JASON system to seek placement with organizations seeking the services of senior volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Registration Data, Volunteer Interest Profile, Volunteer-Seeking Organization or Project Data Organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973, as amended.

PURPOSE(S):

To match prospective senior volunteers who voluntarily elect to use the JASON system to seek placement with organizations seeking the services of senior volunteers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

See General Routine Uses contained in Preliminary Statement. Information is collected electronically and stored on computers.

RETRIEVABILITY:

Information stored by an individual is retrievable by user name and password that provides access to the data he or she provided to the system.

SAFEGUARDS:

Electronic records are protected by the use of passwords.

RETENTION AND DISPOSAL:

Records will be retained indefinitely to permit longitudinal analyses, but archived periodically and stored in a secure location.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Program Officer, Technical Assistance and Project Information Systems, National Senior Service Corps, Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURE:

To determine whether there is a record in the system about an individual, that individual should submit a request, in writing, to the system manager giving their full name, and user ID used to access JASON.

RECORD ACCESS PROCEDURE:

See Notification procedures.

CONTESTING RECORD PROCEDURE:

Anyone desiring to contest or amend information in this system should write to the system manager and set forth the basis for which the record is believed to be incomplete or incorrect.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individual seniors seeking to opportunities to volunteer their services and from organizations with projects who are seeking senior volunteers. Furnishing of information to the system is voluntary.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–18820 Filed 7–24–02; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by August 26, 2002.

Title, Form, and OMB Number: NROTC Applicant Questionnaire; NAVCRUIT 1131/6; OMB Number 0703–0028.

Type of Request: Reinstatement.

Number of Respondents: 40,000.

Responses per Respondent: 1.

Annual Responses: 40,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 10,000.

Needs and Uses: The information is used by the Navy Recruiting Command to determine basic eligibility for the Four-Year NROTC Scholarship Program, and is necessary for the initial screening of prospective applicants. Use of this questionnaire is the only accurate and specific method to determine scholarship awardees. Each individual who wishes to apply to the scholarship program completes and returns the questionnaire.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Office: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–18777 Filed 7–24–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–30]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–30 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

17 JUL 2002
In reply refer to:
I-02/007331

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. 02-30, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the United Arab Emirates for defense articles and services estimated to cost $1.5 billion. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
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. 02-30

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: United Arab Emirates**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ .746 billion
Other	$ .754 billion
TOTAL	$1.500 billion

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: remanufacture of 30 AH-64A APACHE helicopters to the AH-64D model aircraft. This proposed sale also includes: 32 AN/APG-78 AH-64D Longbow Fire Control Radar; 32 APR-48A Radar Frequency Interferometer; 32 T-700-GE-701C engines; 32 Modernized Target Acquisition Designation Sight/Pilot Night Vision Sensors; 240 AGM-114L3 HELLFIRE II laser guided missiles; 49 AGM-114M3 HELLFIRE II blast fragmentation missiles; 90 M299 HELLFIRE missile launchers; 33 AN/ALQ-211 Suite of Integrated Radio Frequency Countermeasures/Suite of Integrated Infrared Countermeasures; HAVE GLASS II capabilities; spare and repair parts; support equipment; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor technical support and other related elements of logistics support.**

(iv) **Military Department: Army (UDI)**

(v) **Prior Related Cases, if any:**
FMS case JAH - $404 million – 11Dec91
FMS case JAH, Amd 1 - $ 9 million – 17Nov92
FMS case JAH, Amd 3 - $197 million – 31May94

(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: 17 JUL 2002**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

United Arab Emirates – AH-64A APACHE Helicopters Remanufactured to AH-64D Model Aircraft

The Government of United Arab Emirates (UAE) has requested the remanufacture of 30 AH-64A APACHE helicopters to the AH-64D model aircraft. This proposed sale also includes: 32 AN/APG-78 AH-64D Longbow Fire Control Radar; 32 APR-48A Radar Frequency Interferometer; 32 T-700-GE-701C engines; 32 Modernized Target Acquisition Designation Sight/Pilot Night Vision Sensors; 240 AGM-114L3 HELLFIRE II laser guided missiles; 49 AGM-114M3 HELLFIRE II blast fragmentation missiles; 90 M299 HELLFIRE missile launchers; 33 AN/ALQ-211 Suite of Integrated Radio Frequency Countermeasures/Suite of Integrated Infrared Countermeasures; HAVE GLASS II capabilities; spare and repair parts; support equipment; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor technical support and other related elements of logistics support. The estimated cost is $1.5 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The United Arab Emirates desires these articles to fulfill their strategic commitments for self-defense, with coalition support, in the region. The proposed sale will upgrade UAE's anti-armor day/night missile capability, provide for the defense of vital installations and improve close air support for its military ground forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: The Boeing Company of Mesa, Arizona; Lockheed Martin Electronics and Missiles of Orlando, Florida; Lockheed Martin Systems Integration of Oswego, New York; General Electric of Lynn, Massachusetts; and Longbow International of Orlando, Florida. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of 10 U.S. Government representatives for two-week intervals, twice annually, to participate in training, program management and technical reviews. There will be up to 40 contractor representatives in-country for two years to assist in the delivery of the helicopters. A U.S. Government representative will be in the OCONUS field office for two years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-30

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AH-64D APACHE Attack Helicopter includes the following classified or sensitive components:

a. AN/APG-78 AH-64D Longbow Fire Control Radar (FCR) is an active fire control radar system providing detection, location, classification and prioritization of targets to be prosecuted by the Longbow HELLFIRE Modular Missile System or handed over to other on-board sensor systems. This enables the APACHE helicopter to detect and fire upon targets in weather and visual conditions that preclude the use of visual or infrared imaging systems. The hardware and releasable technical manuals for operation and organic level maintenance are Unclassified. When the system software is activated with the hardware, the system become Secret. The data, including operational software, proposed for release will not, in itself facilitate reverse engineering.

b. The AN/APR-48A Radar Frequency Interferometer (RFI) is part of the AN/APR-78 FCR. It passively detects, locates in azimuth, and identifies radar emitters and sends the emitter identification and location to either the FCR or to the APACHE Weapons Processor for display to the aircrew. Emitter information can also be used to cue the FCR, as well as for making decisions on FCR target prioritization. Hardware is classified Confidential when the User Data Module (UDM) is attached to the RFI Processor Assembly and Unclassified when the UDM is absent. Releasable technical manuals for operation and organic level maintenance are Unclassified. The data, including operational software, proposed for release will not facilitate reverse engineering.

c. The Modernized Target Acquisition and Designation Sight/Pilot Night Vision Sensor (MTADS/PNVS) provides second generation day and night target information, as well as night navigation capabilities and second generation thermal imaging that permits safer nap-of-the-earth flight. The co-pilot gunner is provided with improved search, detection, recognition, and designation by way of Direct View Optics (DVO), and second generation Forward Looking Infrared (FLIR) sighting systems that may be used singly or in combinations. Complete provisions are made for image fusion, automatic target recognition, and dynamic alignment. Hardware and technical manuals are classified up to Secret.

d. The AGM-114L3 HELLFIRE missiles hardware, and the documentation provided are Unclassified. However, sensitive technology is contained within the system itself. Sensitive software algorithms are contained within the system, but the L3 version contains several software security capabilities. Also, the missile source code is not releasable. This protects the sensitive software information from being compromised. The Longbow seeker contains critical components, but the technical data package will not be released.

e. The AGM-114M3 HELLFIRE II Blast Fragmentation Missile is a laser-guided helicopter launched missile. The warhead is designed to defeat targets such as ships, heavy equipment, light armor, electronics, bunkers, and personnel. The blast fragmentation warhead penetrates hulls, decks, light metal/frame construction and has a built-in time delay. The warhead detonates after penetration to maximize lethality. Missiles utilize the semi-active laser (SAL) terminal homing guidance system. The hardware is Unclassified.

f. The AN/ALQ-211 Suite of Integrated Radio Frequency Countermeasures (SIRFC) passively detects, geolocates, identifies and prioritizes radar emitters. SIRFC sends the emitter identification and location to whichever bus it is connected to for display to the aircrew. Emitter information is used to define the use of countermeasures to defeat the threat. The hardware is classified Secret when the User Data Module (UDM) is attached to the Processor Component; Unclassified when the UDM is absent. The data, including operational software, proposed for release will not facilitate reverse engineering. SIRFC is paired with the Suite of Integrated Infrared Countermeasures (SIIRCM) as part of the Air Survivability Equipment (ASE). Final decision is pending for the ASE, which will be either the SIRFC/SIIRCM System or the Helicopter Integrated Defensive Aids System (HIDAS) which is non-MDE.

g. The AN/ALQ-212 Countermeasures Set (ATIRCM/CMWS) senses, identifies and prioritizes and activates the correct system countermeasures necessary to defeat incoming threat infrared missiles. Due to the short time lines associated with this activity, countermeasures information is not displayed to the operator. The Countermeasure Receiver (Electronic Control Unit) of the system is classified Confidential when a Memory Card, Personal Computer (User Data Module) is installed. When the Memory Card is removed the receiver is Unclassified.

2. 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.

3. A determination has been made that United Arab Emirates 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.

[FR Doc. 02–18796 Filed 7–24–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–32]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

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 Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittial 02–30 with attached transmittal and policy justification.

Dated: July 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

17 JUL 2002
In reply refer to:
I-02/007655

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. 02-32, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Singapore for defense articles and services estimated to cost $120 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
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. 02-32

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Singapore**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 10 million
Other	$110 million
TOTAL	$120 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: munitions, services and support for F-16C/D aircraft which includes 2 MQM-107 target drones, 9 AIM-9 Sidewinder coolant bottles, 105,000 20mm cartridges, 36 AGM-65G Infrared Guidance Control Sections, 324 GBU-10 and 108 GBU-12J/B guided bomb units, modification kits, maintenance, flight training, spare and repair parts, support equipment, program management, publications and documentation, personnel training, training equipment, logistics personnel services and other related elements of program support.**

(iv) **Military Department: Air Force (NCU)**

(v) **Prior Related Cases, if any: FMS case NCP - $88 million – 20Mar99**

(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: none**

(viii) **Date Report Delivered to Congress: 17 JUL 2002**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Singapore – Munitions, Services, and Support

The Government of Singapore has requested a possible sale of munitions, services and support for F-16C/D aircraft which includes 2 MQM-107 target drones, 9 AIM-9 Sidewinder coolant bottles, 105,000 20mm cartridges, 36 AGM-65G Infrared Guidance Control Sections, 324 GBU-10 and 108 GBU-12J/B guided bomb units, modification kits, maintenance, flight training, spare and repair parts, support equipment, program management, publications and documentation, personnel training, training equipment, logistics personnel services and other related elements of program support. The estimated cost is $120 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for economic progress in Southeast Asia.

This proposed sale would support Singapore's current and future F-16 aircraft inventory. These short-range precision munitions will provide Singapore with a credible defense capability while avoiding the collateral damage associated with conventional gravity munitions. The long-term pilot training program in CONUS continues a professional interaction and enhances operational interoperability with U.S. forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Singapore.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–18797 Filed 7–24–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–36]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

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 Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–36 with attached transmittal and policy justification.

Dated: July 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

16 JUL 2002

In reply refer to:
I-02/008195

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. 02-36, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Pakistan for defense articles and services estimated to cost $75 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
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. 02-36

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Pakistan

(ii) **Total Estimated Value:**

Major Defense Equipment*	$11 million
Other	$64 million
TOTAL	$75 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** six used C-130E aircraft with engines, one C-130E operational capabilities upgrade aircraft for cannibalization with engines, upgrade of engines to Allison 56-A-15 engines, modification kits, spare and repair parts, devices, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support.

(iv) **Military Department:** Air Force (SEB)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none

(viii) **Date Report Delivered to Congress:**

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Pakistan – C-130 Aircraft

The Government of Pakistan has requested a possible sale of six used C-130E aircraft with engines, one C-130E operational capabilities upgrade aircraft for cannibalization with engines, upgrade of engines to Allison 56-A-15 engines, modification kits, spare and repair parts, devices, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support. The estimated cost is $75 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for economic progress in South Asia.

Pakistan needs these aircraft to support a current and long-term airlift shortfall, both for Pakistan Air Force internal requirements, and as it seeks to support the U.S. Government with Operation Enduring Freedom. These C-130E aircraft will be used for the purpose of providing airlift support. Pakistan can easily absorb and utilize these within its existing structure.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Lockheed Martin Aeronautics Company of Fort Worth, Texas. There are no offset agreements proposed in connection with this potential sale.

The number of U.S. Government and contractor representatives required in-country to support the program will be determined in joint negotiations as the program proceeds through the development, production and equipment installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–18798 Filed 7–24–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–34]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

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 Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–34 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 19, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 JUL 2002
In reply refer to:
I-02/007812

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. 02-34, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Oman for defense articles and services estimated to cost $49 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
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. 02-34

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Oman**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$38 million
Other	$11 million
TOTAL	$49 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: two Goodrich DB-110 or two BAE Systems F-9120 Podded reconnaissance systems, one Goodrich or one BAE Systems Exploitation Ground Station, support equipment, spares and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support.**

(iv) **Military Department: Air Force (SDC, Amendment 1)**

(v) **Prior Related Cases, if any: FMS case SDC - $701 million – 8May02**

(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: 18 JUL 2002**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Oman – Reconnaissance Systems and Support

The Government of Oman has requested a possible sale of two Goodrich DB-110 or two BAE Systems F-9120 Podded reconnaissance systems, one Goodrich or one BAE Systems Exploitation Ground Station, support equipment, spares and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support. The estimated cost is $49 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale will strengthen the military ties between the U.S. and the Sultanate of Oman. Strategically located at the Strait of Hormuz in the Persian Gulf, Oman has been a coalition partner for over thirty years. Oman's active participation during the Gulf crisis and their willingness to allow access to port facilities and air bases make them vital to any coalition success in the region. This proposed sale would strengthen Oman as a coalition partner by providing greater interoperability with U.S. and other coalition forces in the region.

The reconnaissance systems will be utilized on their newly purchased F-16 aircraft. Oman desires these articles to fulfill their strategic commitments for self-defense, with coalition support, in the region.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Goodrich Corporation of Charlotte, North Carolina or BAE Systems, North America of Syosset, New York. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of one U.S. Government and two contractor representatives for one-week intervals, twice annually, to participate in program management and technical reviews. Contractor representatives specializing in various skills and disciplines will be required to provide in-country support for a short period of time. The specific requirements for this support will be established during program definition between representatives of the U.S. Government and Oman.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-34

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended (U)

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The reconnaissance systems being considered by the Royal Air Force of Oman include the Goodrich Corporation DB-110 and the BAE Systems F-9120 reconnaissance systems, neither of these systems is currently in use with U.S. forces. Both candidate sensors feature dual-band (electro-optical and infrared) medium and high-altitude field of view capability with provisions for medium range and over-flight fields of view. Both candidates also utilize a "pan scan" operation and have provisions for data linking information to an exploitation ground station for data analysis, which is part of the overall system being considered. Performance and specification data for both systems is Unclassified.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures, which might reduce the effectiveness of the reconnaissance system, or be used in the development of a system with similar capabilities.

3. A determination has been made that Oman 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.

[FR Doc. 02–18799 Filed 7–24–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–38]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

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 Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–38 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 19, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 JUL 2002
In reply refer to:
I-02/008739

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. 02-38, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $27 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
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. 02-38

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Israel

(ii) **Total Estimated Value:**

Major Defense Equipment*	$24 million
Other	$ 3 million
TOTAL	$27 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 1,000 Joint Direct Attack Munitions (JDAM) tail kits, 50 MK-84 inert bombs, testing, spare and repair parts, support equipment, contractor engineering and technical support, and other related elements of program support.

(iv) **Military Department:** Air Force (YET)

(v) **Prior Related Cases, if any:** FMS case YEQ - $30 million – 9Feb00

(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:** 18 JUL 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel – Joint Direct Attack Munitions

The Government of Israel has requested a possible sale of 1,000 Joint Direct Attack Munitions (JDAM) tail kits, 50 MK-84 inert bombs, testing, spare and repair parts, support equipment, contractor engineering and technical support, and other related elements of program support. The estimated cost is $27 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale will contribute significantly to U.S. strategic and tactical objectives. Israel will maintain its qualitative edge with a balance of new weapons procurement and upgrades supporting its existing systems. Israel, which already has tail kits in its inventory, will have no difficulty absorbing these additional kits.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Boeing Company of St. Louis Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-38

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Joint Direct Attack Munition is actually a guidance kit that converts existing unguided free-fall bombs into precision-guided "smart" munitions. By adding a new tail section containing an Inertial Navigation System (INS) guidance/Global Positioning System (GPS) guidance to existing inventories of MK-84 bombs, the cost effective JDAM provides highly accurate weapon delivery in any "flyable" weather. The INS, using updates from the GPS, helps guide the bomb to the target via the use of movable tail fins.

2. Weapon accuracy is dependent on target coordinates and present position as entered into the guidance control unit. After weapon release, movable tail fins guide the weapon to the target coordinates. In addition to the tail kit, other elements in the overall system that are essential for successful employment include:

Access to accurate target coordinates.
INS/GPS capability
Operational Test and Evaluation Plan.

3. A determination has been made that Israel can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–18800 Filed 7–24–02; 8:45 am]

BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2002 study on Immediate Attack Deep in Hostile Territory. The purpose of the meeting is to allow the SAB and study leadership to brief the Secretary of the Air Force on the results of their study. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: August 13, 2002.

ADDRESSES: The Pentagon, Room 4E869, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–18765 Filed 7–24–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Institute of Pathology Scientific Advisory Board

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following open meeting:

Name of Committee: Scientific Advisory Board (SAB).

Dates of Meeting: November 14–15, 2002.

Place: The Armed Forces Institute of Pathology (AFIP), Building 54, 14th St. & Alaska Ave., NW., Washington, DC 20306–6000.

Time: 8 a.m.–5 p.m. (November 14, 2002). 8:30 a.m.–12 p.m. (November 15, 2002).

FOR FURTHER INFORMATION CONTACT: Mr. Ridgely Rabold, Center for Advanced Pathology (CAP), AFIP Building 54, Washington, DC 20306–6000, phone (202) 782–2553.

SUPPLEMENTARY INFORMATION:

General function of the board: The SAB provides scientific and professional advice and guidance on programs, policies and procedures of the AFIP.

Agenda: The Board will hear status reports from the AFIP Director, Principal Deputy Director, CAP Director, Director of the National Museum of Health and Medicine, and each of the pathology sub-specialty departments, which the Board members will visit during the meeting.

Open board discussions: Reports will be presented on all visited departments. The reports will consist of findings, recommended areas of further research, and suggested solutions. New trends and/or technologies will be discussed and goals established. The meeting is open to the public.

Ridgely L. Rabold,

Executive Secretary, Scientific Advisory Board.

[FR Doc. 02–18854 Filed 7–24–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive License or Partially Exclusive Licensing of U.S. Patent Application Concerning Protection Glove

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In Accordance with 37 part 404.6, announcement is made of the availability of licensing of U.S. Patent No. US 6,415,446 B1 entitled ''Protection Glove'' issued July 9, 2002. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or e-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–18855 Filed 7–24–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Delete a System of Records.

SUMMARY: The Department of the Army is deleting a system of records notice from in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 26, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0037–103d SAFM

SYSTEM NAME:

Conversion Files (February 22, 1993, 58 FR 10002).

REASON:

The Department of the Army no longer collects and maintains this type of record. Therefore, the system of records notice is being deleted.

[FR Doc. 02–18776 Filed 7–25–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[CP02–404–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

July 19, 2002.

Take notice that on July 11, 2002, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP02–404–000 a request pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon by removal in its entirety its delivery point to Allegheny Power, d.b.a. Mountaineer Gas Company, located in Hancock County, West Virginia, under Columbia's blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the request. Copies of this request are on file with the Commission and are available for public inspection. This request may be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call 202–208–2222 for assistance).

Columbia proposes to abandon by removal in its entirety its point of delivery to Allegheny Power, located in Hancock County, West Virginia. Columbia states that the point of delivery is no longer needed for a dwelling on this property because the dwelling is scheduled to be demolished.

Columbia indicates that the abandonment activities will consist of removing the station in its entirety and capping the tap. Columbia asserts that the minor costs associated with the abandonment will be expensed.

Any questions regarding the prior notice request should be directed to Fredric J. George, Senior Attorney, Columbia Gas Transmission Corporation, P. O. Box 1273, Charleston, West Virginia 25315–1273, at (304) 357–2359.

Any person or the Commission's staff may, within 45 day after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

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.,

Deputy Secretary.

[FR Doc. 02–18833 Filed 7–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2032–000]

NRG New Jersey Energy Sales LLC; Notice of Issuance of Order

July 19, 2002.

NRG New Jersey Energy Sales LLC (NRG) submitted for filing a rate schedule under which NRG will engage in the sale of wholesale energy, capacity and ancillary services at market-based rates and for the reassignment of transmission capacity. NRG also requested waiver of various Commission regulations. In particular, NRG requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by NRG.

On July 12, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NRG 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).

Absent a request to be heard in opposition within this period, NRG is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of NRG, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NRG's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 12, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (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 at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18830 Filed 7–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2080–000]

Ocean Peaking Power, L.P.; Notice of Issuance of Order

July 19, 2002.

Ocean Peaking Power, L.P. (OPP) submitted for filing a rate schedule under which OPP will engage in the sales of energy, capacity and certain ancillary services at market-based rates and for the reassignment of transmission capacity. OPP also requested waiver of various Commission regulations. In particular, OPP requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by OPP.

On July 12, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by OPP 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).

Absent a request to be heard in opposition within this period, OPP is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of OPP, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of OPP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 12, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (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 at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18834 Filed 7–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–402–000]

Tennessee Gas Pipeline Company; Notice of Application

July 19, 2002.

Take notice that on July 3, 2002, Tennessee Gas Pipelines Company (Tennessee), 9 East Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP02–402–000 , for permission and approval pursuant to section 7(b) of the Natural Gas Act (NGA) to abandon certain pipeline and appurtenant facilities in the offshore Louisiana area, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (call (202) 208–2222 for assistance).

Specifically, Tennessee proposes to abandon a 200-foot segment of Line 527A–300 located in West Delta Block 61A (WD61A) at the point where the line connects with Mesa Petroleum Company's (Mesa) platform. Tennessee also proposes to abandon a meter designated as the WD61A receipt point. Tennessee states that the line and meter were installed in 1978 to gain access to gas supplies in West Delta Blocks 61 and 62. It is explained that production from the platform ceased as of May 20, 1998 and that Pioneer Resources, USA, Inc. (Pioneer), the successor to Mesa's interest in the WD61A platform, intends to abandon and remove the platform. Tennessee's application includes a copy of the letter from Pioneer dated April 9, 2002, informing Tennessee that the platform is being removed.

In addition, Tennessee requests a limited, one-time waiver of the Commission's capacity release regulations and the capacity release provisions in Tennessee's FERC Gas Tariff to allow the continuation of a replacement contract with a new receipt point made necessary by the proposed abandonment. It is explained that although Tennessee is no longer receiving gas supplies from the Block 61 platform, Tennessee still has an agreement with Columbia Gas of Ohio, Inc. (COH) to provide gas under an FT agreement at the meter being abandoned, and that COH has released a portion of its firm capacity to Mirant Americas Energy Marketing , L.P. for a one-year term ending October 31, 2002.

Any questions regarding this amendment should be directed to Susan T. Halbach Senior Counsel, at (832) 676–5556.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 9, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file

comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18829 Filed 7–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1595–001]

TME Energy Services; Notice of Filing

July 17, 2002.

Take notice that on July 15, 2002, TME Energy Services filed with the Federal Energy Regulatory Commission (Commission) an ''Affiliate Sales Prohibited'' clause to Rate Schedule No. 1.

Any person desiring to intervene or to protest this filing should file 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). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: August 5, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18836 Filed 7–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–94–000, et al.]

Cargill-Alliant, LLC, et al.; Electric Rate and Corporate Regulation Filings

July 18, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Cargill-Alliant, LLC; Alliant Energy Corporation; Cargill, Incorporated

[Docket No. EC02–94–000]

Take notice that on July 15, 2002, Cargill-Alliant, LLC (Cargill-Alliant), Alliant Energy Corporation (Alliant), and Cargill, Incorporated (Cargill) tendered for filing a joint application for authorization for Alliant to transfer its membership interests in Cargill-Alliant to Cargill.

Comment Date: August 8, 2002.

2. Termo Norte Energia Ltda.

[Docket No. EG02–169–000]

Take notice that on July 16, 2002, Termo Norte Energia Ltda. filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Federal Energy Regulatory Commission's Regulations.

Applicant, a Brazilian limited liability company, owns power generating facilities in Brazil. These facilities consist of a 345MW combined cycle electric generating facility and facilities necessary to make wholesale sales of electricity in Brazil.

Comment Date: August 6, 2002.

3. New England Power Pool

[Docket Nos. EL00–83–006 and ER00–2811–006]

Take notice that on July 16, 2002, the New England Power Pool(NEPOOL) Participants Committee tendered for filing with the FederalEnergy Regulatory Commission (Commission), its report of compliance with the Commission's June 17, 2002 order in the above-captioned dockets. This report of compliance identifies whether any issues raised in NEPOOL's August 25, 2000 compliance filing in the above-captioned dockets has not been acted upon by the Commission.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: August 6, 2002.

4. Berkshire Power Company, L.L.C.; Colorado Power Partners; BIV Generation Company, L.L.C.; Capital District Energy Center; Cogeneration Associates; Dartmouth Power Associates; Limited Partnership; Eagle Point Cogeneration Partnership; Cogen Technologies NJ Ventures; Camden Cogen, L.P.; ManChief Power Company, L.L.C.; Milford Power Company, L.L.C.; Mt. Carmel Cogen, L.L.C.; Newark Bay Cogeneration Partnership, L.P.; Pawtucket Power Associates Limited Partnership; Fulton Cogeneration Associates, L.P.; San Joaquin Cogen Limited; Vandolah Power Company, L.L.C.; Cedar Brakes I, L.L.C.; Cedar Brakes II, L.L.C; Utility Contract Funding, L.L.C.; Mohawk River Funding III, L.L.C.; Mohawk River Funding IV, L.L.C.; Power Contract Finance, L.L.C.; (Not Consolidated)

[Docket Nos. ER99–3502–001; ER99–3077–001; ER02–579–001; ER96–149–008; ER01–3055–002; ER02–1486–001; ER01–2756–002; ER02–1831–002; ER99–4102–001; ER02–1324–001; ER00–2887–002; ER02–580–001; ER01–324–002; ER00–1517–002; ER02–1336–001; ER01–2765–001; ER01–3056–003; ER02–137–001; ER01–2799–001; ER00–2885–002; ER02–1485–001; and ER99–3197–001]

Take notice that on July 15, 2002, the subsidiaries of El PasoCorporation that have been granted market-based rates by the FederalEnergy Regulatory Commission submitted for filing a triennial market analysis in support of their existing market-based rates authority.

Comment Date: August 5, 2002.

5. New England Power Pool

[Docket No. ER02–2315–000]

Take notice that on July 15, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted the Eighty-Seventh Agreement Amending New England Power Pool Agreement (the Eighty-Seventh Agreement), which proposes changes to (1) the Financial Assurance Policy for NEPOOL Members, which is Attachment L to the NEPOOL Tariff, (2) the Financial Assurance Policy for Non-Participant Transmission Customers, which is Attachment M to the NEPOOL Tariff, and (3) the New England Power Pool Billing Policy, which is Attachment N to the NEPOOL Tariff (collectively, the

''Policies''). The Eighty-Seventh Agreement proposes changes to the Policies to account for the implementation of the FTR Markets in NEPOOL and the presence of Non-Participant FTR Customers transacting in those markets and to clarify certain provisions of the Policies.

A September 16, 2002 effective date was requested. The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: August 5, 2002.

6. New York Independent System Operator, Inc.

[Docket No. ER02–2318–000]

Take notice that on July 12, 2002, the New York Independent System Operator, Inc. (NYISO) hereby respectfully requests that the Federal Energy Regulatory Commission (Commission) grant it permission to waive: (I) performance charges applicable to certain categories of Generators that were previously deferred on an interim basis by the NYISO; and (ii) performance charges applicable to suppliers of Regulation and Frequency Response Service (Regulation) that could not be accurately or fairly assessed.

Comment Date: August 2, 2002.

7. Idaho Power Company

[Docket No. ER02–2319–000]

Take notice that on July 15, 2002 Idaho Power Company filed a Service Agreement for Non-Firm Point-to-Point Transmission Service between Idaho Power Company and FPL Energy Power Marketing, Inc., under its open access transmission tariff in the above-captioned proceeding.

Comment Date: August 5, 2002.

8. Idaho Power Company

[Docket No. ER02–2320–000]

Take notice that on July 15, 2002, Idaho Power Company filed a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and FPL Energy Power Marketing, Inc., under it open access transmission tariff in the above-captioned proceeding.

Comment Date: August 5, 2002.

9. California Independent System Operator Corporation

[Docket No. ER02–2321–000]

Take notice that on July 15, 2002, the California Independent System Operator Corporation (ISO) tendered for filing Amendment No. 46. The purpose of the amendment is to modify the provisions of the ISO Tariff concerning Metered Subsystems. The ISO also filed the Northern California Power Agency Metered Subsystem Aggregator Agreement; the City of Roseville Metered Subsystem Agreement; and the Silicon Valley Power Metered Subsystem Agreement. This filing is in accordance with an Offer of Settlement being filed in Docket Nos. ER01–2998–000, ER02–358–000, and EL02–64–000.

The ISO requests the amendment and the agreements be made effective on September 1, 2002. The ISO states that this filing has been served on the California Public Utilities Commission, all California ISO Scheduling Coordinators.

Comment Date: August 5, 2002.

10. New England Power Pool and ISO New England Inc.

[Docket No. ER02–2330–000]

Take notice that on July 15, 2002, the New England Power Pool (NEPOOL) Participants Committee, joined by ISO New England Inc., submitted Market Rule 1and related materials for filing at the Commission. Market Rule 1 contains comprehensive changes to the NEPOOL arrangements to adopt for New England a revised wholesale market design, commonly referred to in New England as the ''standard market design'', for the implementation of locational marginal pricing and a multi-settlement system. The NEPOOL Participants Committee and ISO New England request that the Commission accept Market Rule 1 to become effective on September 15, 2002.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: August 5, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 FirstStreet, 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). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link,select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18784 Filed 7–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10855–002—Michigan Dead River Project]

Upper Peninsula Power Company; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

July 19, 2002.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Michigan State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Advisory Council) pursuant to the Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. Section 470 f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project No. 10855–002.

[1] 18 CFR 385.2010.

The Programmatic Agreement, when executed by the Commission, the SHPO, and the Advisory Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to Section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below. The executed Programmatic Agreement would be incorporated into any license issued.

Upper Peninsula Power Company, as prospective licensee for Project No.10855–002, is invited to participate in consultations to develop the Programmatic Agreement and to sign as a concurring party to the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 10855–002 as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

David Hickey, City of Marquette, Board of Light and Power, 2200 Wright Street, Marquette, MI 49855–1366.

Robert J. Meyers, Supervisor—Hydros, Upper Peninsula Power Company, PO Box 537, Ishpeming, MI 49849–0537.

Brian D. Conway, SHPO, Michigan Historical Center, 717 West Allegan Street, Lansing, MI 48909.

Robert Powless, Tribal Historic Preservation Officer, Bad River Band of Lake Superior Chippewa Indians, P.O. Box 39, Odanah, WI 54861.

George Beck, Tribal Historic Preservation Officer, Lac Vieux Desert Band of Lake Superior Chippewa Indians, P.O. Box 249, Watersmeet, MI 49969.

Mary Manydeeds, Bureau of Indian Affairs, Midwest Regional Office, One Federal Drive, Room 550, Ft. Snelling, MN 55111.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE, Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18831 Filed 7–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2589–024—Michigan Marquette Project]

Marquette Board of Power and Light; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

July 19, 2002.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Michigan State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Advisory Council) pursuant to the Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. 470f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project No. 2589–024.

The Programmatic Agreement, when executed by the Commission, the SHPO, and the Advisory Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to Section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below. The executed Programmatic Agreement would be incorporated into any license issued.

Marquette Board of Power and Light, as prospective licensee for Project No. 2589–024, is invited to participate in consultations to develop the Programmatic Agreement and to sign as a concurring party to the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 2589–024 as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

David Hickey, City of Marquette, Board of Light and Power, 2200 Wright Street, Marquette, MI 49855–1366.

Robert J. Meyers, Supervisor—Hydros, Upper Peninsula Power Company, PO Box 537, Ishpeming, MI 49849–0537.

Brian D. Conway, SHPO, Michigan Historical Center, 717 West Allegan Street, Lansing, MI 48909.

Robert Powless, Tribal Historic Preservation Officer, Bad River Band of Lake Superior Chippewa Indians, P.O. Box 39, Odanah, WI 54861.

George Beck, Tribal Historic Preservation Officer, Lac Vieux Desert Band of Lake Superior Chippewa Indians, P.O. Box 249, Watersmeet, MI 49969.

Mary Manydeeds, Bureau of Indian Affairs, Midwest Regional Office, One Federal Drive, Room 550, Ft. Snelling, MN 55111.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18835 Filed 7–24–02; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2010.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

July 19, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. Copies of this filing are on file with the Commission and are available for public inspection. The documents may 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).

EXEMPT

Docket No.	Date filed	Presenter or requester
1. CP01–415–000	7–12–02	Barbara Winn.
2. Project No. 1494–240	7–16–02	Cheryl B. Creekmore.
3. Project No. 1494–240	7–16–02	Stephen S. Adams.
4. Project No. 2055–000	7–16–02	Sandra L. Guchea.
5. Project No. 1494–233	7–17–02	Jim Martin (Frank Ronsse).

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18832 Filed 7–24–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7248–1]

State Innovation Pilot Grant Program, Solicitation of Proposals for 2002

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On July 19, 2002 the U.S. Environmental Protection Agency transmitted a solicitation for proposals for a pilot grant program to support innovation by State environmental regulatory agencies—the ''State Innovation Pilot Grant Program,'' to the fifty-five state and Territorial Secretaries or Commissioners of those agencies.

DATES: Respondents will have until August 19, 2002 to respond with a brief pre-proposal and budget.

ADDRESSES: The URL address for the solicitation package is: *http://www.epa.gov/projectxl/2002state.htm*. Copies of the solicitation package will also be available from: Gerald Filbin (202–566–2182) (*filbin.gerald@epa.gov*) (FAX 202–566–2220); Office of Environmental Policy Innovation, Office of Policy Economics and Innovation; US Environmental Protection Agency (1807T); 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gerald Filbin at 202–566–2182.

SUPPLEMENTARY INFORMATION: Announcement of Availability of Solicitation for Pilot State Grants Program: In April 2002, EPA issued its plan for future innovation, published as Innovating for Better Environmental Results: A Strategy to Guide the Next Generation of Innovation at EPA (EPA 100–R–02–002; *http://www.epa.gov/opei/strategy*). The Agency's Strategy presents a framework for innovation consisting of four major elements:

(1) Strengthen EPA's innovation partnerships with States and Tribes;

(2) Focus on priority environmental areas:

—Reduce greenhouse gases
—Reduce smog
—Restore and maintain water quality
—Reduce the cost of water and wastewater infrastructure;

(3) Diversify our environmental protection tools and approaches:

—Information resources and technology
—Environmental technology
—Incentives
—Environmental Management Systems
—Results-based goals and measures;

(4) Foster a more ''innovation-friendly'' organizational culture and systems.

This pilot grant program will seek to strengthen EPA's innovation partnership with States by establishing a new system of funding to facilitate State efforts to address the priority environmental areas targeted in —and use the tools highlighted in—the Strategy. EPA would like to help States build on previous experience and undertake bigger, bolder and more strategic projects which test new models for ''next generation'' environmental protection and promise better environmental results.

With this 2002 pilot program, EPA is exploring the use of grants and cooperative agreements to support innovation at the State level. For 2002, and contingent upon Congressional approval of a re-programming request, EPA anticipates approximately $500,000.00 in total will be available for State innovation pilot assistance—this pilot fund will support approximately 3–7 projects that can produce results in

2–3 years. Only the States, the District of Columbia and the US Territories are eligible for this 2002 pilot grant program. It is EPA's intention to expand this pilot program to include innovation by American Indian Tribes, if funding becomes available in FY 2003.

The complete solicitation package was sent by express courier to the environmental regulatory agency Commissioners/Secretaries of every State, the District of Columbia and the Territories. It became available on the EPA's website on July 19, 2002.

Dated: July 19, 2002.

Christopher A. Knopes,

Associate Director, Office of Environmental Policy Innovation.

[FR Doc. 02–18864 Filed 7–24–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7251–2]

Additional Data Available on Wastes Studied in the Report to Congress on Cement Kiln Dust

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability (NODA) and request for comments.

SUMMARY: This notice announces the availability for public inspection and comment, of recently acquired data on cement kiln dust (CKD) studied in the Agency's December 1993 Report to Congress on Cement Kiln Dust (see 59 FR 709, 1/6/94). The Agency is now considering an approach whereby it would finalize the proposed option of issuing the protective CKD management standards as described in the August 20, 1999 proposal (64 CFR 45632) , as a RCRA Subtitle D rule. The Agency would temporarily suspend its active consideration of the proposed listing of mismanaged CKD as a hazardous waste, and assess how CKD management practices and state regulatory programs evolve over the next three to five years. Based on this assessment, EPA will then proceed to either formally withdraw or promulgate the portion of the 1999 proposal that classifies as a RCRA hazardous waste CKD that has been egregiously mismanaged.

DATES: Submit comments on or before September 23, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline at (800) 424–9346 or (202) 260–3000; for technical information contact Anthony Carrell (5306W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, *carrell.anthony@epa.gov,* (703) 308–0458.

SUPPLEMENTARY INFORMATION:

I. General Information

EPA has established an official public docket for this action under Docket ID No. RCRA–1999–0011. The official public docket is the collection of materials that is available for public viewing at the RCRA Information Center (RIC), 1235 Jefferson Davis Hwy, 1st Floor, Arlington, VA 22201. This Information Center is open from 9 a.m.–4 p.m., Monday through Friday, excluding legal holidays. The Center telephone number is (703) 603–9230.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.3.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/*

edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in Docket ID No. RCRA–1999–0011. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to [RCRA-*docket@epamail.epa.gov*], Attention Docket ID No. RCRA–1999–0011. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address already identified. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Environmental Protection Agency, Mailcode: 5305–G, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. RCRA–1999–0011.

3. *By Hand Delivery or Courier.* Deliver your comments to: RCRA Information Center (RIC), 1235 Jefferson Davis Hwy, 1st Floor, Arlington, VA 22201, Attention Docket ID No. RCRA–1999–0011. Such deliveries are only accepted during the Center's normal hours of operation as identified above.

Background: On February 7, 1995, EPA issued the Regulatory Determination required by section 3001(b)(3)(C) of RCRA, finding that additional control of CKD was warranted (60 FR 7366). Specifically, the Agency stated that its concerns about the potential harm to human health and the environment posed by some CKD suggest the need for some level of regulation under RCRA Subtitle C authority. The Agency also decided to evaluate the need for additional controls for off-site use of CKD as use as a substitute for lime on agricultural fields.

On August 20, 1999, EPA issued a proposed rule (64 FR 45632) outlining the Agency's preferred regulatory approach; i.e., an exemption from hazardous waste listing for properly managed CKD, and several optional approaches including requirements solely under RCRA Subtitle D. Under the preferred approach, CKD would remain a non-hazardous waste provided the following management standards are met. First, for ground water protection, the Agency proposed management standards which require a landfill to be designed to control releases of toxic metals to ground water. EPA also proposed that ground water monitoring be required for all new and existing CKD management units to detect the presence of regulated constituents in the ground water. The Agency also proposed that within 90 days of finding that any of the part 261 inorganic constituents have been detected at a statistically significant level exceeding the groundwater protection standards as defined under § 259.45(h), the persons managing the CKD waste must initiate an assessment of corrective measures. The ground water monitoring and corrective action requirements proposed are based on requirements promulgated under part 258 for municipal solid waste landfills and hazardous waste regulations under part 264–subpart F for Solid Waste Management Units. Second, to control releases of fugitive dust, the proposed management standards would require persons managing CKD waste to cover or otherwise manage the landfill, CKD handling areas, and CKD storage areas to control wind dispersal of fugitive CKD. Third, EPA proposed concentration limitations on various pollutants in CKD used for agricultural purposes. Finally, the Agency proposed a hazardous waste listing and tailored standards for CKD where there are egregious or repeated violations of the management standards described above.

EPA also took comment on an approach that would promulgate the same protective management standards described above solely as RCRA Subtitle D requirements, relying on authority in RCRA section 4004(a). Under this approach the standards would be enforceable by the public through citizen suits. EPA would additionally encourage States to adopt standards developed under Subtitle D as enforceable standards under State law, but the Agency could not compel them to do so. Such standards would not be directly enforceable by EPA under the enforcement authorities of sections 3007 and 3008. However, EPA could take enforcement action under section 7003, upon a finding of imminent and substantial endangerment. In addition, the Agency requested comment on several other approaches. See 64 FR 45632 for a discussion of these other approaches.

The Agency received a total of 52 comments; two from the Association of State and Territorial Solid Waste Management Officials, 11 from states, two from the American Portland Cement Alliance, 23 from cement plants, six from other related industry commenters, five from CKD reusers or recyclers and three from geotechnical engineering companies or consultants. No written comments were submitted by citizens groups, environmental community groups or the general public. All comments are on file in the Docket to this NODA and may be reviewed; see the **ADDRESSES** section below. In addition, a summary of public comments document is available on the internet at www.epa.gov/epaoswer/other/ckd/index.htm.

New Data: On May 11, 2001, the American Portland Cement Alliance (APCA) submitted a rulemaking petition to EPA pursuant to 7004(a) of the RCRA requesting that the Agency (1) withdraw the regulations EPA proposed in 1999 relating to CKD and (2) reverse the 1995 regulatory determination for CKD. EPA met with APCA on July 6, 2001 to discuss the petition. APCA indicates that a decrease in waste CKD, an increase in groundwater monitoring, improved CKD management practices, improved fugitive dust controls and improvements in State programs obviate the need for federal CKD waste management regulations. APCA suggests that State programs have improved and provided regulatory language from six States illustrating they no longer allow placement of waste in old quarries down into the groundwater. APCA also contends that the amount of CKD disposed by the most significant disposers of the dust has been reduced by over 22 percent since 1990, while during the same period clinker production among these same plants has increased by almost 22 percent. APCA provided groundwater monitoring data for 18 CKD disposal facilities from a collection of information on 35 plants that together accounted for approximately 95 percent of the CKD landfilled in the United States in 2000.

Applicable State groundwater contaminant limits for these 18 facilities were also provided. APCA points out that 20 of the 35 plants (57%) monitor ground water, 34 (97%) practice landfill dust control techniques, 30 (86%) CKD employ compaction techniques, 32 (91%) practice road-dust control and 27 (77%) have water runoff controls. APCA's rulemaking petition and a summary of the July 6, 2001 meeting are on file in the Docket to this NODA. For access to these materials, see the **ADDRESSES** section below.

APCA also provided summary reports of groundwater monitoring data dated

October 2001 for 18 CKD disposal facilities operated by nine cement manufacturing companies in 10 States. EPA assessed these data for exceedances of groundwater maximum contaminant levels or health-based numbers. APCA's summary reports of groundwater monitoring data and EPA's analysis of the data are in the Docket to this NODA.

ADDRESSES: Supporting materials and comments on the 1999 proposed rule are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is RCRA–1999–0011. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

Comment Period: The Agency is soliciting comments only on the new data provided by APCA regarding reduced disposal, more extensive groundwater monitoring, increased fugitive dust controls, and improved CKD management and state programs. EPA is not reopening the comment period on the Report to Congress on Cement Kiln Dust or the 1999 proposed rule. Public comments on the new APCA data will be accepted through September 23, 2002.

Comment Submissions: Those persons, companies or organizations intending to submit comments for the record must send an original and two copies to the following address: RCRA Docket Information Center (5305), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460. Please place the docket number RCRA–1999–0011 on your comments.

Additional Information: As noted above, the 1999 proposal sought comment on a number of regulatory options for addressing the hazards associated with managing CKD. Among the options discussed, was the adoption of the management standards described in the proposed rule language (64 FR 45632) solely as RCRA Subtitle D requirements. As also noted above, we received numerous comments on the 1999 proposal from industry and States. The Agency has reviewed all comments on the proposed rule, including comments directed to the Subtitle D option. Based on our review of the comments, the Agency recognizes that even though detection of contaminants from CKD in groundwater, and fugitive dust emissions from CKD management units continue, improvements are occurring in cement manufacturing technology and processes that are resulting in an increase in CKD recycling back into the manufacturing process which translates to a decrease in waste CKD. We also recognize that there has been an increase in groundwater monitoring at CKD management units. We further recognize that additional States have regulatory programs that address CKD management and a number of other States are willing to develop or refine regulatory programs, but are reluctant to do so pending EPA's decision on the 1999 proposal.

In light of these developments, the Agency is now considering an approach whereby it would finalize the proposed option of issuing the CKD management standards as described in the August 20, 1999 proposal (64 CFR 45632) , as a RCRA Subtitle D rule and would temporarily suspend its active consideration of the proposed mismanagement-based listing (but would not formally withdraw the proposed rule) for a period of three to five years. During this time, EPA would collect data to evaluate the effectiveness of CKD management practices and States' regulatory programs. This approach would create a federal baseline that states could use to develop appropriate regulatory programs and allow adequate time for implementation of more protective CKD management standards. If after its evaluation the Agency deems CKD management practices and State regulatory programs to be effective in protecting human health and the environment, the Agency would formally withdraw the Subtitle C portion of the 1999 proposal and would revisit the 1995 CKD regulatory determination. On the other hand, if the Agency deems CKD management practices and State regulatory programs to be ineffective after this period, the Agency would pursue regulation of mismanaged CKD under RCRA Subtitle C, as described in the 1999 proposal.

Additionally, the Agency has determined that additional risk analyses for CKD used as an agricultural soil amendment substitute is warranted. The Agency will perform these analyses and report the results in a subsequent NODA. If additional controls are needed for CKD used as an agricultural soil amendment substitute, the Agency will issue agricultural use requirements.

Dated: July 16, 2002.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 02–18870 Filed 7–24–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Managemnet and Budget

July 17, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judith Boley Herman, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0954.
Expiration Date: 07/31/05.
Title: Implementation of the 911 Act.
Form No.: N/A.
Respondents: Business, not-for-profit institutions, and State, local, or tribal Government Entities.
Responses: 800.
Estimated Time Per Response: 4.5 hours.
Total Annual Burden: 3,100 hours.
Total Annual Cost: 0.
Description: The burdens are all needed to ensure prompt and smooth transition to universal 911 emergency calling services.

OMB Control No.: 3060–0987.
Expiration Date: 06/30/05.
Title: 911 Callback Capability; Non-initialized Phones.
Form No.: N/A.
Respondents: Business, State, local, or tribal Government Entities.
Responses: 3,137.
Estimated Time Per Response: 1 to 3 hours.
Total Annual Burden: 4,885 hours.
Total Annual Cost: $661.00.
Description: The labeling requirement, education requirement, and software/coding requirement are all

needed to make all parties involved in emergency calls originating from non-initialized and ''911-only'' phones aware that the calling party cannot be reached for further information, if necessary. Thus, complete, critical location information must be supplied to the PSAP as quickly as possible in the originating call.

OMB Control No.: 3060–0813.

Expiration Date: 06/30/05.

Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Calling Systems.

Form No.: N/A.

Respondents: Business or other for-profit, Federal Government, and State, local, or tribal Governments.

Responses: 47,031.

Estimated Time Per Response: 4 hours.

Total Annual Burden: 198,200 hours.

Total Annual Cost: 0.

Description: The burdens are all needed to ensure that transition to wireless Enhanced 911 service is achieved in as smooth and timely fashion as technologically possible, with minimum burden on all concerned parties, including carriers, manufacturers, and PSAPs, while still achieving the important, public safety goals of the proceeding.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–18790 Filed 7–24–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

PREVIOUSLY ANNOUNCED DATA AND TIME: Thursday, July 25, 2002, 10 a.m. Meeting Open to the Public.

The following item was added to the agenda: Bipartisan Campaign Reform Act Rulemaking Calendar (revised).

The following item was held over to August 1, 2002: Draft Advisory Opinion 2002–08, David Vitter for Congress Committee by William J. Vanderbrook, Treasurer.

DATE AND TIME: Tuesday, July 30, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g. 438(b) and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 1, 2002 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Draft Advisory Opinion 2002–08: David Vitter for Congress Committee by William J. Vanderbrook, Treasurer.

Draft Advisory Opinion 2002–10: Green Party of Michigan by Marc Reichardt, Chair.

Draft Notice of Proposed Rulemaking on ''Electioneering Communications.''

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–18958 Filed 7–23–02; 10:56 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011733–005, –006.

Title: Common Ocean Carrier Platform Agreement.

Parties: Alianca Navegacao e Logistica Ltda.; A.P. Moller-Maersk Sealand; CMA CGM, S.A.; CP Ships Limited; Hamburg Sud; Hapag-Lloyd Container Linie GmbH; Mediterranean Shipping Company, S.A.; Nippon Yusen Kaisha; P&O Nedlloyd Limited; Safmarine Container Lines N.V.; United Arab Shipping Company (S.A.G.).

Synopsis: Proposed Amendment No. 005 would permit non-party ocean common carriers to use the Portal authorized by the agreement on a trial basis without becoming a party to the agreement. Amendment No. 006 adds CP Ships Limited, for and on behalf of its ocean common carrier subsidiaries, as a non-shareholder party to the agreement.

Dated: July 19, 2002.

By order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary,

[FR Doc. 02–18752 Filed 7–24–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Airsealand Express Incorporated, 2680 Donegal Avenue, So. San Francisco, CA 94080. Officers: Isidro H. Protasio, President (Qualifying Individual), Randall N. Harris, Chairman.

Eaglewings Freight Services Inc., 35 Lambert Street, Roslyn Heights, NY 11577. Officers: Ying Huang (Irene), President (Qualifying Individual), Su Hwa Lin, Secretary.

Pas Cargo USA Inc., 16351 SW 23rd Street, Miramar, FL 33027. Officers: Dirk Chee-A-Tow, President (Qualifying Individual), Jeanine Chee-A-Tow, Vice President.

Pacific-Net Logistics (NYC) Inc., 151–02 132 Avenue (AIP), Jamaica, NY 11434. Officers: Chi Ming Szeto, President (Qualifying Individual), Tony Yet Yu Ng, Secretary.

Gava Italian Airfreight Consolidators, Inc. dba Gava International Freight Consolidators, Inc., 419 S. Hindry Avenue, Unit B, Inglewood, CA 90301. Officers: Giovanni Valente, Vice President (Qualifying Individual), Mario G. Hummel, President/CEO.

ARC Air Logistics, Inc., 9133 S. La Cienega Blvd., Suite 170, Inglewood, CA 90301. Officer: Anthony Rimland, Managing Director (Qualifying Individual).

Dominicana Air & Ocean Freight, Corp., 1332 N.W. 36 Street, Miami, FL

33142. Officers: Isabel Ramirez, Vice President (Qualifying Individual), Denise A. Zitz, President.

International Ocean Logistics, 9390 NW 23rd Street, Pembroke Pines, FL 33024. Officer: Elizeth R. Goncalves, President (Qualifying Individual).

Prime Holidays Tour & Car Rentals Inc. dba Ultimate Solutions, 6130 Edgewater Drive, Suite H, Orlando, FL 33147. Officers: Marie Y. Baity, Director/Secretary (Qualifying Individual), Byron C. Gardner, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Eastern Network Express, Inc. dba Eastern Container Line, One Cross Island Plaza, Suite 111, Rosedale, NY 11422. Officer: Louisa Chiu, President (Qualifying Individual).

G.P.R. International, Inc., 8347 NW 68th Street, Miami, FL 33166. Officer: Roberto Diaz, President (Qualifying Individual).

Rende Li, 2794 Covered Bridge Road, Merrick, NY 11566. Sole Proprietor.

Global Quality Logistics, Inc., 18411 Crenshaw Blvd., Suite 210, Torrance, CA 90504. Officers: Daniel Lim, CEO (Qualifying Individual), Sumddi Kusuma, Director.

Brit-Am Logistic Management Services, Inc., 6425 Woodstone Way, Morrow, GA 30260. Officer: Carylon E. Simpson-Graves, President.

Cross Trans Service USA, Inc., 1480 Elmhurst Road, Elk Grove Village, IL 60007. Officers: Bonifacio Salas, Vice President (Qualifying Individual), Kurt Konodi-Floch, CEO.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

PK Logistics, Inc., 114 Maple Avenue, Red Bank, NJ 07701. Officers: Paul William Kelley, CEO/President (Qualifying Individual), Kristina Katja Kelley, Vice President.

Fox Freight Forwarders, Inc., 3727 NW 52nd Street, Miami, FL 33142. Officers: Maria S. Hugues, President (Qualifying Individual), Maria J. Boue, Vice President.

Universal Freight Forwarders Ltd., 12820 NE 185th Court, Bothell, WA 98011. Officers: Irmgard S. Harris, Gen. Manager/President (Qualifying Individual), George E. Tylen, Vice President.

TFS Acquisition Corp., 7959 NW 21 Street, Miami, FL 33122. Officers: Laura Almaguer, Vice President (Qualifying Individual), Richard Schuler, President.

ARK Technology, Inc. dba ARK International, 14545 Valley View Ave. #G, Santa Fe Springs, CA 90670. Officer: Gilbert Ji, President (Qualifying Individual).

Dolphin Call USA Inc., 321½ East First Street, Suite 200, Los Angeles, CA 90012–3920. Officer: Yasuyuki Kitajima, President (Qualifying Individual).

Shiprotectors International, 1730 Ximeno Avenue, Suite #12, Long Beach, CA 90815. Officer: Kevin J. Gregory, Managing Director (Qualifying Individual).

Dated: July 19, 2002.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–18749 Filed 7–24–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/Address	Date reissued
17180F	American Logistic Co. Inc., 10840 Warner Avenue, Suite 205, Fountain Valley, CA 92708.	May 23, 2002.
15590N	Express Global Freight, Inc., 400 S. Atlantic Blvd., Suite #308, Monterey Park, CA 91754.	April 24, 2002.
12279NF	Frontrunner Worldwide, Inc., 5001 U.S. Highway 30 West, Fort Wayne, IN 46801–0988.	April 12, 2002.
6053N	Sino-Am Marine Company, Inc., 601 East Linden Avenue, Linden, NJ 07036.	May 25, 2002.
17354N	Wingar Logistics Inc., 9690 Telstar Avenue, Suite 207, El Monte, CA 91731.	May 25, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–18750 Filed 7–24–02; 8:45 am]

BILLING CODE 65730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 16159F.
Name: American Pioneer Shipping L.L.C.
Address: 33 Wood Avenue, South, Suite 600, Iselin, NJ 08830.
Date Revoked: February 2, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3961.
Name: Ford Freight Forwarders, Inc.
Address: 8081 NW 67th Street, Miami, FL 33166.
Date Revoked: May 25, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15965N.
Name: Global Cargo U.S.A. Inc.
Address: 7500 W 18th Lane, Hialeah, FL 33014.
Date Revoked: April 27, 2002.
Reason: Failed to maintain a valid bond.

License Number: 1988N.
Name: HEG International Freight Forwarders, Inc.
Address: 5855 Naples Plaza, Suite 2, Long Beach, CA 90803.
Date Revoked: June 8, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15471N.
Name: Navicargo, Inc.
Address: 8325 NW. 55th Street, Suite 103, Miami, FL 33166.
Date Revoked: May 25, 2002.

Reason: Failed to maintain a valid bond.

License Number: 3177NF

Name: Pacific Freight, Inc.

Address: 2420 W. Carson Street, Suite #200, Torrance, CA 90501.

Date Revoked: June 13, 2002.

Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–18751 Filed 7–24–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 19, 2002.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Sky Financial Group, Inc., Bowling Green, Ohio; to acquire an additional 8.2 percent, for a total of 19 percent of the voting shares of NSD Bancorp, Inc., Pittsburgh, Pennsylvania, and thereby indirectly acquire voting shares of Northside Bank, Pittsburgh, Pennsylvania.

2 Sky Financial Group, Inc., Bowling Green, Ohio; to merge with Three Rivers Bancorp, Monroeville, Pennsylvania, and thereby indirectly acquire The Three Rivers Bank and Trust, Jefferson Borough, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Rockhold Bancorp, Kirksville, Missouri; to acquire 8 percent of the voting shares of La Plata Bancshares, Inc., La Plata, Missouri, and thereby indirectly acquire voting shares of La Plata State Bank, La Plata, Missouri.

Board of Governors of the Federal Reserve System, July 19, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–18763 Filed 7–24–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulations Y (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulations Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 8, 2002.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Security Pacific Bancorp, Ontario, California; to engage *de novo* through Security Pacific Finance Company, Ontario, California, in lending activities, pursuant to §§§ 225.28(b)(1), (b)(2)(i), and (b)(2)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 19, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–18764 Filed 7–24–02; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

[Docket No. OMB Control No. 3090–0248]

Submission for OMB Review and Extension; GSAR 516.506, Solicitation Provisions and Contract Clauses, 552.216–72, Placement of Orders Clause and 552.216–73, Ordering Information Clause

AGENCY: General Services Administration (GSA).

ACTION: Notice of a request for review and extension of the collection (3090–0248).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection that pertains to GSAR 516.506, Solicitation provisions and contract clauses, and GSAR Placement of Orders clause and Ordering Information clause. The information collected is required by regulation. The information collected under this collection is collected through Electronic Data Interchange (EDI) in accordance with the Federal Government's mandate to increase electronic commerce. A request for public comments was published at 67 FR 19758, April 23, 2002. No comments were received.

Public comments are particularly invited on: Whether the information collection required by GSAR 516.506 and generated by the GSAR clauses, 552.216–72, Placement of Orders, and 552.216–73, Ordering Information, is necessary to ensure the Federal Supply Service (FSS) maximizes the use of

computer-to-computer electronic data interchange (EDI) to place delivery orders; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: *Comments Due Date:* August 26, 2002.

ADDRESSES: Please submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Ms. Stephanie Morris, General Services Administration, Acquisition Policy Division, 1800 F Street, NW., Room 4035, Washington, DC 20405, or fax to (202) 501–4067. Please cite OMB Control No. 3090–0248.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Acquisition Policy Division, GSA (202) 208–1168.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of Federal Supply Service's (FSS's) Stock, Special Order, and Schedules Programs. These mission responsibilities generate requirements that are realized through the solicitation and award of various types of FSS contracts. Individual solicitations and resulting contracts may impose unique information collection and reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

B. Annual Reporting Burden

Respondents: 5380.
Responses Per Respondent: 1.
Total Responses: 5380.
Hours Per Response: .25.
Total Burden Hours: 1,345.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, Acquisition Policy (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0248 in all correspondence.

Dated: July 15, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–18881 Filed 7–24–02; 8:45 am]

BILLING CODE 6820–14–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 26]

Federal Travel Regulation; eTravel Initiative

AGENCY: Office of Governmentwide Policy (MTT), GSA.

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin informs Federal agencies of the creation of the eTravel Initiative and of the intent to require agency use of the governmentwide, web-based, end-to-end travel management system.

EFFECTIVE DATE: This bulletin is effective June 18, 2002.

FOR FURTHER INFORMATION CONTACT: Tim Burke, General Services Administration, Office of Governmentwide Policy (MTT), Washington, DC 20405; e-mail, *timothy.burke@gsa.gov;* telephone (703) 872–8611.

SUPPLEMENTARY INFORMATION: The eTravel Initiative was born out of a Bush Administration governmentwide task force that was established to address performance gaps in existing Government systems as they relate to E-Government. The eTravel Initiative will establish a single portal by December 2003 that Federal employees making official business trips will use to obtain travel authorizations, make reservations and pay for airline tickets and other expenses. The system will work much like commercial web-based systems that the public uses to book business travel.

Dated: June 18, 2002.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

Attachment

Attachment

June 18, 2002
[GSA Bulletin FTR 26]
TO: Heads of Federal Agencies
SUBJECT: eTravel Initiative

1. *Purpose.* This bulletin notifies Federal agencies of the creation of the eTravel Initiative, a governmentwide, web-based, end-to-end travel management system. It is the intent of the General Services Administration to require agency use of the system.

2. *Background.* The eTravel initiative was born out of the governmentwide task force known as Quicksilver, that was established to address performance gaps in existing Government systems as they relate to E-Government, a key component of the President's Management Agenda.

3. *eTravel Objective.* To automate and consolidate the Federal Government's travel process through a self-service, web-based environment, offering end-to-end travel services from planning, authorization and reservation, through claims and voucher reconciliation. eTravel will eliminate the need for hardcopy travel documentation that is currently used at many agencies. It will re-engineer the entire travel process to realize significant cost savings, to improve employee productivity and to provide a unified, simplified official travel process. The eTravel system will be available by the end of 2003.

4. *Government Interest.* eTravel is in the best interest of the Government because it will produce:

a. A governmentwide, web-based, end-to-end travel management service;

b. A cost model that reduces capital investment and lowers the travel transaction cost for the Government; and

c. A policy environment based on the use of best travel management practices.

5. *Agency Planning.* Agencies will be required to use the new eTravel system. Therefore, any present effort to re-engineer agency travel processes should be geared for maximum flexibility, so that any new systems or processes will be adaptable to the new eTravel system. Agencies are cautioned against investment in new systems that will be agency-specific and non-transferable to the eTravel system.

6. *Point of Contact.* Tim Burke, Director, Travel Management Policy Division (MTT), Office of Governmentwide Policy, General Services Administration, Washington, DC 20405; telephone 703–872–8611; e-mail, *timothy.burke@gsa.gov.*

7. *Expiration Date.* This bulletin expires when the FTR (41 CFR 300–304) is revised to incorporate the specific modules of the Government eTravel management system.

[FR Doc. 02–18880 Filed 7–24–02; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science

[Program Announcement No. OPHS 2002–01]

Announcement of the Availability of Financial Assistance and Request for Applications to Support Development and Delivery of Public Awareness Campaigns on Embryo Adoption

AGENCY: Office of Public Health and Science, Department of Health and Human Services.

ACTION: Notice.

Authority: Pub. L. 107–116.

SUMMARY: The Office of Public Health and Science (OPHS) of the Department of Health and Human Services (DHHS) announces the availability of funding and requests applications for public awareness campaigns on embryo adoption for fiscal year (FY) 2002 as authorized in Pub. L. 107–116, enacted on January 10, 2002. Approximately $900,000 in funding is available on a competitive basis for three to four new projects each in the range of $200,000 to $250,000. The Catalog of Federal Domestic Assistance (CFDA) number is 93.007. The CFDA is a government-wide compendium of enumerated Federal programs, projects, services and activities that provide assistance.

DATES: Applications must be received in the OPHS or clearly postmarked no later than August 26, 2002. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications which do not meet the deadline will not be accepted for review. OPHS will notify each late applicant that its application will not be considered in the current competition. OPHS cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to OPHS electronically will not be accepted.

ADDRESSES: Application kits may be requested from, and applications submitted to: Andrea Brandon, Grants Management Office, Office of Population Affairs, Office of Public Health and Science, Department of Health and Human Services, 4350 East West Highway, Suite 200, Bethesda, Maryland 20814. Application kits are also available online at: *http://opa.osophs.dhhs.gov/* or *http://4women.gov/owh/index.htm* Written requests for application materials may be faxed to (301) 594–5980.

FOR FURTHER INFORMATION CONTACT: Kaye Hayes, MPA at (202) 205–2003 for questions specific to project activities of the program or Andrea Brandon, (301) 594–4012 for grants policy, budget or business questions.

SUPPLEMENTARY INFORMATION: The purpose of this announcement is to award funds to organizations to develop and implement public awareness campaigns regarding embryo adoption. Applicants must demonstrate experience with embryo adoption programs that conform with professionally recognized standards governing embryo adoption, such as the guidelines for embryo donation published by the American Society for Reproductive Medicine,[1] or other applicable Federal or State requirements. For the purposes of this announcement, embryo adoption is defined as the donation of frozen embryo(s) from one party to a recipient who wishes to bear and raise a child.

Background

The OPHS is under the direction of the Assistant Secretary for Health (ASH), who serves as the Senior Advisor on public health and science issues to the Secretary of the Department of Health and Human Services. The Office serves as the focal point for leadership and coordination across the Department in public health and science; provides direction to program offices within OPHS; and provides advice and counsel on public health and science issues to the Secretary.

The increasing success of assisted reproductive technologies (ART) has resulted in a situation in which an infertile couple typically creates several embryos through in vitro fertilization (IVF). During IVF treatments, couples may produce many embryos in an attempt to conceive with several being cryopreserved (frozen) for future use. If a couple conceives without using all the stored embryos, they may choose to have the remaining unused embryos donated for adoption allowing other infertile couples the experience of pregnancy and birth. Embryo adoption is a relatively new process in which individuals who have extra frozen embryos agree to release the embryos for transfer to the uterus of another woman, either known or anonymous to the donor(s), for the purpose of the recipient(s) attempting to bear a child and be that child's parent.

Legislative Framework

With the passage of Public Law 107–116, the FY 2002 Departments of Labor, Health and Human Services, Education and Related Agencies Appropriations Act, the Congress authorized the Secretary to conduct a public awareness campaign to educate Americans about the existence of frozen embryos available for adoption.

Senate Report 107–84 (page 244) contains the following statement:

> ''During hearings devoted to Stem Cell research, the Committee became aware of approximately 100,000 spare frozen embryos stored in vitro fertilization (IVF) clinics throughout the United States. The Committee is also aware of many infertile couples who, if educated about the possibility, may chose to implant such embryos into the woman and, potentially, bear children. The Committee therefore directs the Department to launch a public awareness campaign to educate Americans about the existence of these spare embryos and adoption options. The Committee has provided $1,000,000 for this purpose.''

Eligible Applicants

Eligibility to compete for this announcement is limited to particular applicant organizations. Only agencies and organizations, not individuals, are eligible to apply. Eligible applicants include public agencies, non-profit organizations, and for-profit organizations. One agency must be identified as the applicant organization and will have legal responsibility for the project. Additional agencies and organizations can be included as co-participants, subgrantees, subcontractors, or collaborators if they will assist in providing expertise and in helping to meet the needs of the recipients. Faith-based and community-based organizations meeting the eligibility requirements may apply, or they may be included as co-participants, subgrantees, subcontractors, or collaborators if they will assist in providing expertise and in helping to meet the needs of recipients. Eligibility is limited to organizations that can demonstrate previous experience with embryo adoption and are knowledgeable in all elements of the process of embryo adoption.

Applicants should note that § 74.81 of the DHHS grants administration regulations (45 CFR part 74) indicates that, except for awards under certain ''small business'' programs, no grant funds may be paid as profit to any recipient even if the recipient is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs.

Anticipated Number of Projects to be Funded

The OPHS proposes to award approximately three to four new grants from the competition resulting from this announcement. The total funding available for these awards is approximately $900,000. The OPHS anticipates that each award will be in the range of $200,000–250,000, although the number and size of the actual awards will vary based on the number and quality of applications received.

Project Duration

The term ''project period'' refers to the total time a project is approved for support. The term ''budget period''

[1] Guidelines for embryo donation. Fertility and Sterility. Vol. 70, No. 4 Suppl. 3, October 1998. American Society for Reproductive Medicine Published by Elsevier Science, Inc. Also available on the Internet at: *http://www.asrm.org/Media/Practice/gamete.html#Psychologicalg.*

refers to the interval of time (usually 12 months) into which a multi-year period of assistance is divided for budgetary and funding purposes. For multi-year projects, continued Federal funding beyond the first budget period is dependent upon satisfactory performance by the grantee, availability of funds from future appropriations, and a determination that continued funding is in the best interest of the Government. Funding for projects under this announcement is expected to be a one time award with a one year project and budget period. Applicants should note that continued future funding beyond the initial project period is subject to continued appropriations, the availability of funds and competition for the funds.

Travel for Grantee Meeting

Approximately four to six weeks after the award of funding, the project directors for funded projects will be required to attend a two-day grantee orientation meeting in the Washington, DC area. During this meeting, DHHS staff will review currently available, nationally recognized guidelines regarding embryo adoption and discuss the implications for developing the public awareness campaign and related educational materials. Scheduling matters and plans for ensuring that the public awareness campaigns are appropriately focused and targeted to donors as well as potential recipients during the course of the project will be outlined and discussed. Budget plans should include funding for participation in this meeting.

Geographic Region

In the project narrative, applicants are required to describe the specific geographic region that will be served by the organization. This section should include a justification for the selection of the region, based on, for example, geographic size or the number and types of ART centers in the area, and an estimate of the number of frozen embryos available for adoption. There are no geographic restrictions on where the prospective projects may be conducted. The OPHS will accept applications for projects of national, regional, or local scope. The rationale for the project scope must be justified in detail.

Public Awareness Campaign

Applicants will be required to develop and implement programs for a public awareness campaign on embryo adoption. Applicants are required to submit a plan and time line that demonstrate that the proposed public awareness campaign: (a) Will be competency-based, (b) has experience with embryo donation programs that conform to professionally-recognized guidelines, and other relevant Federal or State requirements, (c) will be pilot tested and appropriately modified, as necessary, before use, and (e) can be reliably evaluated.

In the narrative section of the application, applicants are advised to describe the strategies and processes that they will use to design a public awareness campaign. The applicant should document its capacity to undertake a public awareness campaign focused on donors and/or potential recipients. Applicants are encouraged to present a description of approaches that may be used, as well as any supplemental materials (brochures, handouts, visual aids, and other resources). Moreover, applicants are advised to demonstrate a familiarity with and understanding of professionally recognized standards or practices (both medical and legal issues) pertaining to embryo adoption, as well as supportive services for donor or recipient couples. The applicant organization should clearly demonstrate its professional knowledge and experience in embryo adoption whether with donor or potential recipient populations.

Qualifications

The OPHS requires that funded organizations agree to make reasonable efforts to ensure that the individuals who design and implement the public awareness campaign are knowledgeable in all elements of the embryo adoption process and are experienced in providing such information. Applicant organizations should demonstrate that they have access to frozen embryos for adoption either directly or through partnership arrangements. Applicants should include information about the number of frozen embryos to which they have access, their history in working with either donor or potential recipient couples, and the organization's capacity to facilitate an embryo adoption public awareness campaign. As part of the project narrative, applicants are advised to describe the methods they will use to recruit, select, train and evaluate individuals who will implement the public awareness campaign. In the project narrative, applicants are encouraged to present a plan that may be used for working with potential donors and/or recipients under the proposed public awareness campaign.

Applicants, in the project narrative, are encouraged to present a plan for evaluation of the public awareness campaign. The evaluation plan should be two tiered to address: (1) Process, including the planning, content and quality of the public awareness campaign materials provided and (2) participant satisfaction and campaign effectiveness. Applicants that do not have the in-house capacity to conduct an evaluation are advised to propose contracting with a third-party social sciences evaluator or a university or college to conduct the evaluation.

Application Requirements

A. Application Content

Applicants should prepare a project description statement in accordance with the following general instructions. Use the information provided in this section and the evaluation criteria section to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in describing your program plan. The narrative should contain the following sections in the order presented below:

1. *Project Summary/Abstract:* Provide a summary of the project description not to exceed two pages. Care should be taken to produce an abstract/summary that accurately and concisely reflects the proposed project since the abstract will be used to provide reviewers with an overview of the application, and will form the basis for an application summary in official documents. The OPHS maintains a summary of funded projects and may post this information on the OPHS Web site. The abstract will be used as the basis for this posting and for requests for summary information. It should describe the objectives of the project, the approach to be used and the results or benefits expected.

2. *Specific Aims and Objectives:* Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as well as information about frozen embryos available for adoption. In developing the project description, the applicant may volunteer to provide information on the total range of related projects currently being conducted and supported (or to be initiated), some of

which may be outside the scope of the program announcement.

3. *Approach:* Outline a plan of action, which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work, and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of program activities to be held, or appropriate measurable outcomes. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

4. *Evaluation:* Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

5. *Organizational Profiles:* Provide information on the applicant organization and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information.

6. *Budget and Budget Justification:* Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs. Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, and wage rates. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant. Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, and taxes, unless treated as part of an approved indirect cost rate. Include information on the costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend the grantee meeting should be detailed in the budget. For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition. Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested. Include information on the costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category. Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information.

B. Application Format

Applications must be prepared on the forms supplied (OPHS–1, Revised 6/2001) and in the manner prescribed in the application kits provided by the OPHS. The application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

To be considered for funding, applicants must submit one signed original of the application and two photocopies in one package, including all forms and attachments. Please label the application envelop: ''Attention: Embryo Adoption Public Awareness Campaign''. The submissions may not be faxed or sent electronically.

The application should be typed and should be no more than 50 double-spaced pages (excluding attachments), printed on one side, with one-inch margins, and unreduced font. All pages, including appendices should be numbered sequentially and stapled, or otherwise secured, in the upper left corner.

Additional Requirements

This program is not subject to the intergovernmental review requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented by 45 CFR part 100.

Matching or Cost Sharing Requirement

There is no matching or cost sharing requirement for this program.

Required Reports

Applicants must submit all required reports in a timely manner, in recommended formats (to be provided) and submit a final report on the project, including any information on evaluation results, at the completion of the project period.

Review Procedures and Evaluation Criteria

Each application will be evaluated individually against the following four criteria by an objective review panel appointed by the OPHS. Before the review panel convenes, each application will be screened for applicant organization eligibility, as well as to make sure the application contains all the essential elements. Applications received from ineligible organizations and applications received after the deadline will be withdrawn from further consideration. A panel of at least three reviewers will use the evaluation criteria listed below to determine the strengths and weaknesses of each application, provide comments and assign numerical scores. Applicants should address each criterion in the project application. The point values (summing up to 100) indicate the maximum numerical weight each

criterion will be accorded in the review process.

Criterion 1: Objectives and Need for Assistance (30 Points)

Applicants must demonstrate a clear understanding of the legislative goals and demonstrate how their approach to the design of a public awareness campaign will contribute to achieve the legislative goals. Applicants must also demonstrate an understanding of the information and skills needed by the designated staff conducting such a public awareness campaign, as well as the information and service needs of potential donors and recipients. Applicants should provide letters of commitment or Memoranda of Understanding from organizations, agencies and consultants that will be partners or collaborators in the proposed project. These documents should describe the role of the agency, organization or consultant and detail specific tasks to be performed. Specific review criteria include:

(1) Extent to which the application reflects an understanding of the legislative goals of the public awareness campaign for embryo adoption, and shows how their approach to the design of a public awareness campaign and implementation will contribute to achieving the legislative goals;

(2) Extent to which the application clearly describes and documents an understanding of the need for assistance to support and/or enhance existing efforts regarding embryo adoption;

(3) Extent to which the application reflects a knowledge and understanding of the issues faced by donors and/or recipients;

(4) Extent to which the application reflects a knowledge and understanding of the medical and legal framework of embryo adoption and the services and resources in the geographic area in which the proposed project will be conducted;

(5) Extent to which the application explains how the proposed public awareness campaign will contribute to increased knowledge of the problems, issues, and effective strategies and best practices in the field;

(6) Extent to which the application reflects a knowledge and understanding of the challenges of developing a public awareness campaign and in providing support to donors and/or recipients; and

(7) Extent to which the application presents a vision of the campaign to be developed, and discusses broad contextual factors that will facilitate or impede the implementation of the campaign.

Criterion 2: Approach (30 Points)

In this section, applicants are expected to define goals and specific, measurable objectives for the project. Goals and objectives should not be confused. Goals are an end product of an effective project. Objectives are measurable steps for reaching goals. Applicants are advised to describe a preliminary, yet appropriate and feasible plan of action pertaining to the scope of the proposed public awareness campaign and provide details on how the proposed public awareness campaign will be accomplished. If the project involves partnerships with other agencies and organizations, then the roles of each partner should be clearly specified. Applicants are required to describe how the public awareness campaign will be evaluated to determine the extent to which it has achieved its stated goals and objectives. Applicants are expected to present a project design that includes detailed procedures for documenting project activities that is sufficient to support a sound evaluation. The evaluation design is expected to include process and outcome analyses with qualitative and quantitative components. Applicants are expected to report on their evaluation results in their final report to the OPHS upon completion of the project period. Applicants are required to describe the products that they will develop pursuant to the public awareness campaign. Applicants should discuss the intended audiences for these products (e.g., ART centers, adoption organizations, practitioners, professional organizations that work with infertile couples, potential recipients, or donors) and present a dissemination plan specifying the venues for conveying the information. This criterion consists of four broad topics: (A) Design of the public awareness campaign, (B) implementation, (C) evaluation, and (D) dissemination. Specific review criteria include:

(A) Design of the Public Awareness Campaign

(1) Extent to which the application reflects a familiarity with and understanding of professionally-recognized standards and/or other relevant Federal or State requirements pertaining to embryo adoption and supportive services for donors and recipients.

(2) Extent to which the proposed project goals, objectives and outcomes are clearly specified and measurable, and reflect an understanding of the characteristics of the donors and recipients and the context in which embryo adoption operates; and

(3) Extent to which the application presents an approach to the design of a public awareness campaign is: (a) Competency based, (b) linked to embryo adoption programs which are consistent with the nationally recognized guidelines, (c) pilot tested and appropriately modified, as necessary, before use, and (d) can be readily evaluated.

(B) Implementation

(1) Extent to which the application clearly describes and provides a justification for the selection of the geographic region that will be served by the project;

(2) Extent to which the application presents an appropriate, feasible and realistic plan for scheduling and conducting the public awareness campaign;

(3) Extent to which the application presents an appropriate, feasible and realistic plan for recruiting, selecting, and training individuals to provide information under the public awareness campaign;

(4) Extent to which the application provides an appropriate, feasible and realistic plan for documenting project activities and results, that can be used to describe and evaluate the public awareness campaign, and participant satisfaction with the campaign; and

(5) Extent to which the proposed project will establish and coordinate linkages with other appropriate agencies and organizations serving the target population.

(C) Evaluation

(1) Extent to which the methods of evaluation are feasible, comprehensive and appropriate to the goals, objectives and context of a public awareness campaign;

(2) Extent to which the applicant provides an appropriate, feasible and realistic plan for evaluating the public awareness campaign, including performance feedback and assessment of program progress that can be used as a basis for program adjustments;

(3) Extent to which the methods of evaluation include process and outcome analyses for assessing the effectiveness of program strategies and the implementation process; and

(4) Extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the program and will produce quantitative and qualitative results.

(D) Dissemination

(1) Extent to which the application provides an appropriate, feasible and realistic plan for dissemination of information in a public awareness campaign and related educational materials;

(2) Extent to which the intended audience is clearly identified and defined and is appropriate to the goals of the proposed program;

(3) Extent to which the program's products will be useful to the respective audiences;

(4) Extent to which the application presents a realistic schedule for developing these products, and provides a dissemination plan that is appropriate in scope and budget to each of the audiences; and

(5) Extent to which the products to be developed during the program are described clearly and will address the goal of dissemination of information and are designed to support evidence-based improvements of practices in the field.

Criterion 3: Organizational Profile (20 Points)

Applicants need to demonstrate that they have the capacity to implement the proposed program. Capacity includes: (1) Previous experience with similar projects; (2) experience with the target population; (3) qualifications and experience of the project leadership; (4) commitment to developing and sustaining working relationships among key stakeholders; (5) experience and commitment of any consultants and subcontractors; and, (6) appropriateness of the organizational structure. This criterion consists of three broad topics: (A) management plan, (B) staff qualifications, and (C) organizational capacity and resources.

Applicants are expected to present a sound and feasible management plan for implementing the proposed program. This section should detail how the program will be structured and managed, how the timeliness of activities will be ensured, how quality control will be maintained, and how costs will be controlled. The role and responsibilities of the lead agency should be clearly defined and, if appropriate, applicants should discuss the management and coordination of activities carried out by any partners, subcontractors and consultants. Applicants should include a list of organizations and consultants who will work with the project, along with a short description of the nature of their contribution or effort. Applicants are also expected to produce a time line that presents a reasonable schedule of target dates, and accomplishments. The time line should include the sequence and timing of the major tasks and subtasks, important milestones, reports, and completion dates. The application should also discuss factors that may affect project implementation or the outcomes and present realistic strategies for the resolution of these difficulties.

Applicants must provide evidence that project staff have the requisite experience, and expertise to carry out the proposed public awareness campaign on time, within budget, and with a high degree of quality. Include information on staff knowledge of the medical and legal issues concerning embryo adoption, and experience working in this area. Brief resumes of current and proposed staff, as well as job descriptions, should be included. Resumes must indicate the position that the individual will fill, and each position description must specifically describe the job as it relates to the proposed project.

Applicants must show that they have the organizational capacity and resources to successfully carry out the project on time and to a high standard of quality, including the capacity to resolve a variety of technical and management problems that may occur. If the proposed project involves partnering and/or subcontracting with other agencies/organizations, then the application should include an organizational capability statement for each participating organization documenting the ability of the partners and/or subcontractors to fulfill their assigned roles and functions. Specific review criteria include:

(A) Management Plan

(1) Extent to which the management plan presents a realistic approach to achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines and milestones for accomplishing project tasks;

(2) Extent to which the role and responsibilities of the lead agency are clearly defined and the time commitments of the project director and other key project personnel (including consultants) are appropriate and adequate to meet the objectives of the proposed project; and

(3) Extent to which the application discusses factors that may affect the development and implementation of the public awareness campaign and presents realistic strategies for the resolution of these difficulties.

(B) Staff Qualifications

(1) Extent to which the proposed project director, key project staff and consultants have the necessary technical skill, knowledge and experience to successfully carry out their responsibilities; and

(2) Extent to which staffing is adequate for the proposed project, including administration, program services, data processing and analysis, evaluation, reporting and implementation of the public awareness campaign, including related educational materials.

(C) Organizational Capacity and Resources

(1) Extent to which the applicant and partnering organizations collectively have experience in embryo adoption consistent with professionally recognized guidelines;

(2) Extent to which the applicant has experience in developing and implementing similar information or public awareness campaigns; and

(3) Extent to which the applicant has adequate organizational resources for the proposed project, including administration, program operations, data processing and analysis, and evaluation.

Criterion 4: Budget and Budget Justification (20 Points)

Applicants are expected to present a budget with reasonable project costs, appropriately allocated across component areas and sufficient to accomplish the objectives. Consideration shall be given to project delays due to start-up when preparing the budget. Applicants are expected to allocate sufficient funds in the budget to provide for the project director to attend a two-day orientation meeting in the Washington, DC area. Specific review criteria include:

(1) Extent to which applicant demonstrates that the project costs and budget information submitted for the proposed program are reasonable and justified in terms of the proposed tasks and the anticipated results and benefits; and,

(2) Extent to which the fiscal control and accounting procedures are adequate to ensure prudent use, proper and timely disbursement and an accurate accounting of funds received under this announcement.

Funding Decisions

The results of a competitive review are a primary factor in making funding decisions. In addition, Federal staff will conduct administrative reviews of the applications and, in light of the results

of the competitive review, will recommend applications for funding to the ASH. The ASH reserves the option of discussing applications with other funding sources when this is in the best interest of the Federal government. The ASH may also solicit and consider comments from Public Health Service Regional Office staff and others within DHHS in making funding decisions. The ASH makes final decisions regarding the applications to be funded.

The OPHS does not release information about individual applications during the review process. When final decisions have been made, successful applicants will be notified by letter of the outcome of the final funding decisions. The official document notifying an applicant that a project as been approved for funding is the Notice of Grant Award (NGA), which sets forth the amount of funds granted, the terms and conditions of the award, the effective date of the grant, the budget period for which initial support will be given, and the total project period for which support is contemplated. The ASH will notify an organization in writing when its application will not be funded. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

Dated: July 22, 2002.

Eve E. Slater,

Assistant Secretary for Health, Office of Public Health and Science.

[FR Doc. 02–18826 Filed 7–24–02; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For HealthCare Research and Quality Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not meet regularly and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for Exploratory/Developmental Research (R21) Grant Awards are to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with these applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Primary Care Practice-Based Research Networks (PBRNS) Developmental Grant Projects.

Date: August 7–9, 2002 (Open on August 7, from 7:30 p.m. to 7:45 p.m. and closed for remainder of the meeting).

Place: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 19, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–18882 Filed 7–24–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not meet regularly and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for Evaluation of Demonstration: ''Rewarding Results'' Awards are to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with these applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Evaluation of Demonstration: ''Rewarding Results'' Projects.

Date: July 26, 2002 (Open on July 26, from 8:30 a.m. to 8:45 a.m. and closed for remainder of the meeting).

Place: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 19, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–18883 Filed 7–24–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–183]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from April 2002 through June 2002. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Assistant Surgeon General, Director, Division of

Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 498–0007.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on May 9, 2002 [67 FR 31308]. This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments and addenda are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 605–6000. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

Between April 1, 2002 and June 30, 2002, public health assessments were issued for the sites listed below:

NPL Sites

District of Columbia

Washington Navy Yard (PB2002–104375).

New Jersey

Emmell's Septic Landfill (PB2002–104386).

Texas

Malone Service Company—Swan Lake Plant (PB2002–103158).

Washington

Cenex Supply and Marketing, Incorporated (a/k/a Western Farmers, Incorporated) (PB2002–104385).

Non NPL Petitioned Sites

None.

Dated: July 18, 2002.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 02–18779 Filed 7–24–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–70]

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) 498–1210.

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: Antineoplastic Drug Exposure: Effectiveness of Guidelines—New—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). Antineoplastic, chemotherapeutic, or cytostatic drugs are widely used in the treatment of cancer. These drugs possess mutagenic, teratogenic, and carcinogenic properties, cause organ damage, and affect reproductive function. Healthcare workers such as pharmacists and nurses who handle, prepare, and administer these drugs are at increased risk of adverse health effects from these agents, if exposed. The Occupational Safety and Health Administration (OSHA) developed guidelines for healthcare workers for the safe handling of antineoplastic drugs in 1986 and revised those guidelines again in 1995. However, recent studies suggest that the guidelines have not been effective in preventing exposure. A 1999 industrial hygiene evaluation of six cancer centers in the U.S. and Canada reported that 75% of the wipe test samples in the pharmacy were found to have detectable levels of antineoplastic drugs. Similar findings were reported in the Netherlands, which has similar guidelines. In addition, healthcare workers may assume that gloves designed for bloodborne pathogen protection will also prevent drug exposure which is often not the case. Since air concentrations of antineoplastic drugs in many of the studies have been low to non-detectable, it appears that the dermal route may be an important consideration for internal absorption.

Numerous studies, including those after the OSHA guidelines were revised in 1995, have demonstrated adverse health effects from healthcare workers' exposure to antineoplastic agents. The most common endpoints have been either markers of exposure, such as metabolites in the urine, or genotoxic markers, such as micronuclei, sister chromatid exchange, and chromosomal aberrations. Female reproductive adverse effects have also been shown to occur with healthcare workers' exposure to antineoplastic drugs. Not only have spontaneous abortion and miscarriage been reported, but changes in the menstrual cycle have been demonstrated as well. Based upon animal and human data, one study estimated that exposure to cyclophosphamide by healthcare workers increases the risk of leukemia cases by 17–100 new cases/million workers/10 years.

This project addresses the continuing concern of healthcare workers' exposure to antineoplastic agents. This is a multifaceted project that involves environmental sampling of the workplace and the collection of biological samples to determine how much of the agent is absorbed and if there are any early biological effects

from that exposure. Biological measurements or biomarkers can detect effects of exposure long before a disease can be diagnosed. A questionnaire will be administered to determine confounders and other conditions that might affect exposure such as work history and work practices. This project will recruit oncology nurses, pharmacists, and pharmacy technicians and will be conducted in collaboration with the University of Maryland, the University of North Carolina, and the M.D. Anderson Cancer Center.

By utilizing a battery of sensitive biomarkers, the effects of low-level chronic exposure to antineoplastic agents can be determined. Using the results of the proposed study, exposures can be minimized or eliminated before adverse health effects occur. Ultimately, the study will contribute to the prevention of occupational disease from antineoplastic drug exposure. There are no costs to respondents.

Survey	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Genotoxicity Immunotocixicity Study*	150	1	1	150
Reproductive Health Study†	150	1	225/60	562.5
Total				714.50

*This part of the study involves the participant, after informed consent, voluntarily providing blood and urine samples and responding to a questionnaire concerning medical history, work history, and work practices to identify study eligibility, past exposures, and confounders.

† In the reproductive health part of the study and after informed consent, women are being asked to voluntarily give a daily urine sample for approximately 45 days and keep track of their menstrual cycle by entries into a diary. In addition, a short questionnaire is given to each participant to determine eligibility for inclusion into the study and confounders of hormone analysis.

Dated: July 18, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–18781 Filed 7–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–71]

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)498–1210.

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: Adult and Pediatric HIV/AIDS Confidential Case Reports (CDC 50.42A, 50.42B)—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). This data collection system was formerly included and approved under the National Disease Surveillance Program, OMB No. 0920–0009, National Center for Infectious Disease (NCID), CDC. CDC is seeking a 3-year OMB approval to continue data collection of the HIV/AIDS case reports, with revisions of the report forms to collect race and ethnicity data in adherence to OMB Statistical Policy Directive 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting.

The National Adult and Pediatric HIV/AIDS Confidential Case Reports are collected as part of the HIV/AIDS Surveillance System. CDC in collaboration with health departments in the states, territories, and the District of Columbia, conducts national surveillance for cases of human immunodeficiency virus (HIV) infection and the acquired immunodeficiency syndrome (AIDS), the end-stage of disease caused by infection with HIV. HIV/AIDS surveillance data collection by CDC is authorized under sections 301 and 306 of the Public Health Service Act (42 U.S.C. 241 and 242k).

Currently, 55 states (areas/territories) mandate and collect AIDS surveillance data. In addition, 35 areas mandate and collect surveillance data on HIV cases which have not progressed to AIDS in adults/adolescents and/or children using the HIV/AIDS case report forms. The purpose of HIV/AIDS surveillance data is to monitor trends in HIV/AIDS and describe the characteristics of infected persons (e.g., demographics, modes of exposure to HIV, manifestations of severe HIV disease, and deaths due to AIDS). Because HIV infection results in untimely death and most often infects younger adults in the prime years of life, large amounts of federal, state, and local government funding have been allocated to address all aspects of HIV infection, including prevention and treatment. HIV/AIDS surveillance data are widely used at all government levels to assess the impact of HIV infection on morbidity and mortality, to allocate medical care resources and services, and to guide prevention and disease control activities.

HIV/AIDS reports are sent to state/local health departments by laboratories, physicians, hospitals, clinics, and other health care providers using standard adult and pediatric case report forms. Areas use a microcomputer system developed by CDC (the HIV/AIDS Reporting System, HARS) to store and analyze data, as well as transmit encrypted data to CDC. An HIV program area module (PAM) for the National Electronic Disease Surveillance System (NEDSS) is in the early development stage and will replace HARS when it is complete.

In order to adhere to OMB Directive 15, the proposed data collection form will collect race and ethnicity separately, collect multiple races, and

disaggregate Asian/Pacific Islander into two categories: Asian and Native Hawaiian/Other Pacific Islander.

No other federal agency collects this type of national HIV/AIDS data. In addition to providing technical assistance for use of the case report forms, CDC also provides reporting areas with technical support for the HARS software. There is no cost to respondents.

Form	Number of respondents	Number of responses/respondent	Average burden/response/(in hours)	Total burden (in hours)
Adult Case Report: AIDS	55	782	10/60	7,168
Adult Case Report: HIV	35	1007	10/60	5,874
Peds Case Report: AIDS	55	3	10/60	28
Peds Case Report: HIV	35	16	10/60	93
Total				13,163

Dated: July 19, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–18818 Filed 7–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–39–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Report of Verified Case of Tuberculosis (RVCT) (CDC 72.9A, 72.9B, 72.9C) OMB No. 0920–0026—Revision—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

The Centers for Disease Control and Prevention (CDC), National Center for HIV, STD, and TB Prevention (NCHSTP), Division of Tuberculosis Elimination (DTBE), proposes to continue data collection for the Report of Verified Case of Tuberculosis (RVCT) (CDC 72.9A, 72.9B, 72.9C), previously approved under OMB No. 0920–0026 in 1992, 1995, 1998, and 2001. This request is for a 3-year revision of OMB clearance approval beginning January 1, 2003 (current OMB No. 0920–0026 expiration date is December 31, 2002). CDC is requesting OMB clearance for revision of the RVCT which will change the race and ethnicity variables on the RVCT form to comply with the OMB ''Standards for Maintaining, Collecting, and Processing Federal Data on Race and Ethnicity''.

To accomplish the CDC goal of eliminating tuberculosis (TB) in the United States, CDC maintains the national TB surveillance system. The system, initiated in 1953, has been modified several times to better monitor and respond to changes in TB morbidity. The most recent modification was implemented in 1993 when the RVCT was expanded in response to the TB epidemic of the late 1980s and early 1990s and incorporated into a CDC software for electronic reporting of TB case reports to CDC. The expanded system improved the ability of CDC to monitor important aspects of TB epidemiology in the United States, including drug resistance, TB risk factors, including HIV coinfection, and treatment. The timely system also enabled CDC to monitor the recovery of the nation from the resurgence and identify that current TB epidemiology supports the renewed national goal of elimination. To measure progress in achieving this goal, as well as continue to monitor TB trends and potential TB outbreaks, identify high risk populations for TB, and gauge program performance, CDC proposes to extend use of the RVCT.

Data are collected by 60 Reporting Areas (the 50 states, the District of Columbia, New York City, Puerto Rico, and 7 jurisdictions in the Pacific and Caribbean) using the RVCT. An RVCT is completed for each reported TB case and contains demographic, clinical, and laboratory information. A comprehensive software package, the Tuberculosis Information Management System (TIMS) is used for RVCT data entry and electronic transmission of TB case reports to CDC. TIMS provides reports, query functions, and export functions to assist in analysis of the data. CDC publishes an annual report summarizing national TB statistics and also periodically conducts special analyses for publication in peer-reviewed scientific journals to further describe and interpret national TB data. These data assist public health officials and policy makers in program planning, evaluation, and resource allocation. Reporting Areas also review and analyze their RVCT data to monitor local TB trends, evaluate program success, and assist in focusing resources to eliminate TB.

No other federal agency collects this type of national TB data. In addition to providing technical assistance for use of the RVCT, CDC also provides Reporting Areas with technical support for the TIMS software. There annualized burden for this data collection is 8,338 hours.

Respondents	Number of respondents	Responses per respondent	Average burden per response (in hours)
State/Local/Tribal Governments	60	278	30/60

Dated: July 17, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–18780 Filed 7–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Nonvoting Representatives of Industry Interests on Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for nonvoting representatives of industry interests to serve on the Blood Products Advisory Committee, in the Center for Biologics Evaluation and Research (CBER). Nominations will be accepted for vacancies that will or may occur through September 30, 2003.

FDA has a special interest in ensuring that women, minority groups, individuals with disabilities, and small businesses are adequately represented on advisory committees and, therefore, encourages nominations for appropriately qualified candidates from these groups. Specifically, in this document, nominations for nonvoting representatives of industry interests are encouraged from the biologics and/or drug industry.

DATES: Nominations should be received by July 30, 2002.

ADDRESSES: All nominations and curricula vitae should be sent to Linda A. Smallwood (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Linda A. Smallwood, Office of Blood Research and Review, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6128.

SUPPLEMENTARY INFORMATION: Section 120 of the FDA Modernization Act (FDAMA) of 1997 (21 U.S.C. 355) requires that newly formed FDA advisory committees include representatives from the biologics and/or drug manufacturing industries. This announcement is soliciting nominations for the committee listed below:

Blood Products Advisory Committee: One vacancy occurring in September 30, 2002; clinical and administrative medicine, hematology, immunology, blood banking, surgery, internal medicine, biochemistry, engineering, statistics, biological and physical sciences, and other related scientific fields.

I. Function

Reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood and products intended for use in the diagnosis, prevention, or treatment of human diseases.

II. Nomination Procedures

Any organization in the blood, medical device and/or biologics manufacturing industry wishing to participate in the selection of an appropriate nonvoting industry representative for the Blood Products Advisory Committee should notify the contact person of their interest in nominating one or more qualified persons. Persons who nominate themselves as representatives of industry interests for a certain advisory committee may not participate in the overall selection process.

Nominees should be familiar with firms that manufacture products regulated by the agency including biologics and/or drug manufacturers. Nomination packages should include the name of the committee and the nominee's willingness to serve on the committee. To ensure that the nomination process continues within the set timelines, submitters are strongly encouraged to include a complete curriculum vitae for each nominee with the letter of nomination. The term of office is up to 4 years.

III. Selection Procedure

A letter will be sent to each nominating organization that submitted a nomination package to FDA for a particular advisory committee. The letter will provide the complete list of all nominees. It is the responsibility of each nominating organization to consult with one another to select a single member to represent the industry interests for the advisory committee. This must be completed within 60 calendar days. If no individual is selected, the Commissioner of Food and Drugs will select a nonvoting member to represent the industry interests.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: July 18, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–18775 Filed 7–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 6 and 7, 2002, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: TurnerT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: On August 6, 2002, the committee will discuss new drug application (NDA) 21–449, adefovir dipivoxil tablets, Gilead Sciences, Inc., proposed for treatment of chronic hepatitis B infection (HBV). On August 7, 2002, the committee will discuss clinical trial design issues in the development of products for the treatment of chronic hepatitis B infection.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 30, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. each day. Time allotted

for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 30, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Tara Turner at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the August 6 and 7, 2002, Antiviral Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Antiviral Drugs Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 18, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–18772 Filed 7–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Biotechnology Subcommittee of the Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Food Biotechnology Subcommittee of the Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 13, 2002, from 9 a.m. to 4:30 p.m. and August 14, 2002, from 9 a.m. to 4:30 p.m.

Location: Harvey W. Wiley Federal Bldg., 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2200.

Contact Person: Margaret E. Cole, Center for Food Safety and Applied Nutrition (HFS–006), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2397, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: The purpose of the meeting is to discuss science-based approaches to assessing whether new proteins in bioengineered foods are likely to cause allergic reactions in some individuals in order to assist FDA in developing a draft guidance for industry.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 30, 2002. Oral presentations from the public will be scheduled between approximately 10:15 a.m. and 11:30 a.m. on August 14, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 30, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Margaret E. Cole at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 18, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–18773 Filed 7–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 16, 2002, from 10:30 a.m. to 4:30 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, ext. 127, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12522. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss and make recommendations on a draft guidance entitled ''Implantable Middle Ear Hearing Device; Draft Guidance for Industry and FDA.'' The topics for discussion will include the appropriate study population, objective measurement techniques for comparison of acoustic hearing aids and middle ear hearing devices, and subjective questionnaire development for determining postoperative effectiveness and quality of life outcome measures. The draft guidance is available to the public on the Internet at http://www.fda.gov/cdrh/ode/guidance/1406.html.

Background information, including the attendee list, agenda, and questions for the committee, will be available to

the public on August 15, 2002, on the Internet at http://www.fda.gov/cdrh/panelmtg.html.

Procedure: On August 16, 2002, from 12:30 p.m. to 4:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 8, 2002. Oral presentations from the public will be scheduled between approximately 12:40 p.m. and 1:10 p.m. and 3:45 p.m. and 4:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 8, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations. On August 16, 2002, from 10:30 a.m. to 12:30 p.m., the meeting will be closed to the public to permit discussion and review of trade secret and/or confidential information regarding pending issues and applications (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley Meeks, Conference Management Staff, at 301–594–1283, ext. 105, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 18, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–18774 Filed 7–24–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Demonstration Training Grants To Support Public Health Fellowships and Internships 93.249

AGENCY: Health Resources and Services Administration (HRSA).

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that Fiscal Year 2002 applications will be accepted to support one project under the Public Health Fellowship and Internship Demonstration Training Grant Program.

Authorizing Legislation: Applications are solicited under the authority of title VII, section 765 of the Public Health Service (PHS) Act, as amended. Section 765 authorizes the award of grants to increase the number of individuals in the public health workforce, to enhance the quality of such workforce, and to enhance the ability of the workforce to meet national, State, and local health care needs.

Purpose of Award: This Demonstration Training Grant is to support a program of innovative training and education opportunities to share expertise among public health faculty, fellow/interns, and health professionals at HRSA.

Eligible Applicants: An applicant must be: a health professions school (including an accredited school or program of public health, health administration, preventive medicine, or dental public health or a school providing health management programs), an academic health center, a State or local government, and any other appropriate public or private non-profit entity, including a faith-based and community based organization.

Review Criteria: The review criteria are: (1) Understanding of and approach to conducting a public health fellowship and internship program; (2) history of performance of applicant and its personnel; (3) adequacy of facilities and resources; (4) methods for achieving program objectives; (5) cost effectiveness; (6) national agency, and public health objectives, and (7) the ability to anticipate problems. Additional information pertaining to the review criteria will be listed in the supplement to instructions for application form HRSA 6025.

Estimated Amount of Available Funds: It is anticipated that up to $525,000 will be available in fiscal year 2002 for this program.

Estimated Number of Awards: It is estimated that 1 award will be made for fiscal year 2002.

Application Requests, Availability, Dates and Addresses: The HRSA 6025 application kit will be available on July 25, 2002 and may be downloaded via the web at *http://www.hrsa.gov/bhpr/grants2002.* The instructions for preparing the Public Health Fellowship and Internship Training Grant Applications are contained within application form HRSA 6025. Applicants may also request a hardcopy of the application material by contacting the HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, Maryland 20879, by fax calling at 1–877–477–2133, or by fax at 1–877–477–2345. In order to be considered for competition, applications must be received by mail or delivered to HRSA Grants Application Center by no later than August 26, 2002. Applications received after the deadline date may be returned to the applicant and not processed.

FOR FURTHER INFORMATION CONTACT: Douglas Lloyd, M.D., Acting Director, CPH, DSCPH, Bureau of Health Professions, HRSA, Room 8–103, Parklawn Building, 5600 Fishers Land, Rockville, Maryland 20857, or e-mail address *dlloyd@hrsa.gov.* Dr. Lloyd's telephone number is 301–443–6853. Capt. Barry Stern, Sr., Environmental Health Advisor, CPH, Bureau of Health Professions, HRSA, Room 8–103, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; or e-mail address at *bstern@hrsa.gov.* Capt. Stern's telephone number is 301–443–6758.

Paperwork Reduction Act: The Application for the Public Health Fellowship and Internship Training Grant has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0060. The program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is also not subject to the Public Health Systems Reporting Requirements.

Dated: July 18, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–18778 Filed 7–24–02; 8:45 am]

BILLING CODE 4165–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, T32: Training in Gastroenterology and Nutrition.

Date: August 15, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Boulevard, Room 749 Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18804 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Biosensor Mass Spectrometry Array.

Date: July 31, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS).

Dated: July 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18807 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council NADCRC, Review of RFAs.

Date: August 22, 2002.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, NIDCR, 31 Center Drive, Building 31C, Conf. Rm. 2C19, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: J. Ricardo Martinez, MD, MPH, Associate Director for Program Development, Office of the Director. National Institute of Dental & Craniofacial Research, 31 Center Drive, Bldg. 31, Rm. 5B55, Bethesda, MD 20892.

Information is also available on the Institute's/Center's home page: www.nidcr.nih.gov/discover/nadrc/index.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalog of Federal Domestic Assistance program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS).

Dated: July 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18809 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Diabetes Endocrinology Research Center Applications Review.

Date: August 14, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriot, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lakshmanan Sankaran, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600. (301) 594–7799.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Diabetes Research and Training Centers Grant Applications Review.

Date: August 15–16, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriot, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lakshmanan Sankaran, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600. (301) 594–7799.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, and Training Programs in Diabetes Research.

Date: August 15, 2002.

Time: 8 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIDDK Review Branch, 2 Democracy Plaza, 6707 Democracy Blvd., Suite 755, Bethesda, MD 20792, (Telephone Conference Call).

Contact Person: Michael W. Edwards, Scientific Review Administrator, Review Branch, DEA, NIDDK Room 751, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892. (301) 594–8886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18810 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, ZHD1 DRG–A C5 S, Family and Fertility Research and Data Collection Design Planning Process.

Date: August 14, 2002.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892. (301) 496–1845.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18811 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, ZHD1 DSR–R 04 R, Research on Adult and Family Literacy.

Date: August 12–13, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Robert H. Stretch, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E01, MSC 7510, Bethesda, MD 20892. (301) 435–6912.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18812 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, ZHD1 DRG–D 16 1/ Progestin Contraception and Endometrial Bleeding.

Date: August 6, 2002.

Time: 8:30 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, Phd, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892. (301) 435–684.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864 Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18813 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, ZHD1 MCHG–B BS 1, Pathogenesis of Functional Hypothalamic Amenorrhea III.

Date: July 25, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd. 5th Floor, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, Phd., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room, 5E01, Bethesda, MD 20892. (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18814 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Purusant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, ZHD1 DSR–A 03 1/Partnerships for HIV/AIDS Research in African Populations.

Date: July 18–19, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5E01, Bethesda, MD 20892. (301) 496–1487. *anandr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalolgue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18815 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ET–1 (02) Transgenic Mice Models.

Date: July 25, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892. (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavioral Pharmacology and Addiction.

Date: July 29, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center For Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892. (301) 435–0902. *krausem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oral Biology and Medicine–1 Epidemiology.

Date: August 13, 2002.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781. *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 19, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892. (301) 435–1041.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 20, 2002.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892. (301) 435–1210.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.892, 93.893, National Institutes of Health, HHS)

Dated: July 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18805 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 15, 2002, 1 p.m. to July 15, 2002, 2 p.m., NIH, Rockledge 2, Bethesda, MD 20892 which was published in the **Federal Register** on July 1, 2002, 67 FR 44224–44227.

The meeting will be held on July 25, 2002. The time and location remain the same. The meeting is closed to the public.

Dated: July 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18806 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 23, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard D. Rodewald, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024, *rodewalr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Special Emphasis Panel.

Date: August 8, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18808 Filed 7–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF JUSTICE

Antitrust Division; Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on June 13, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AAF 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, Metaglue Corporation, Lexington, MA has been added as a party to this venture. Also, Snell & Wilcow, Petersfield, England, UNITED KINGDOM acquired AAF Member Post Impressions, Newbury, England, UNITED KINGDOM. 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 AAF Association, Inc. intends

to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF 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 June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on March 15, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 22, 2002 (67 FR 19587).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–18754 Filed 7–24–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Amendment to Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Amendment to Consent Decree Entered on December 29, 1999 in *United States and State of Georgia* v. *City of Atlanta,* Civil Action No. 1:98–CV–1956–TWT, was lodged with the United States District Court for the Northern District of Georgia, Atlanta Division on July 12, 2002.

The First Amended Consent Decree involved the settlement of Claims brought by the United States and State pursuant to the Clean Water Act, 33 U.S.C. 1251 *et seq.* and the Georgia Water Quality Control Act, O.G.A. §§ 12–5–21 *et seq.* The United States and State sought the assessment of civil penalties and injunctive relief to bring the City into compliance with the Clean Water Act and the Georgia Water Quality Control Act. The proposed and agreed upon Amendment would modify the Consent Decree by: (1) Substituting a tunnel project for a diversion project; (2) providing for a different date of completion for the tunnel project, and (3) changing the time in which the City must remit payment of stipulated penalties.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. Each communication should refer on its face to *United States and State of Georgia* v. *City of Atlanta,* DOJ #90–5–1–4430.

The proposed Amendment to Consent Decree may be examined at the Office of the United States Attorney, Northern District of Georgia, 1800 U.S. Courthouse, 75 Spring Street, SW., Atlanta, Georgia 30335, and at the U.S. Environmental Protection Agency, Region 4 Office, 61 Forsyth Street, Atlanta, Georgia 30303. A copy of the proposed Amendment to Consent Decree may be obtained by (1) Mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of justice, Washington, DC 20044–7611; or by (2) faxing the request to Tonia Fleetwood, U.S. Department of justice, fax number (202) 616–6584; phone confirmation (202) 514–1547. In requesting a copy, please forward the request and a check in the amount of $1.25 (25 cents per page reproduction cost), made payable to the U.S. Treasury.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–18755 Filed 7–24–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA'')

Notice is hereby given that a proposed consent decree in *United States* v. *Julie Deutschumann,* Civ. No. 02–10240 (MEL), was lodged with the United States District Court for the District of Massachusetts on July 15, 2002, (''Consent Decree''). The Consent Decree resolves the liability of Julie Deutschmann, (''Settling Defendant''), the sole current owner of the Toka Renbe Farm Superfund Site in Canton, Massachusetts (''Site'') for the recovery of costs incurred by the United States in response to releases and threatened releases of hazardous substances at the Site pursuant to Sections 107(a) and 113 of the Comprehensive Environmental Response, Compensation, and Recovery Act, as amended (''CERCLA''), 42 U.S.C. 9607(a) and 9613. EPA has incurred at least $5,765,632.19 in response costs relating to this Site. The United States filed its Complaint on behalf of EPA on February 13, 2002.

This is an ability to pay settlement based upon expert review of financial documentation provided to the United States by the Settling Defendant. This settlement calls for the liquidation of all real estate owned by the Settling Defendant, except for her residence, in addition to an up-front cash payment to the United States and a cash payment to fund a trust for the purpose of liquidating real property for the benefit of the United States. The value of the settlement is estimated to be $2,500,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Julie Deutschmann,* DOJ Ref. #90–11–2–1032/1.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of Massachusetts, 1 Court House Way, U.S. Courthouse, Suite 9200, Boston, Massachusetts 02210 (contact Assistant United States Attorney George B. Henderson, II); and the Region I Office of the Environmental Protection Agency, One Congress Street, Suite 1100, Boston, Massachusetts, 02114–2023 (contact Senior Enforcement Counsel, Catherine Garypie). A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. BOx 7611, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $11.75 (25 cents per page reproduction costs) for the Consent Decree, payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–18753 Filed 7–24–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 277–2002]

Privacy Act of 1974 as Amended by The Computer Matching and Privacy Protection Act of 1988

This notice is published in the **Federal Register** in accordance with the requirements of the Privacy Act, (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (CMPPA) (Pub. L. 100–503) (5 U.S.C. 552a(e)(12)). The Immigration and Naturalization Service

(INS), Department of Justice (the source agency), is participating in computer matching programs with the District of Columbia and the State agencies listed below (all designated as recipient agencies). These matching activities will permit the recipient agencies to confirm the immigration status of alien applicants for, or recipients of, Federal benefits assistance under the ''Systematic Alien Verification for Entitlements (SAVE)'' program as required by the Immigration Reform and Control Act (IRCA) of 1986 (Pub. L. 99–603).[1]

Specifically, the matching activities will permit the following eligibility determinations:

(1) The District of Columbia Department of Employment Services, New York State Department of Labor, New Jersey Department of Labor, Texas Workforce Commission, and Massachusetts Department of Employment and Training will be able to determine eligibility for unemployment compensation;

(2) The California Department of Social Services will be able to determine eligibility status of aliens applying for or receiving benefits under the TANF (''Temporary Assistance for Needy Families'') program, and upon the submission of favorable cost-benefit data to the Department of Justice (DOJ) Data Integrity Board, will also be able to determine eligibility status of non-TANF Food Stamp applicants and recipients;

(3) The California Department of Health Services will be able to determine eligibility status for the Medicaid program; and

(4) The Colorado Department of Human Services will be able to determine the eligibility status for the Medicaid, TANF, and the Food Stamps programs.

Section 121(c) of IRCA amends Section 1137 of the Social Security and other statutes to require agencies which administer the Federal entitlement benefit programs designated within IRCA as amended, to use the INS verification system to determine eligibility. Accordingly, through the use of user identification codes and passwords, authorized persons from these agencies may electronically access the database of an INS system of records entitled ''Alien Status Verification Index, Justice/INS–009''. From its automated records system, any agency (named above) participating in these matching programs may enter electronically into the INS database the alien registration number of the applicant or recipient. This action will initiate a search of the INS database for a corresponding alien registration number. Where such number is located, the agency will receive electronically from the INS database the following data upon which to determine eligibility: alien registration number, last name, first name, date of birth, country of birth (not nationality), social security number (if available), date of entry, immigration status data, and employment eligibility data. In accordance with 5 U.S.C. 552a(p), such agencies will provide the alien applicant with 30 days notice and an opportunity to contest any adverse finding before final action is taken against that alien because of ineligible immigration status as established through the computer match.

The original effective date of the matching programs (with the exception of the matching agreement with Massachusetts Department of Employment and Training) was January 29, 1990, for which notice was published in the **Federal Register** on December 28, 1989 (54 FR 53382). The original effective date of the Massachusetts matching program was February 28, 1990, for which notice was published in the **Federal Register** on January 29, 1990 (55 FR 2890). The programs have continued to date under the authority of a series of new approvals as required by the CMPPA. The CMPPA provides that based upon approval by agency Data Integrity Boards of a new computer matching agreement, computer matching activities may be conducted for 18 months and, contingent upon specific conditions, may be similarly extended by the Board for an additional year without the necessity of a new agreement. The most recent 1-year extension for those programs listed in items (1) through (4) above will expire on August 31, 2002, except that the agreement with the Massachusetts Department of Employment and Training will expire on September 12, 2002. The DOJ's Data Integrity Board has approved new agreements to permit the above named computer matching programs to continue for another 18-month period from the expiration date or after the notification period (described below) is satisfied, whichever is later.

Matching activities under the new agreements will be effective 30 days after publication of this computer matching notice in the **Federal Register**, or 40 days after a report concerning the computer matching programs has been transmitted to the Office of Management and Budget (OMB) and transmitted to Congress along with a copy of the agreements, whichever is later.

The agreements (and matching activities) will continue for a period of 18 months from the effective date, unless, within 3 months prior to the expiration of the agreement, the Data Integrity Board approves a 1-year extension pursuant to 5 U.S.C. 552a(o)(2)(D).

In accordance with 5 U.S.C. 552a(o)(2)(A) and (r), the required report has been provided to the OMB, and to the Congress together with a copy of the agreements.

Inquiries may be addressed to Kathleen M. Riddle, Procurement Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530.

Dated: July 19, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–18794 Filed 7–24–02; 8:45 am]

BILLING CODE 4410–10–P

[1] Effective July 1, 1997, IRCA was amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Pubic Law 104–193, 110 Stat. 2168 (1996). The PRWORA amended IRCA by replacing the reference to ''Aid to Families with Dependent Children'' (AFDC), with a reference to its successor program, ''Temporary Assistance for Needy Families'' (TANF). As was the case with AFDC, states and the District of Columbia are required to verify through SAVE that an applicant or recipient is in an eligible alien status for TANF benefits. In addition, Section 840 of the PRWORA makes verification for eligibility under the Food Stamps program voluntary on the part of the State/District of Columbia agency rather than mandatory.

DEPARTMENT OF LABOR

Employment and Training Administration

Submission for OMB Review; Comment Request

AGENCY: Employment and Training Administration (ETA), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly

understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments about the proposed new collection of information as part of the Evaluation of Labor Exchange Services in a One-Stop Environment. The evaluation is partially composed of three surveys: an employer survey, an in-office job seeker survey, and an in-office survey of workshop participants.

DATES: Written comments must be submitted to the office listed in the addresses's section below on or before September 23, 2002.

ADDRESSES: Richard Muller, Office of Policy and Research, ETA, N–5637, US Department of Labor, 200 Constitution Ave., NW. Washington, DC 20210, (202) 693–3680 (this is not a toll-free number), e-mail: *RMULLER@DOLETA.GOV.*

SUPPLEMENTARY INFORMATION:

I. Background

Public labor exchanges (PLEX) were last evaluated by ETA in 1983. At that time, obtaining basic information about job-seekers' and employers' use of state labor exchanges was relatively easy, given that nearly all job seekers filled out registration forms and could only get a referral after being screened by staff at local offices. Similarly, employers had to describe job openings and key characteristics to staff to obtain referrals. Moreover, cost information was available because Wagner-Peyser Act funds were allocated to each state based on a type of performance-based budgeting, called the balanced placement formula, designed to stimulate improvements in placement services by allocating grants to state agencies on the basis of their actual performance.

While special purpose block grants simplified distribution of Wagner-Peyser Act funds, the removal of the balanced formula eliminated the need to determine how costly it is for staff to perform various services, and also reduced incentives to carefully track delivery of individual services. Job seekers can now utilize large public databases, such as America's Job Bank (AJB), and every state labor exchange, by using PC modems at home, in libraries and a variety of other sites. The block grants and the easy access to electronic job information has greatly limited the amount of quantifiable data available to perform a comprehensive evaluation. In order to accurately measure the costs and benefits of PLEXs today, surveys of job seekers and employers are required to assess the quantity and quality of services provided.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarify of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

This study will examine the efficacy of labor exchange services in 6 States operating within selected State One-Stop delivery systems. The findings from the employer survey and in-office surveys will describe the results of mail surveys and follow-up telephone interviews with diverse employers, and will describe the experiences of job seekers. The study will provide, among other things, in-depth information on:

- The amount of hiring done at each establishment in a year;
- The methods used to obtain applicants for high and low paying jobs;
- Satisfaction with methods used to obtain applicants;
- The costs associated with hiring and recruitment efforts;
- The costs to the establishment for not filling various types of jobs; and
- How placements made from public labor exchanges affect recruiting and production costs.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Evaluation of Labor Exchange Services in a One Stop Environment.

OMB Number: 1205–0NEW.

Affected Public: Individuals or households/Business or other for profit/Not for profit institutions/Farms/Federal Government/State, Local or Tribal Government.

Cite/reference	Total respondents per state	Frequency	Total responses per state	Average time per response per hour	Burden hours per state
Employer survey & reminders	60	Once + reminder cards for non-respondents.	60	.5	30
Telephone interview	240	Once	240	.75	180
In-office survey	1200	Once	1200	.25	300
Workshop survey	1200	Once	1200	.25	300
Totals					810

Total Burden Cost: The total estimated cost of the study is $160,200 over a 36-month contract period, with a one-year option. Of the total costs, approximately 11 percent is allocated for surveys. The annualized cost of the surveys, over the 36 month period is approximately $53,400. The total burden in terms of time is 810 hours per State times 6 States, or 4860 hours.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 18, 2002.

Gerard F. Fiala,

Administrator, Office of Policy and Research.

[FR Doc. 02–18876 Filed 7–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Preliminary Finding of No Significant Impact (FONSI) for the Proposed Acquisition of the Property Located at 22 East Lincoln Street, Phoenix, AZ

AGENCY: Employment and Training Administration, Labor.

ACTION: Preliminary finding of no significant impact (FONSI) for the proposed acquisition of the property located at 22 East Lincoln Street, Phoenix, Arizona.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (CEQ) (40 CFR part 1500–08) implementing procedural provision of the National Environmental Policy Act (NEPA), the Employment and Training Administration (ETA) of the Department of Labor (DOL), Office of the Job Corps, in accordance with 29 CFR 11.11(d), gives notice that and Environmental Assessment (EA) has been prepared and the proposed acquisition of the property located at 22 East Lincoln Street, Phoenix, Arizona, will have no significant environmental impact, and this Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Written comments must be received by August 26, 2002.

ADDRESSES: Any comments are to be submitted to Michael F. O'Malley, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW, Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA and additional information are available to interested parties by contacting Michael F. O'Malley, Architect, US Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The U.S. Department of Labor is proposing to acquire a 42,000 square foot property at 22 East Lincoln Street, Phoenix, Arizona in order to consolidate the Phoenix Job Corp Center operations, currently located both east and west of the proposed site, into a more campus-like setting. Initially, the U.S. Department of Labor Job Corps Program intends to leave the parcel vacant, possibly used for excess parking. The property possibly will be used in the future to provide space for a Child Development Center (CDC), recreation, dormitory, and/or an administration building. No new structures will be built on the property initially. The purpose and need for the U.S. Department of Labor's acquisition of this property is to allow for future expansion of the current Job Corps facilities currently located immediately to the east of the proposed project site.

General environmental conditions and potential impacts were evaluated for the proposed site and a general 0.5-mile study radius surrounding the site.

The area immediately surrounding the project area (0.5-mile study area) is a diverse mix of commercial, industrial, and residential areas. The residential areas contain a young and diverse population. The acquisition of the proposed property is not expected to have any negative impacts on the demographics of the surrounding area. The purpose of the Job Corps is to provide basic education, vocational skills training, health care, and work experience to allow disadvantaged persons from the Phoenix area to improve their position in the workplace and society. Initially, the property will only be used for classroom, shop, and support space; however, in the long term, the property will allow the center the flexibility for possible facility expansion which would provide more educational opportunities for the disadvantaged youth in the downtown area. Thus, the addition of this parcel to the Job Corps campus is expected to have a positive impact on the lives of disadvantaged youths living in Phoenix and specifically the diverse downtown area.

The acquisition of the proposed property is not expected to have any negative impacts on any of the facilities, services, or existing infrastructure in the surrounding study area. The proposed project will initially remain undeveloped and thus would not pose any additional strain to the public services, such as the police, fire departments or medical facilities. Future development of the site would be beneficial to the surrounding neighborhood and any additional need for infrastructure or public services would cause only a negligible impact on the departments or services in the area. The existing schools, libraries, parks, and transportation facilities are not expected to be impacted by the acquisition of this property. Local streets and transit facilities are more than adequate to facilitate the current use of the site and any proposed future development of the parcel.

The proposed property is not expected to have any negative impacts on land use or the surrounding residential communities. The acquisition of the property would be compatible with current land uses in the area including industrial, commercial, and residential. Additionally, the consolidation of the Job Corps facilities to a more campus-like environment would be a responsible and efficient use of space.

Residential communities in the area, located generally south of the property, would not be impacted by the acquisition and use of this property. The presence of the Job Corps program in the area is a positive catalyst for the education of the youth in the area and revitalization of the surrounding residential communities, which are consistent with neighborhood goals.

The acquisition of the proposed project property is not expected to have any negative impacts on air quality in the Phoenix metropolitan area. The Phoenix metropolitan area is currently in non-attainment of the 24-hour and annual health-based standard for particulate matter. If the site is developed in the future, short-term impacts may occur due to construction disturbance and clearing (dust). Such impacts would be localized and short-term in duration; however, the construction contractor should follow industry standards for minimizing dust and particulates at construction sites.

The acquisition of this property is not expected to have any negative impacts on the geology, soils and/or water resources in the study area. The vacant parcel will be used initially as parking, an activity which would only minimally disturb the surface of the property and would not result in any impacts on the subsurface of the property including groundwater. If the property is developed in the future, the proposed development options (a Child Development Center, recreation, dormitory, and/or an administration building) would not result in any negative impacts on the surface or subsurface including groundwater. In fact, improvements to sanitary sewers and drainage on the site as a result of development would be considered a positive benefit.

The proposed project site is located in a light industrial, downtown setting. Current, typical sources of noise on the site include traffic from local streets, ambient noise from local businesses and educational facilities, and railroad traffic north of the site. Potentially sensitive receptors in the area consist of one church facility located approximately 500 feet to the south of

the proposed property. Any of the proposed uses of the currently vacant parcel (parking, a Child Development Center, recreation, dormitory, and/or and administration building) are not expected to increase noise levels in excess of the current conditions, and thus the acquisition of the parcel is not expected to have any negative impacts to the noise in the area. Any future development on the site would more than likely create construction noise; however, this noise would be of short duration.

Acquisition of the proposed property would not result in adverse impacts on the visual environment. There is a future opportunity to improve the aesthetics of this property as it is developed into a campus-like learning center. Additionally, implementing landscaping along the property boundaries would contribute to the revitalization efforts occurring throughout the north and south areas of this neighborhood.

The project site is currently a vacant lot with little vegetation resources within the project site boundary. The small amount of vegetation at the property boundary will be removed. Landscaped vegetation near Lincoln Street will not be impacted. The proposed action will result in little to no impacts on vegetation resources.

Potential impacts on wildlife are expected to be low. For small mammals and birds, mainly rodents and pigeons, some habitat loss as well as loss of individuals (chiefly small mammals) will occur if and when the site is developed. Project disturbances (i.e., construction), although locally intense, would be temporary. No riparian or wetland areas occur within the project site or study area. Therefore, there will be no impacts on riparian and wetland vegetation. No endangered or threatened species are expected to occur in the study area. If any special status species is observed, necessary mitigation measures will be developed in coordination with USFWS and the Arizona Game and Fish Department.

The proposed acquisition of the project property and use of the area for parking are expected to have no adverse effect on any archaeological or historical properties listed on or eligible for the National Register. Thus, there should be no significant impacts as defined by NEPA, nor any cumulative impacts.

Any future construction of new facilities on the project site has potential to directly affect archaeological resources that may be buried on the project site and indirectly affect adjacent historic buildings. If future development is pursued, the U.S. Department of Labor should comply with Section 106 of NHPA by consulting with the CHPO and SHPO. A plan for archaeological testing may need to be developed and implemented, and subsequent data recovery studies might be required to mitigate any identified adverse effects. Consideration also may need to be given to designing any new construction to minimize any potential for adverse visual effects or any other types of indirect effects to nearby historic resources listed on or eligible for the National Register. It seems likely that any identified adverse effects of future development could be satisfactorily mitigated through studies to recover important archaeological data or by sensitive project design. Therefore no significant impacts, as defined by NEPA, are projected.

Based on information gathered in the preparation of the EA, negative impacts on the surrounding environment are not anticipated to be associated with this project. However, appropriate consideration to surrounding cultural and historic resources should be handled according to Section 106 of NHPA and any other applicable regulations. Mitigation for any possible impacts should be possible through archaeological studies and project design. Similarly, if any special status species is observed, necessary mitigation measures will be developed in coordination with USFWS and the Arizona Game and Fish Department.

Dated this 19th day of July, 2002.

Richard C. Trigg,

National Director of Job Corps.

[FR Doc. 02–18873 Filed 7–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps: Preliminary finding of No significant impact (FONSI) for the Proposed Acquisition of the Property Located at 515 South First Street and 118 East Lincoln Street, Phoenix, AZ

AGENCY: Employment and Training Administration, Labor.

ACTION: Preliminary finding of no significant impact (FONSI) for the proposed acquisition of the property located at 515 South First Street and 118 East Lincoln Street, Phoenix, Arizona.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (CEQ) (40 CFR part 1500–08) implementing procedural provision of the National Environmental Policy Act (NEPA), the Employment and Training Administration (ETA) of the Department of Labor (DOL), Office of the Job Corps, in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared and the proposed acquisition of the property located at 515 South First Street and 118 East Lincoln Street, Phoenix, Arizona, will have no significant environmental impact, and this Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Written comments must be received by August 26, 2002.

ADDRESSES: Any comments are to be submitted to Michael F. O'Malley, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA and additional information are available to interested parties by contacting Michael F. O'Malley, Architect, US Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor is proposing to acquire a 42,000 square foot property at 515 South First Street and 118 East Lincoln Street, Phoenix, Arizona in order to consolidate the Phoenix Job Corp Center operations, currently located both east and west of the proposed site, into a more campus-like setting. Acquiring this piece of property would allow this consolidation by eliminating the need for a current leased piece of property that is used for teaching and support of the ''hard vocation'' trades such as carpentry, building maintenance, electronic assembly, painting, cement masonry, and plastering. The ''hard vocations'' would relocate to the new property. The existing structures on the site would be modified and used as classroom, shop, and support space. This consolidation would also allow trainees at the facility to have safer and closer access for training in an area where high traffic volumes can pose safety concerns. Property dimensions would allow expansion or additions to the existing buildings in the future; however, no plans exist at this time for these expansions.

The purpose and need for the U.S. Department of Labor's acquisition of this property is to eliminate the need for

a current lease and accommodate the relocation of the existing classroom, shop, and support space used by the ''hard vocations'' program. The newly acquired property would also provide room for building expansion in the future.

General environmental conditions and potential impacts were evaluated for the proposed site and a general 0.5-mile study radius surrounding the site.

The area immediately surrounding the project area (0.5-mile study area) is a diverse mix of commercial, industrial, and residential areas. The residential areas contain a young and diverse population. The acquisition of the proposed property is not expected to have any negative impacts on the demographics of the surrounding area. The purpose of the Job Corps is to provide basic education, vocational skills training, health care, and work experience to allow disadvantaged persons from the Phoenix area to improve their position in the workplace and society. Initially, the property will only be used for classroom, shop, and support space; however, in the long term, the property will allow the center the flexibility for possible facility expansion which would provide more educational opportunities for the disadvantaged youth in the downtown area. Thus, the addition of this parcel to the Job Corps campus is expected to have a positive impact on the lives of disadvantaged youths living in Phoenix and specifically the diverse downtown area.

The acquisition of the proposed property is not expected to have any negative impacts on any of the facilities, services, or existing infrastructure in the surrounding study area. The buildings on the proposed project site will be converted to classroom, shop, and support space, taking the place of rented space with the same function, and thus would not pose any additional strain to the public services, such as the police, fire departments, or medical facilities. Future development of the site would be beneficial to the surrounding neighborhood and any additional need for infrastructure or public services would cause only a negligible impact on the departments or services in the area. The existing schools, libraries, parks, and transportation facilities are not expected to be impacted by the acquisition of this property. Local streets and transit facilities are more than adequate to facilitate the current use of the site and any proposed future development of the parcel.

The proposed project is not expected to have any negative impacts on land use or the surrounding residential communities. The acquisition of the property would be compatible with current land uses in the area including industrial, commercial, and residential. Additionally, the consolidation of the Job Corps facilities to a more campus-like environment would be a responsible and efficient use of space.

Residential communities in the area, located generally south of the property, would not be impacted by the acquisition and use of this property. The presence of the Job Corps program in the area is a positive catalyst for the education of the youth in the area and revitalization of the surrounding residential communities, which are consistent with neighborhood goals.

The acquisition of the proposed project property is not expected to have any negative impacts on air quality in the Phoenix metropolitan area. The Phoenix metropolitan area is currently in non-attainment of the 24-hour and annual health-based standard for particulate matter. If the buildings on the site are expanded or further developed in the future, short-term impacts may occur due to construction disturbance and clearing (dust). Such impacts would be localized and short-term in duration. The construction contractor should follow industry standards for minimizing dust and particulates at construction sites.

The acquisition of this property is not expected to have any negative impacts on the geology, soils, and/or water resources in the study area. The existing buildings will be modified for use as classroom, shop, and support space, which should not result in any impacts on the surface or subsurface of the property, including groundwater. If the buildings are expanded or property is further developed in the future, the expansions should not result in any negative impacts on the surface or subsurface, including groundwater.

The proposed project site is located in a light industrial, downtown setting. Current, typical sources of noise on the site include traffic from local streets, ambient noise from local businesses and educational facilities, and railroad traffic north of the site. Potentially sensitive receptors in the area consist of one church facility located approximately 500 feet to the south of the proposed property. The proposed modifications to the site are not expected to increase noise levels in excess of the current conditions, and thus the acquisition of the proposed site is not expected to have any negative impacts on the noise in the area. Any future development on the site, such as building expansions, would more than likely create construction noise; however, this noise would be of short duration.

Acquisition of the proposed property for the intended purpose would not result in adverse impacts on the visual environment. There is an opportunity to improve the aesthetics of this property as it is developed into a campus-like learning center.

The project site is currently an industrial site used for cold storage of foodstuffs with no vegetation resources within the project site boundary. Landscaped vegetation near Lincoln Street will not be impacted. The proposed action will result in little to no impacts on vegetation resources.

Potential impacts on wildlife are expected to be low. For small mammals and birds, mainly rodents and pigeons, some habitat loss as well as loss of individuals (chiefly small mammals) will occur if and when the site is developed. Project disturbances (i.e., construction), although locally intense, would be temporary. No riparian or wetland areas occur within the project site or study area. Therefore, there will be no impacts on riparian and wetland vegetation. No endangered or threatened species are expected to occur in the study area. If any special status species is observed, necessary mitigation measures will be developed in coordination with USFWS and the Arizona Game and Fish Department.

The proposed acquisition of the project property and interior modifications of the two buildings on the project site are expected to have no adverse effect on any archaeological or historical properties listed on or eligible for the National Register. Thus, there should be no significant impacts as defined by NEPA, nor any cumulative impacts. Any future expansion of the existing buildings or construction of new facilities on the project site has potential to directly affect archaeological resources that may be buried on the project site and indirectly affect adjacent historic buildings. A plan for archaeological testing may need to be developed and implemented, and subsequent data recovery studies might be required to mitigate any identified adverse effects. Consideration also may need to be given to designing any modification or new construction to minimize any potential for adverse visual effects or any other types of indirect effects to nearby historic resources listed on or eligible for the National Register. It seems likely that any identified adverse effects of future development could be satisfactorily mitigated through studies to recover important archaeological data or by sensitive project design. Therefore no

significant impacts, as defined by NEPA, are projected.

Based on information gathered in the preparation of the EA, negative impacts on the surrounding environment are not anticipated to be associated with this project. However, appropriate consideration to surrounding cultural and historic resources should be handled according to Section 106 of NHPA and any other applicable regulations. Mitigation for any possible impacts should be possible through archaeological studies and project design. Similarly, if any special status species is observed, necessary mitigation measures will be developed in coordination with USFWS and the Arizona Game and Fish Department.

Dated this 19th day of July, 2002.

Richard C. Trigg,

National Director of Job Corps.

[FR Doc. 02–18872 Filed 7–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the information collection request (ICR) incorporated in the regulation pertaining to Disclosure by Insurers to General Account Policyholders pursuant to ERISA Section 401(c) and 29 CFR 2550.401c–1. A copy of the ICR may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESS** section below on or before September 23, 2002.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 694–8410; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104–188) amended ERISA by adding Section 401(c), which clarified the extent to which assets of an insurer's general accounts constitute assets of an employee benefit plan when that insurer has issued policies for the benefit of a plan, and such policies are supported by assets of the general account. Section 401(c) established certain requirements and disclosures for companies that offer and maintain policies for employee benefits plans where the underlying assets are held in the insurer's general account. Section 401(c) also required the Secretary to provide guidance on the statutory requirements, which was issued as a final rulemaking on January 5, 2000 (65 CFR 614). The regulation includes information collection provisions pertaining to one-time and annual disclosure obligations of insurers.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

III. Current Action

This notice requests comments on the extension of the ICR included in the regulation pertaining to Disclosures by Insurers to General Account Policyholders. The Department is not proposing or implementing changes to the existing ICR at this time.

Type of Review: Extension of a currently approved collection of information.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Titles: Disclosures by Insurers to General Account Policyholders.

OMB Number: 1210–0114.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 104.

Frequency of Response: One-time; Annual.

Responses: 123,500.

Estimated Total Burden Hours: 466,667.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: July 19, 2002.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research Pension and Welfare Benefits Administration.

[FR Doc. 02–18874 Filed 7–24–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection; Comment Request; ERISA Technical Release 91–1

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the extension of the information collection request (ICR) incorporated in its Technical Release 91–1 related to the transfer of excess assets from a defined benefit plan to a

retiree health benefits account. A copy of the ICR may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before September 23, 2002.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 693 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

ERISA section 101(e) sets forth certain notice requirements which must be satisfied before an employer may transfer excess assets from a defined benefit plan to a retiree health benefits account as otherwise permissible after satisfying the conditions set forth in section 420 of the Internal Revenue Code of 1986, as amended (Code). Section 101(e)(1) describes the plan administrator's obligation to provide advance written notification of such transfers to participants and beneficiaries. Section 101(e)(2)(A) describes the employer's obligation to provide advance written notification to the Secretaries of Labor and Treasury, the administrator, and each employee organization representing participants in the plan. The requirements relating to advance notification of transfers to retiree health benefit accounts were added to ERISA as part of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508). The ICR included in ERISA Technical Release 91–1 provides guidance on the type of information to be provided in the notices to both the participants and beneficiaries and to the Secretaries.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

III. Current Action

This notice requests comments on the extension of the ICR included in ERISA Technical Release 91–1. The Department is not proposing or implementing changes to the existing ICR at this time.

Type of Review: Extension of a currently approved collection of information.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Titles: ERISA Technical Release 91–1.

OMB Number: 1210–0084.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 52.

Frequency of Response: One time.

Responses: 182,000.

Estimated Total Burden Hours: 4,550.

Total Burden Cost (Operating and Maintenance): $37,986.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: July 19, 2002.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research Pension and Welfare Benefits Administration.

[FR Doc. 02–18875 Filed 7–24–02; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Renewal of Advisory Committee on Presidential Libraries

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration's (NARA) Advisory Committee on Presidential Libraries. In accordance with Office of Management and Budget (OMB) Circular A–135, OMB approved the inclusion of the Advisory Committee on Presidential Libraries in NARA's ceiling of discretionary advisory committees.

NARA has determined that the renewal of the Advisory Committee is in the public interest due to the expertise and valuable advice the Committee members provide on issues affecting the functioning of existing Presidential libraries and library programs and the development of future Presidential libraries. NARA will use the Committee's recommendations in its implementation of strategies for the efficient operation of the Presidential libraries. NARA's Committee Management Officer is Mary Ann Hadyka. She can be reached at 301–837–1782.

Dated: July 18, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–18823 Filed 7–24–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation (NSF).

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 et seq.), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 11146 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding thse information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written commenets regarding (a) Whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to 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 should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov.*

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Cross-Site Evaluation of the National Science Foundation's Directorate for Education and Human Resources' Urban Systemic Program.

OMB Approval Number: 3145–0186.

Abstract: The National Science Foundation (NSF) requests a three-year clearance for an evaluation of the Urban Systemic Program (USP), a study that has been on-going since October 1999 first under OMB 3145–0136 and now under OMB 3145–0186. Due to a change in OMB terms of clearance for OMB 3145–0136, NSF established an independent clearance for the USP study under the terms of an emergency clearance.

USP began in 1999 when NSF made competitive awards of up to $3 million per year, for up to 5 years, to 5 urban school districts. Since then, the program has made awards to 13 additional districts in 2000, and another 9 districts in 2001. The USP represents one of NSF's major investments in improving science and mathematics education in urban school systems across the country, and have third-party evaluation is important in order for the agency to interpret the worthiness of the investment.

NSF uses the data to: (1) Determine whether to modify or extend the USP concepts and (2) share best practices and lessons learned about reform in mathematics and science education for K–12 schools.

Specifically, during the first two years of the USP Cross-Site Evaluation, the third-party, COSMOS Corporation of Bethesda, MD, has produced reports for others at NSF (e.g., the National Science Board). Though there are other sources of such documentation, the information provided by the Cross-Site team is valued because the team is not associated in any way with the program sites. Second, the Division of Educational System Reform uses the information to supplement its annual program monitoring. Third, NSF will use the information, both to assess its investment in the USP program and potentially to help to guide the design of future programs, such as the Mathematics and Science Partnerships.

During the extended period of clearance, the cross-site evaluation will conduct site visits to the first 18 districts that received USP awards and will collect student achievement data in mathematics and science from all of the districts. This data collection complements earlier efforts already undertaken by the Cross-Site team under earlier OMB clearances.

Respondents: State, local or tribal governments.

Number of Respondents: 324.

Burden on the Public: 121.5 hours.

Dated: July 22, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–18824 Filed 7–24–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Co.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–4 and NPF–7 issued to Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Units 1 and 2, located in Louisa County, Virginia.

The proposed amendments would permit the licensee to delay the effective implementation date of the Improved Technical Specifications from no later than September 2, 2002, to no later than December 20, 2002.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendments request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes delay implementation of the Improved Technical Specifications (ITS) to permit completion of system modifications and final functional testing of the Control Room Bottled Air System. The proposed changes are administrative in nature in that they simply delay implementation of ITS for four months. Until the ITS are implemented the current Technical Specifications will remain in effect. Since the changes are administrative, they will not alter the operation or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. As a result, the probability of any accident previously evaluated is not significantly increased. The changes will not affect the design, function or operation of any system, structure or component nor will it affect any maintenance, modification or testing activities. Thus, there will be no impact on the capability of any structure, system or component to perform its intended safety function. Therefore, it is concluded that operation in accordance with the proposed changes will not involve a significant increase in the probability or consequences of accidents previously analyzed.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Deferral of the ITS implementation date is an administrative change. As such the 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 normal plant operation. Thus, these changes do not create the possibility of a new or different kind of

accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Deferral of the ITS implementation date is an administrative change. The proposed changes do not affect the plant design or operations. The changes do not eliminate any requirements or impose any new requirements or alter any physical parameters, which could reduce the margin to an identified acceptance limit. Hence, these 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 amendments request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments 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 amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 26, 2002, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses 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,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments 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

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: ''In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things: (i) The nature of the petitioner's right under the Act to be made a party to the proceeding. (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding. (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if: (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.''

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 amendments request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Ms. Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated July 18, 2002, 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 System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* 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, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 19th day of July 2002.

For the Nuclear Regulatory Commission.

Stephen R. Monarque,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–18822 Filed 7–24–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Maine Yankee Atomic Power Co., Maine Yankee Atomic Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–36, issued to Maine Yankee Atomic Power Company (MYAPC or the licensee), for the Maine Yankee Atomic Power Station (Maine Yankee or the plant), located in Lincoln County, Maine. 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 revise the license to incorporate a new License Condition 2.B.(9). The license condition would terminate license jurisdiction for a portion of the Maine Yankee site (referred to as the Non-Impacted Backlands (West of Bailey Cove and West of Young's Brook and North of Old Ferry Road)), thereby releasing these lands from Facility Operating License No. DPR–36. The land in question is not used for any licensed activities. No radiological materials have historically been used on this land and the land will not be used to support ongoing decommissioning operations and activities.

The Backlands, approximately 260 hectares (640 acres), are located beyond the 610-meter (2,000-foot) exclusion area established under the requirements of 10 CFR part 100, except for a specific portion. As such, the area has been open and accessible to the general public and is bounded by residential land owners. The Backlands consists of open fields, woodland, and some shoreline property. The Backlands have been designated as a non-impacted area, which means the area was not impacted due to site operation.

The proposed action is in accordance with the licensee's application dated August 16, 2001, as supplemented by letter dated November 19, 2001.

The Need for the Proposed Action

The revision to the license is needed to release the Backlands from the jurisdiction of Facility Operating License No. DPR–36. Portions of this land, approximately 80 hectares (200 acres), will be donated to a tax exempt environmental organization to create a nature preserve and an environmental education center and to provide public access to coastal lands in the mid-coast region of Maine. This donation is part of a rate case settlement that MYAPC made with the Federal Energy Regulatory Commission. The release of the rest of the Backlands will facilitate potential redevelopment and reuse of property that has been part of the Maine Yankee site.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the issuance of the amendment will not have any significant effect on accident risk or the possibility of environmental impact. The Commission has previously issued a No Significant Hazards Consideration Determination for the proposed action (67 FR 12604) dated March 19, 2002. The proposed action will not significantly increase the probability or consequences of any accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have the potential to

affect historic or cultural resources, nor will the proposed action affect endangered and threatened species. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action and retention of the Backlands under Facility Operating License No. DPR–36 (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 identical.

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 Maine Yankee Atomic Power Station, dated July 1972.

Agencies and Persons Consulted

On June 11, 2002, the staff consulted with the Maine State official, Mr. Patrick Dostie of the State of Maine, Department of Human Services, regarding the environmental impact of the proposed action. The State official had a question related to the type of effluents (e.g. contaminated dust) that demolition of the slightly contaminated structures could generate. The NRC staff responded to Mr. Dostie's question and provided information that clarified this issue with respect to this licensing action.

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 August 16, 2001, as supplemented by letter dated November 19, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* 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 to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 19th day of July 2002.

For the Nuclear Regulatory Commission.

William D. Reckley,

Acting Chief, Section 1, Project Directorate IV–1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–18821 Filed 7–24–02; 8:45 am]

BILLING CODE 7590–01–P

COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: Commission on Ocean Policy.

ACTION: Notice.

SUMMARY: The U.S. Commission on Ocean Policy will hold its eighth regional meeting, the Commission's tenth public meeting, to hear and discuss coastal and ocean issues of concern of the State of Alaska.

DATES: Public meetings will be held Wednesday, August 21, 2002 from 12:30 p.m. to 6 p.m. and Thursday, August 22, 2002 from 8:30 a.m. to 6 p.m.

ADDRESSES: The meeting location is the Hotel Captain Cook, Discovery Ballroom, 4th & K Street, Anchorage, AK 99501.

FOR FURTHER INFORMATION CONTACT: Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW., Washington, DC 20036, 202–418–3442, *schaff@oceancommission.gov.*

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Pub. L. 106–256, section 3(e)(1)(E)). The agenda will include presentations by invited speakers representing local and regional government agencies and non-governmental organizations, comments from the public and any required administrative discussions and executive sessions. Invited speakers and members of the public are requested to submit their statements for the record electronically by Monday, August 12, 2002 to the meeting Point of Contact. A public comment period is scheduled for Thursday, August 22, 2002. The meeting agenda, including the specific time for the public comment period, and guidelines for making public comments will be posted on the Commission's Website at *http://www.oceancommission.gov* prior to the meeting.

Dated: July 19, 2002.

Thomas R. Kitsos,

Executive Director, U.S. Commission on Ocean Policy.

[FR Doc. 02–18819 Filed 7–24–02; 8:45 am]

BILLING CODE 6820–WM–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

[Rule 17f–2(c), SEC File No. 270–35, OMB Control No. 3235–0029]

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–2(c) allows persons required to be fingerprinted pursuant to section 17(f)(2) of the Securities Exchange Act of 1934 to submit their fingerprints through a national securities exchange or a national securities association in accordance with a plan submitted to and approved by the Commission. Plans have been approved for the American, Boston, Chicago, New York, Pacific, and Philadelphia stock exchanges and for the National Association of Securities Dealers and the Chicago Board Options Exchange.

It is estimated that 85,000 registered broker-dealers submit approximately 275,000 fingerprint cards to exchanges or a registered security association on an annual basis. It is approximated that it should take 15 minutes to comply with Rule 17f–2(c). The total reporting burden is estimated to be 68,750 hours.

Because the Federal Bureau of Investigation will not accept fingerprint

cards directly from submitting organizations, Commission approval of plans from certain exchanges and national securities associations is essential to the Congressional goal of fingerprint personnel in the security industry. The filing of these plans for review assures users and their personnel that fingerprint cards will be handled responsibly and with due care for confidentiality.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 18, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18838 Filed 7–24–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25667; 812–12801]

Matrix Capital Group, Inc. and Matrix Unit Trust; Notice of Application

July 19, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under (a) section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 2(a)(35), 14(a), 19(b), 22(d) and 26(a)(2)(C) of the Act and rules 19b–1 and rule 22c–1 thereunder; and (b) sections 11(a) and 11(c) of the Act for approval of certain exchange and rollover privileges.

Applicants: Matrix Capital Group, Inc. (''Matrix'') and any entity controlling, controlled by or under common control with Matrix (collectively, the ''Depositor''); Matrix Unit Trust (''Matrix Trust''); any future registered unit investment trusts sponsored by the Depositor (together with the Matrix Trust, the ''Trusts'') and the future and existing series of each Trust (each a ''Series'').[1]

Summary of Application: Applicants request an order to permit certain unit investment trusts (''UITs'') to: (a) Impose sales charges on a deferred basis and waive the deferred sales charge in certain cases; (b) offer unitholders certain exchange and rollover options; (c) publicly offer units without requiring the Depositor to take for its own account or place with others $100,000 worth of units; and (d) distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

Filing Dates: The application was filed on March 21, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing of Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 13, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, 666 Fifth Avenue, 14th Floor, New York, NY 10103.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 942–0527 or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. Each Series will be a series of a Trust and each Trust will be a UIT registered under the Act.[2] The Depositor is registered under the Securities Exchange Act of 1934 as a broker-dealer and is the depositor of each Series. Each Series will be created by a trust indenture between the Depositor and a banking institution or trust company as trustee (''Trustee'').

2. The Depositor acquires a portfolio of securities, which it deposits with the Trustee in exchange for certificates representing units of fractional undivided interest in the Series' portfolio (''Units''). The Units are offered to the public by the Depositor and dealers at a price which, during the initial offering period, is based upon the aggregate market value of the underlying securities plus a front-end sales charge. The Depositor may reduce the sales charge in compliance with rule 22d–1 under the Act in certain circumstances, which are disclosed in the prospectus.

3. The Depositor will maintain a secondary market for Units and continually offer to purchase these Units at prices based upon the market value of the underlying securities. Investors may purchase Units on the secondary market at the current public offering prices plus a front-end sales charge. If the Depositor discontinues maintaining such a market at any time for any Series, holders of the Units (''Unitholders'') of that Series may redeem their Units through the Trustee.

A. Deferred Sales Charge and Waiver of Deferred Sales Charge Under Certain Circumstances

1. Applicants request an order to the extent necessary to permit one or more Series to impose a sales charge on a deferred basis (''deferred sales charge'' or ''DSC''). For each Series, the Depositor would set a maximum sales charge per Unit, a portion of which may be collected ''up front'' (*i.e.,* at the time an investor purchases the Units). The DSC would be collected subsequently in installments (''Installment Payments'') as described in the application. The Depositor would not add any amount for interest or any similar or related charge to adjust for such deferral.

2. When a Unitholder redeems or sells Units, the Depositor intends to deduct any unpaid DSC from the redemption or sale proceeds. When calculating the

[1] Any future Series that relies on the requested order will comply with the terms and conditions of the application.

[2] All presently existing Trusts that currently intend to rely on the requested order have been name as applicants.

amount due, the Depositor will assume that Units on which the DSC has been paid in full are redeemed or sold first. With respect to Units on which the DSC has not been paid in full, the Depositor will assume that the Units held for the longest time are redeemed or sold first. Applicants represent that the DSC collected at the time of redemption or sale, together with the Installment Payments and any amount collected up front, will not exceed the maximum sales charge per Unit. Under certain circumstances, the Depositor may waive the collection of any unpaid DSC in connection with redemptions or sales of Units. These circumstances will be disclosed in the prospectus for the relevant Series and implemented in accordance with rule 22d–1 under the Act.

3. Each Series offering Units subject to a DSC will state the maximum charge per Unit in its prospectus. In addition, the prospectus for such Series will include the table required by Form N–1A (modified as appropriate to reflect the difference between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment, along with the duration of the collection period. The prospectus also will disclose that portfolio securities may be sold to pay an Installment Payment if distribution income is insufficient, and that securities will be sold *pro rata* or a specific security will be designated for sale.

B. Exchange Option and Rollover Option

1. Applicants request an order to the extent necessary to permit Unitholders of a Series to exchange their Units for Units to another Series (''Exchange Option'') and Unitholders of a Series that is terminating to exchange their Units for Units for a new Series of the same type (''Rollover Option''). The Exchange Option and Rollover Option would apply to all exchanges of Units sold with a front-end sales charge or DSC.

2. A Unitholder who purchases Units under the Exchange Option or Rollover Option would pay a lower sales charge than that which would be paid for the Units by a new investor. The reduced sales charge will be reasonably related to the expenses incurred in connection with the administration of the DSC program, which may include an amount that will fairly and adequately compensate the Depositor and participating underwriters and brokers for their services in providing the DSC program.

3. Pursuant to the Exchange Option, an adjustment would be made if Units of any Series are exchanged within five months of their acquisition for Units of a Series with a higher sales charge (''Five Months Adjustment''). An adjustment also would be made if Units on which a DSC is collected are exchanged for Units of a Series that imposes a front-end sales charge and the exchange occurs before the DSC collected (plus any amount collected up front on the exchanged Units) at least equals the per Unit sales charge on the acquired Units (''DSC Front-End Exchange Adjustment''). If an exchange involves either the Five Months Adjustment or the DSC Front-End Exchange Adjustment, the Unitholder would pay the greater of the reduced sales charge or an amount which, together with the sales charge already paid on the exchanged Units, equals the normal sales charge on the acquired Units on the date of the exchange. With appropriate disclosures, the Depositor may waive such payment. Further, the Depositor would reserve the right to vary the sales charge normally applicable to a Series and the charge applicable to exchanges, as well as to modify, suspend, or terminate the Exchange Option as set forth in the conditions to the application.

Applicant's Legal Analysis

A. DSC and Waiver of DSC

1. Section 4(2) of the Act defines a ''unit investment trust'' as an investment company that issues only redeemable securities. Section 2(a)(32) of the Act defines a ''redeemable security'' as a security that, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets or the cash equivalent of those assets. Rule 22c–1 under the Act requires that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption or repurchase be based on the security's current net asset value (''NAV''). Because the collection of any unpaid DSC may cause a redeeming Unitholder to receive an amount less than the NAV of the redeemed Units, applicants request relief from section 2(a)(32) and rule 22c–1.

2. Section 22(d) of the Act and rule 22d–1 under the Act require a registered investment company and its principal underwriter and dealers to sell securities only at the current public offering price described in the investment company's prosectus, with the exception of sales of redeemable securities at prices that reflect scheduled variations in the sales loan. Section 2(a)(35) of the Act defines the term ''sales load'' as the difference between the sales price and the portion of the proceeds invested by the depositor or trustee. Applicants request relief from section 2(a)(35) and section 22(d) to permit waivers, deferrals or other scheduled variations of the sales load.

3. Under section 6(c) of the Act, the Commission may exempt classes of transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their proposal meets the standards of section 6(c). Applicants state that the provisions of section 22(d) are intended to prevent (a) riskless trading in investment company securities due to backward pricing, (b) disruption of orderly distribution by dealers selling shares at a discount, and (c) discrimination among investors resulting from different prices charged to different investors. Applicants assert that the proposed DSC program will present none of these abuses. Applicants further state that all scheduled variations in the sales load will be disclosed in the prospectus of each Series and applied uniformly to all investors, and that applicants will comply with all the conditions set forth in rule 22d–1.

4. Section 26(a)(2)(C) of the Act, in relevant part, prohibits a trustee or custodian of a UIT from collecting from the trust as an expense any payment to the trust's depositor or principal underwriter. Because the Trustee's payment of the DSC to the Depositor may be deemed to be an expense under section 26(a)(2)(C), applicants request relief under section 6(c) from section 26(a)(2)(C) to the extent necessary to permit the Trustee to collect Installment Payments and disburse them to the Depositor. Applicants submit that the relief is appropriate because the DSC is more properly characterized as a sales load.

B. Exchange Option and Rollover Option

1. Sections 11(a) and (c) of the Act prohibit any offer of exchange by a UIT for the securities of another investment company unless the terms of the offer have been approved in advance by the Commission. Applicants request an order under sections 11(a) and 11(c) for Commission approval of the Exchange Option and the Rollover Option. Applicants state that the Five Months

Adjustment and the DSC Front-End Exchange Adjustment in certain circumstances are appropriate to maintain the equitable treatment of various investors in each Series.

C. Net Worth Requirement

1. Section 14(a) of the Act requires that a registered investment company have $100,000 of net worth prior to making a public offering. Applicants state that each Series will comply with this requirement because the Depositor will deposit substantially more than $100,000 of debt and/or equity securities, depending on the objective of the particular Series. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Series would not satisfy section 14(a) because of the Depositor's intention to sell of the Units of the Series.

2. Rule 14a–3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in ''eligible trust securities,'' as defined in the rule. Applicants state that they may not rely on rule 14a–3 because certain future Series (collectively, ''Equity Series'') will invest all or a portion of their assets in equity securities or registered investment company securities pursuant to an exemptive order, which do not satisfy the definition of eligible trust securities.

3. Applicants request an exemption under section 6(c) of the Act to the extent necessary to exempt the Equity Series from the net worth requirement in section 14(a). Applicants state that the Series and the Depositor will comply in all respects with the requirement of rule 14a–3, except that the Equity Series will not restrict their portfolio investment to ''eligible trust securities.''

D. Capital Gains Distribution

1. Section 19(b) of the Act and rule 19b–1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b–1(c), under certain circumstances, exempts a UIT investing in eligible trust securities (as defined in rule 14a–3) from the requirements of rule 19b–1. Because the Equity Series do not limit their investments to eligible trust securities, however, the Equity Series will not qualify for the exemption in paragraph (c) of rule 19b–1. Applicants therefore request an exemption under section 6(c) from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the sale of portfolio securities to be distributed to Unitholders along with the Equity Series' regular distributions. In all other respects, applicants will comply with section 19(b) and rule 19b–1.

2. Applicants state that their proposal meets the standard of section 6(c). Applicants assert that any sale of portfolio securities would be triggered by the need to meet Series' expenses, Installment Payments, or by redemption requests, events over which the Depositor and the Equity Series do not have control. Applicants further state that, because principal distributions must be clearly indicated in accompanying reports to Unitholders as a return of principal and will be relatively small in comparison to normal dividend distributions, there is little danger of confusion from failure to differentiate among distributions.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

A. DSC and Exchange and Rollover Options

1. Whenever the Exchange Option or the Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, *provided* that: (a) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the Exchange Option or the Rollover Option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Series under section 22(e) of the Act and the rules and regulations promulgated under that section, or (ii) a Series temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the Exchange Option or the Rollover Option will pay a lower sales charge than that which would be paid for the Units by a new investor.

3. The prospectus of each Series offering exchanges or rollovers and any sales literature or advertising that mentions the existence of the Exchange Option or Rollover Option will disclose that the Exchange Option and the Rollover Option are subject to modification, termination or suspension without notice, except in certain limited cases.

4. Any DSC imposed on a Series' Units will comply with the requirements of subparagraphs (1), (2) and (3) of rule 6c–10(a) under the Act.

5. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required in Form N–1A relating to deferred sales charges, modified as appropriate to reflect the differences between UITs and open-end management investment companies, and a schedule setting forth the number and date of each Installment Payment.

B. Net Worth Requirement

Applicant will comply in all respects with the requirements of rule 14a–3, except that the Equity Series will not restrict their portfolio investments to ''eligible trust securities.''

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18803 Filed 7–24–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25668; 812–12798]

Matrix Unit Trust, et al.; Notice of Application

July 19, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

Summary of Application: Applicants Matrix Capital Group, Inc. (the ''Depositor''), Matrix Unit Trust (''Matrix Trust'') and unit investment trusts (''UITs'') organized in the future and sponsored by the Depositor (together with Matrix Trust, the ''Trusts,'' and series of the Trusts, ''Series'') request an order (a) under section 12(d)(1)(J) of the Act to permit

Series to offer and sell to the public units (''Units'') with a sales load that exceeds the limit in section 12(d)(1)(F)(ii) of the Act; and (b) under sections 6(c) and 17(b) from section 17(a) of the Act to permit the Series to invest in affiliated registered investment companies within the limits of section 12(d)(1)(F) of the Act.

Applicants: Matrix Unit Trust and Matrix Capital Group, Inc.

Filing Dates: The application was filed on March 21, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 13, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: c/o Mark J. Kneedy, Chapman and Cutler, 111 West Monroe Street, Chicago, IL 60603.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Matrix Trust is registered under the Act as a UIT. The Depositor, a broker-dealer registered under the Securities Exchange Act of 1934, is the depositor for each Series. Each Series will be created under state law pursuant to a trust agreement that will contain information specific to that Series, and will incorporate by reference a master trust agreement between the Depositor and a financial institution that satisfies the criteria in section 26(a) of the Act (the ''Trustee''). The trust agreement and the master trust agreement are referred to collectively as the ''Trust Agreement''. Pursuant to the Trust Agreement, the Depositor will deposit into each Series shares of existing registered investment companies (''Funds''), or contracts and monies for the purchase of shares of the Funds. Each of the Funds will be a closed-end investment company (''Closed-end Fund''), an open-end investment company or a UIT. In addition, certain of the Funds may be either an open-end investment company or a UIT that has received exemptive relief under the Act to sell its shares at negotiated prices on an exchange (''Exchange Funds'').

2. The purpose of each Series is to provide retail investors with a practical, cost efficient means of investing in a diversified pool of securities of investment companies that has been professionally selected by the Depositor, and each Series' investment objective will be to seek capital appreciation, income, or any combination thereof by investing all or a portion of its assets in shares of investment companies. Applicants anticipate that certain of the Funds selected may be advised and/or distributed by the Depositor or one of its affiliates (''Affiliated Funds''). Applicants anticipate that most of the Funds selected will be unaffiliated with any of the applicants, including the Depositor (''Unaffiliated Funds''). Applicants state that the Series'' investments in Affiliated and Unaffiliated Funds will comply with section 12(d)(1)(F) in all respects except for the sales load restriction of section 12(d)(1)(F)(ii).

3. The only Funds that will be eligible for inclusion in a Series are either no load Funds or Funds which, although they offer shares with a front-end sales charge to the public, agree to waive any otherwise applicable front-end sales load with respect to all shares sold or deposited in any Series. Shares of each of the Funds (except Closed-end Funds and Exchange Funds), therefore, will be sold for deposit into any Series at net asset value. Shares of Closed-end Funds and Exchange Funds will be purchased by a Series at their ''market value''.[1] Investors in a Series (''Unitholders'') will pay a specified sales load to the Depositor in connection with the purchase of their Units.

4. A Series may pay an evaluation fee with regard to determining the value of a Fund's shares. If the Trustee receives service fees under a rule 12b–1 plan from the Funds to compensate it for providing servicing and sub-accounting functions with respect to Fund shares held by a Series, the Trustee will reduce its regular fee to a Series directly by the fees it receives from the Funds and rebate any excess fees it receives to the Series. Any fees so rebated will be utilized by the Series to absorb other bona fide Series expenses. To the extent that these fees exceed the total Series expenses, the excess will be distributed along with other income earned by the Series.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if those securities represent more than 3% of the acquired company's total outstanding voting stock, more than 5% of the acquiring company's total assets, or if the securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by the investment companies generally. Section 12(d)(1)(C) of the Act prohibits an investment company, other investment companies having the same adviser, and companies controlled by such investment companies, from acquiring more than 10% of the outstanding voting stock of a registered closed-end management investment company.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) does not apply to an acquiring company if the company and its affiliated persons own no more than 3% of an acquired company's total outstanding securities, provided that the acquired company does not impose a sales load of more than 1.5%. In addition, the section provides that no acquired company may be obligated to honor any acquiring company's redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same

[1] Market value will be determined by an evaluator and will be based on the closing prices (or if unavailable, the closing asking prices) for the securities traded on an exchange or on the Nasdaq Stock Market.

proportion as all other shareholders of the acquired company.

3. A Series will invest in Affiliated and Unaffiliated Funds in reliance on section 12(d)(1)(F) of the Act. If the requested relief is granted, the Series will offer Units to the public with a sales load that exceeds the 1.5% limit in section 12(d)(1)(F)(ii).

4. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1), if and to the extent that such exemption is consistent with the public interest and the protection of investors.

5. Applicants have agreed, as a condition to the requested relief, that any sales charges and/or service fees with respect to Units of a Series will not exceed the limits set forth in rule 2830 of the National Association of Securities Dealers, Inc. (''NASD'') Conduct Rules applicable to a fund of funds. Applicants believe that it is appropriate to apply the NASD's rule to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F)(ii) because the proposed limit would cap the aggregate sales charges of the Units and the Funds. Applicants assert that the NASD's rule more accurately reflects today's regulatory environment with respect to the methods by which investment companies finance sales expenses.

6. Applicants state that, with respect to shares of Closed-end Funds and Exchange Funds held by a Series, no front-end sales load, contingent deferred sales charges or redemption fees will be charged in connection with the sale or purchase of Funds shares by a Series. Applicants state that although the Series likely will incur brokerage commissions in connection with its market purchases of shares of Closed-end Funds or Exchange Funds, these commissions will not differ materially from commissions otherwise incurred in connection with the purchase or sale of comparable portfolio securities.

7. Applicants also agree, as a condition to the requested relief, that no Series will acquire securities of a Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

B. Section 17(a) of the Act

1. With regard to the Series' investments in Affiliated Funds, applicants request relief from section 17(a) of the Act under sections 6(c) and 17(b). Section 17(a) of the Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person directly or indirectly controlling, controlled by, or under common control with the other person. Applicants submit that the Series and Affiliated Funds may be deemed to be affiliated persons of one another by virtue of being under common control of the Depositor. Applicants state that purchases and redemptions of share of the Affiliated Funds by a Series could be deemed to be principal transactions between affiliated persons under section 17(a).

2. Section 6(c) of the Act provides that the Commission may exempt persons or transactions from any provisions of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act provides that the Commission will exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicants state that shares of Affiliated Funds will be sold to the Series at net asset value, or, in the case of Closed-end Funds or Exchange Funds, at their market value. As a result, applicants believe that the proposed terms and conditions of the Series' transactions in Affiliated Fund shares, including the consideration to be paid or received, will be reasonable and fair and will not involve overreaching on the part of any person concerned. Furthermore, applicants believe that the proposed transactions will be consistent with the policies of the each Series as recited in their registration statements, including disclosure that each Series is to hold shares of various Funds.

Applicant's Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges and/or service fees (as those terms are defined in NASD Conduct Rule 2830) charged with respect to Units of a Series will not exceed the limits set forth in NASD Conduct Rule 2830 applicable to a fund of funds (as defined in NASD Conduct Rule 2830).

3. No Series will acquire securities of a Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. No Series will terminate within thirty days of the termination of any other Series that holds shares of one or more common Funds.

5. The prospectus of each Series and any sales literature or advertising that mentions the existence of an in-kind distribution option will disclose that Unitholders who elect to receive Fund shares will incur any applicable rule 12b–1 fees.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18837 Filed 7–24–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46231; File No. SR–CHX–2002–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated to Reduce or Eliminate Certain Transaction Credit Programs for Specialists

July 19, 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 July 8, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule (''Schedule''), effective July 1, 2002, to reduce or eliminate certain transaction credit programs for specialists. The text of the proposed rule change is available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX proposes to amend the Schedule by (1) eliminating the transaction credits paid to specialists with respect to trading in Nasdaq/NM securities; and (2) reducing the highest level of transaction credits and modifying the remaining credits paid to specialists with respect to trading in issues listed on the American Stock Exchange (''Tape B'' securities).

The Exchange has proposed this change in direct response to the Commission's abrogation of certain proposed rule changes involving transaction credit rebate programs of other market centers.[4] The CHX's specialist transaction credit program was put in place in February 1997[5] to provide specialists with credits based upon their market share in the issues that they traded.[6] The Exchange does not believe that its program has resulted in widespread abuses such as those noted by the Commission in its recent press release.[7] Nevertheless, the Exchange believes that the Commission's concerns about the potential impact of these programs on the national markets should be explored further. The Exchange, accordingly, has proposed the elimination and reduction of the credit programs described above, at the request of the Commission, to ensure that market participants are on similar footing with respect to these programs during the ongoing review of this issue. As further information is revealed about the actual impact of these types of programs on the national market system, the Exchange anticipates that it will examine the efficacy of its remaining credit programs as well.

The changes to the Schedule are effective as of July 1, 2002.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder,[10] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–2002–22, and should be submitted by August 15, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18841 Filed 7–24–02; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37) (order of summary abrogation).

[5] *See* Securities Exchange Act Release Nos. 38237 (February 4, 1987, 62 FR 5492 (February 12, 1997) (instituting the specialist credit); and 41947 (September 29, 1999), 64 FR 54703 (October 7, 1999) (instituting a transaction credit for floor brokers).

[6] The program originally provided credits as follows: a specialist whose monthly market share was less than 7% received a credit equal to 18% of the market data revenue in that stock received by the Exchange; a specialist whose monthly market share was 7 to 12% received a 36% credit; and a specialist whose market share was greater than 12% received a 54% credit. These credit rates were marginal rates; in other words, a specialist whose market share was 9% received an 18% credit on the trades that made up its 7% market share and a 36% credit on all subsequent trading activity. The credit program was modified in March 2000 to slightly increase the credits available to specialists trading listed securities and to establish a credit program for specialists trading Nasdaq/NM securities. *See* Securities Exchange Act Release No. 42561 (March 22, 2000), 65 FR 16443 (March 28, 2000) (SR–CHX–2000–06).

[7] In its press release, the Commission noted that it is concerned ''that the availability of large market data revenue rebates in certain markets may be creating incentives for traders to engage in transactions with no economic purpose other than to receive market data fees.'' The Commission also stated its concern that ''the structure and size of market data revenue rebates may be distorting the reporting of trades and that these rebate programs may reduce the regulatory resources of the markets and reallocate the funding of regulation among participants.''

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46228; File No. SR–ISE–2002–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Stock Exchange, Inc. To Eliminate Position and Exercise Limits for Certain Qualified Hedge Strategies

July 18, 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 June 26, 2002, the International Stock Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend ISE Rule 413 to eliminate position and exercise limits when certain qualified hedge strategies are employed to establish a hedged equity option position and to establish a position and exercise limit of five times the standard limit for those strategies that include an OTC option contract. The current reporting procedures that serve to identify and document hedged positions will continue to apply. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to eliminate position and exercise limits when certain qualified strategies are employed to establish a hedged equity option position and to establish a position and exercise limit of five times the standard limit for those strategies that include an OTC option contract. Current ISE Rule 413 provides position and exercise limits for stock options of 13,500, 22,500, 31,500, 60,000 and 75,000 options contracts on the same side of the market depending on the level of underlying trading volume over a six-month period. The existing hedge exemption provides an exemption to position and exercise limits of up to three (3) times the standard limit for certain qualified hedge strategies as follows: (i) Long call and short stock; (ii) short call and long stock; (iii) long put and long stock; and (iv) short put and short stock.

The ISE represents that the types of hedge strategies employed by market participants are becoming increasingly more diversified. The Exchange believes that, through its experience in administering and processing equity hedge exemption information, it has learned that market participants no longer rely strictly on a stock-option hedge. Additionally, while traditional hedge strategies such as a covered call or reverse conversion strategy continue to be utilized, the ISE believes that listed options contracts are now employed to hedge a wider spectrum of securities.

In response to the Commission's liberalization in granting position limit relief for market neutral strategies, and to more fully accommodate the hedging needs of investors, the Exchange is proposing to eliminate position and exercise limits when certain qualified strategies are employed to establish a hedged equity options position. Accordingly, the ISE proposes to expand the definition of a ''qualified'' hedged position found in ISE Rule 413. The proposed qualified hedged strategies are as follows:

1. Where each option contract is ''hedged'' by the number of shares underlying the option contract or securities convertible into the underlying security or, in the case of an adjusted option, the same number of shares represented by the adjusted contract: (a) Long call and short stock; (b) short call and long stock; (c) long put and long stock; or (d) short put and short stock.

2. *Reverse Conversions*—A long call position accompanied by a short put position, where the long call expires with the short put and the strike price of the long call and short put is the same, and where each long call and short put contract is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.[3]

3. *Conversions*—A short call position accompanied by a long put position, where the short call expires with the long put and the strike price of the short call and long put is the same, and where each short call and long put contract is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.[4]

4. *Collars*—A short call position accompanied by a long put position, where the short call expires at the same time as the long put and the strike price of the short call equals or exceeds the strike price of the long put position and where each short call and long put position, is hedged with 100 shares of the underlying security (or other adjusted number of shares). Neither side of the short call/long put position can be in-the-money at the time the position is established.[5]

5. *Box Spreads*—A long call position accompanied by a short put position, where both the long call and short put have the same strike price, and a short call position accompanied by a long put position, where the short call and long put have the same strike price as each other, but a different strike price than the long call/short put position.

6. *Back-to-Back Options*—A listed option position hedged on a one-for-one basis with an over-the-counter (''OTC'') option position on the same underlying security. The strike price of the listed option position and corresponding OTC option position must be within one strike price interval of each other and no more than one expiration month apart.

[3] For reverse conversion, conversion, and collar strategies, one of the option components can be an OTC option guaranteed or endorsed by the firm maintaining the proprietary position or carrying the customer account. Hedge transactions and positions established pursuant to these strategies are subject to a position limit equal to five times the standards limit established under ISE Rule 412(c) and Supplementary Material .02 to Rule 412. For purposes of this rule filing, an OTC option contract is defined as an option that is not listed on a National Securities Exchange or cleared at the Options Clearing Corporation.

[4] *Id.*

[5] *Id.*

Within the list of proposed hedge strategies eligible for the Equity Hedge Exemption, the Exchange proposes that the option component of a reversal, a conversion or a collar position can be treated as one contract rather than as two (2) contracts. All three strategies serve to hedge a related stock portfolio. Because these strategies require the contemporaneous [6] purchase/sale of both a call and put component, against the appropriate number of shares underlying the option (generally 100 shares) the Exchange believes that the position should be treated as one contract for hedging purposes.

Under the proposed rule change, the standard position and exercise limits will remain in place for unhedged equity option positions. Once an account nears or reaches the standard limit, positions identified as a qualified hedge strategy will be exempted from position limit calculations. The exemption will be automatic (*i.e.,* does not require pre-approval from the Exchange) to the extent that the member identifies that a pre-existing qualified hedge strategy is in place or is employed from the point that an account's position reaches the standard limit and provides the required supporting documentation to the Exchange.

The exemption will remain in effect to the extent that the exempt positions remain intact and the Exchange is provided with any required supporting documentation. Procedures to demonstrate that the option position remains qualified are similar to those currently in place. Exchange procedures currently require a qualified account to report hedge information each time the option position changes. Hedge information for member firm and customer accounts are electronically reported via the Large Options Positions Report. Market maker account information is also reported to the Exchange electronically by the member's clearing firm. The existing requirement imposed on a member firm to report hedge information for proprietary and customer accounts that maintain an options position in excess of 10,000 contracts will continue to apply.

The ISE believes that, with the exception of covered stock positions, all of the proposed qualified hedge strategies are market neutral.[7] Therefore, none of the proposed strategies lend themselves to market manipulation and should be exempt from position limits. In addition, the Exchange believes that the current reporting requirements under ISE rules and the surveillance procedures for hedged positions will enable the Exchange to closely monitor sizable option positions and corresponding hedges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [8] in general and furthers the objectives of section 6(b)(5) [9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such short time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

The ISE has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal is substantially identical to proposed rule changes submitted by other options exchanges, which the Commission has approved.[12] The Commission also notes that these proposals were noticed for public comment and no comment was received. The Commission does not believe that the proposed rule change raises novel regulatory issues that were not already addressed in the approval orders to these proposed rule changes.[13] For these reasons, the Commission designates the proposal to be effective and operative as of the date of this order.[14]

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

[6] At or about the same time.

[7] Where covered stock transactions are not market neutral (*i.e.,* long stock/short call; short stock/short put); the market exposure on such activity resides with the stock position where no limit is imposed. The ISE believes that, as the short option premium serves to mitigate the stock exposure, no limit should be imposed on this strategy.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] *See* Securities Exchange Act Release No. 45737 (April 11, 2002), 67 FR 18975 (April 17, 2002) (SR–PCX–00–45); Securities Exchange Act Release No. 45650 (March 26, 2002), 67 FR 15638 (April 2, 2002) (SR–Amex–2001–72); Securities Exchange Act Release No. 44503 (March 20, 2002), 67 FR 14751 (March 27, 2002) (SR–CBOE–00–12).

[13] *Id.*

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–2002–15 and should be submitted by August 15, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18839 Filed 7–24–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46232; File No. SR–NASD–2002–94]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Reinstate a Transaction Credit Pilot Program for Exchange-Listed Securities

July 19, 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 July 8, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. On July 17, 2002, Nasdaq amended the proposal.[3] Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] 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

As of July 1, 2002, Nasdaq proposes to reinstate its transaction credit pilot program for exchange-listed securities for a six-month pilot period, through December 31, 2002. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[7]

7010. System Services

(a)–(b) No change.

(c)(1) No change.

(2) Exchange-Listed Securities Transaction Credit.

For a pilot period, qualified NASD members that trade securities listed on the NYSE and Amex in over-the-counter transactions reported by the NASD to the Consolidated Tape Association may receive from the NASD transaction credits based on the number of trades so reported. To qualify for the credit with respect to Tape A reports, an NASD member must account for 500 or more average daily Tape A reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. To qualify for the credit with respect to Tape B reports, an NASD member must account for 500 or more average daily Tape B reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. If an NASD member is so qualified to earn credits based either on its Tape A activity, or its Tape B activity, or both, that member may earn credits from one or both pools maintained by the NASD, each pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. A qualified NASD member may earn credits from the pools according to the member's pro rata share of the NASD's over-the-counter trade reports in each of Tape A and Tape B for each calendar quarter starting with July 1, 2000 for Tape A reports (April 1, 2000 for Tape B reports) and ending with the calendar quarter starting on [April] *October* 1, 2002.

(d)–(r) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. 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

Nasdaq proposes to reinstate through December 31, 2002 its pilot program to provide a transaction credit to NASD members that exceed certain levels of trading activity in exchange-listed securities. Nasdaq's InterMarket is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock Exchange (''NYSE'') and the American Stock Exchange (''Amex'').[8] The InterMarket competes with regional exchanges like the Chicago Stock Exchange (''CHX'') and the Cincinnati Stock Exchange (''CSE'') for retail order flow in stocks listed on the NYSE and the Amex. The NASD collects trade reports from broker-dealers trading these securities in the over-the-counter (''OTC'') market and provides the trade reports to the Consolidate Tape Association (''CTA'') for inclusion in the Consolidated Tape. As a participant in the CTA Plan, the NASD is entitled to a portion of the revenue that the CTA generates by selling this market data information. NASD's share of the revenues is based on trades that it reports on behalf of these broker-dealers in NYSE-listed

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* July 17, 2002 letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission and attachments (''Amendment No. 1''). In Amendment No. 1, Nasdaq provided clarification as to the procedural history of its transaction credit pilot program, and in particular, with regard to SR–NASD–2002–68. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on July 17, 2002, the date Nasdaq filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] Nasdaq asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[7] On July 2, 2002, the Commission abrogated SR–NASD–2002–68. *See* Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37) (order of summary abrogation). By abrogating SR–NASD–2002–68, the Commission eliminated the pilot program, despite the fact that the NASD Rules still contained NASD Rule 7010(c)(2). Because Nasdaq is reinstating the pilot program at this time, the Commission did not require Nasdaq to file a proposed rule change to eliminate the language of NASD Rule 7010(c)(2). As a result, the only language that appears in italics as new language is the language identifying the expiration date of the newly reinstated pilot program.

[8] Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. *See* Securities Exchange Act Release No. 42907 (June 7, 2000); 65 FR 37445 (June 14, 2002) (SR–NASD–00–323).

securities (''Tape A'') and in Amex-listed securities (''Tape B'').

The Transaction Credit Pilot Program (the ''Program'') began in 1999.[9] Under the Program, Nasdaq shares a portion of the tape revenues that it receives (through the NASD) from the CTA, by providing a transaction credit to members who exceed certain levels of OTC trading activity in NYSE and Amex securities. The Program helps InterMarket market makers and investors lower costs associated with trading listed securities. The Program is also an important tool for Nasdaq to compete against other exchanges (particularly CSE and CHX) that offer similar programs [10] and thereby maintain market share in listed securities.

Under the Program, Nasdaq calculates two separate pools of revenue from which credits can be earned: one representing 40% of the gross revenues received from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by the CTA (Tape A), the other representing 40% of the gross revenue received from the CTA for reporting Amex trades (Tape B). Eligibility for transaction credits is based on concurrent quarterly trading activity. For example, an InterMarket participant that enters the market for Tape A or Tape B securities during a particular quarter and prints an average of 500 daily trades of Tape A securities during the time it is in the market, or that averages 500 Tape B prints during such quarter, would be eligible to receive transaction credits based on its trades during that quarter. Only those members that continue to average an appropriate daily execution level are eligible for transaction credits. Eligible members receive a *pro-rata* portion of the Tape A and/or Tape B pool, as applicable.

The Program was scheduled to expire on June 30, 2002. Nasdaq submitted a proposed rule change on June 13, 2002 to extend the Program through December 31, 2002, and to modify the Program by providing transaction credits to the liquidity provider in a transaction rather than the reporting party.[11] On July 2, 2002, the Commission summarily abrogated SR–NASD–2002–68 and certain filings of the CSE and The Pacific Exchange, Inc. related to market data revenue sharing.[12] However, revenue sharing programs for Tape A and Tape B offered by the CSE and CHX remain in effect. Accordingly, Nasdaq, after consultation with Commission staff, is reinstating the Program, as it was in effect during the first half of 2002, to prevent competitive disparities from arising.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with the Act, including section 15A(b)(5) of the Act,[13] which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and section 15A(b)(6) of the Act,[14] which requires rules that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. By reinstating the Program, the proposed rule change will allow overall fees for InterMarket to remain at the level they were at during the first six months of 2002.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the 5-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq to reinstate the Program effective as of July 1, 2002, thereby eliminating competitive disparities between self-regulatory organizations that offer tape revenue sharing programs. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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

[9] *See* Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR–NASD–99–13). The SEC issued notice of subsequent extensions of the Program. *See* Securities Exchange Act Release Nos. 42095 (November 3, 1999), 64 FR 61680 (November 12, 1999) (SR–NASD–99–59); 42672 (April 12, 2000), 65 FR 21225 (April 20, 2000) (SR–NASD–00–10); 42907 (June 7, 2000), 65 FR 37445 (June 14, 2000) (SR–NASD–00–32); 43831 (January 10, 2001), 66 FR 4882 (January 18, 2001) (SR–NASD–00–72); 44098 (March 23, 2000), 66 FR 17462 (March 30, 2001) (SR–NASD–01–15); 44734 (August 22, 2001), 66 FR 4537 (August 26, 2001) (SR–NASD–2001–42); and 45273 (January 14, 2002); 67 FR 2716 (January 18, 2002) (SR–NASD–2001–92).

[10] *See* Securities Exchange Act Release No. 38237 (February 4, 1997), 62 FR 6592 (Feb. 12, 1997) (SR–CHX–97–01) and Securities Exchange Act Release No. 39395 (December 3, 1997), 62 FR 65113 (December 10, 1997) (SR–CSE–97–12.)

[11] *See* Securities Exchange Act Release No. 46153 (July 1, 2002), 67 FR 45164 (July 8, 2002) (SR–NASD–2002–68).

[12] *See* Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37) (order of summary abrogation).

[13] 15 U.S.C. 78o–3(b)(5).

[14] 15 U.S.C. 78o–3(b)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2002–94 and should be submitted by August 15, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18842 Filed 7–24–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46234; File No. SR–NASD–2002–73]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq Testing Facility Fees, and Adding the Ability to Test Computer-to-Computer Interface, Application Programming Interface, and Market Data Vendor Feeds Over Dedicated Circuits

July 19, 2002.

On June 4, 2002, 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''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–thereunder,[2] a proposed rule change to apply the same schedule of fees in SR–NASD–2002–72[3] to non-member subscribers that use a dedicated circuit or circuits to test their communication interfaces and/or market data vendor feeds with Nasdaq's central processing facilities. The fees consist of monthly fees and one-time installation fees, and would be charged in addition to the hourly fees currently charged. The proposed rule change was published for notice and comment in the **Federal Register** on June 18, 2002.[4] The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[5] and, in particular, the requirements of section 15A(b)(5),[6] which requires the rules of a national securities association to provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility which the association operates or controls. The Commission finds the proposed rule change is consistent with section 15A(b)(5) because the same fees will be charged to member and non-member subscribers that choose to test their communication systems interfaces with Nasdaq's central processing facilities over a dedicated circuit or circuits. The Commission accepts Nasdaq's representation that the fees are reasonable because the fees have been calculated to recover Nasdaq's actual costs of installation and maintenance of the dedicated circuit(s).

It is therefore ordered, pursuant to section 19(b)(2) of the Act[7], that the proposed rule change (SR–NASD–2001–73) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18843 Filed 7–24–02; 8:45 am]

BILLING CODE 8010–01–P

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 46065 (June 12, 2002), 67 FR 41556 (June 18, 2002).

[4] Securities Exchange Act Release No. 46066 (June 12, 2002), 67 FR 41554.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46214; File No. SR–Phlx–2001–63]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing of and Order Granting Accelerated Approval to Amendment No. 3 Relating to New Product Allocations

July 16, 2002.

I. Introduction

On June 18, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to new product allocations. On February 28, 2002, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] On April 5, 2002, the Phlx submitted Amendment No. 2 to the proposed rule change.[4] On May 2, 2002, notice of the proposed rule change and Amendment Nos. 1 and 2 thereto was published in the **Federal Register**.[5] The Commission received no comments on the proposed rule change, as amended by Amendment Nos. 1 and 2. On June 25, 2002, the Phlx filed Amendment No. 3 to the proposed rule change with the Commission.[6] This order approves the proposed rule change, as amended, and grants accelerated approval to Amendment No. 3. The Commission is also soliciting comments on Amendment No. 3 from interested persons.

II. Description of Proposal

The Phlx proposes to amend Phlx Rule 511(b), Allocations, to permit the Equity Allocation, Evaluation and Securities Committee and the Options Allocation, Evaluation and Securities Committee (collectively ''Committees'') to allocate a new product[7] to an eligible

[3] *See* letter from Linda C. Christie, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 26, 2002 (''Amendment No. 1'').

[4] *See* letter from Linda C. Christie, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 4, 2002 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 45824 (April 25, 2002), 67 FR 22144.

[6] *See* letter from Linda S. Christie, Counsel, Phlx, to Kelly McCormick-Riley, Senior Special Council, Division, Commission, dated June 25, 2002 (''Amendment No. 3''). In Amendment No. 3, the Phlx clarified that the three types of business transactions enumerated in proposed Phlx Rule 511(b)(ii) are not the type of business transactions contemplated under Phlx Rule 1023. The Phlx explained that for purposes of its proposed Rule 511(b)(ii), its Rule 1023 shall be deemed to prohibit only business transactions which are material in value either to the issuer or the specialist, would provide access to material non-public information relating to the issuer, or would provide access to material non-public information relating to the issuer, or would give rise to a control relationship between the issuer and the specialist unit. The receipt of routine business services, goods, materials, insurance, on terms that would be generally available shall not be deemed a business transaction for the purposes of Phlx Rule 1023. The Phlx further elaborated that license agreements, trademarks, tradenames and intellectual property are routine business services that are generally available through an issuer and that these types of transactions do not give rise to the possibility of the specialist unit being controlled an issuer. The Phlx also represented that the transactions contemplated in proposed Phlx Rule 511(b)(ii) do not provide access to non-public information relating to the issuer. Rather, these types of business agreements between the parties are routine in nature and are not deemed prohibited transactions per Phlx Rule 1023.

[7] Phlx proposes to define a new product for purposes of Phlx Rule 511(b)(i) as anything other

Continued

specialist unit that develops such new product or is instrumental in developing or bringing such new product to the Exchange without soliciting applications from any other specialist units. Currently, Phlx Rule 506(a) requires, among other things, that the Committees solicit applications from all eligible specialist units when allocating an equity or options book. Specialists will continue to be required to satisfy all eligibility requirements.[8]

The proposal would also permit the Committees, as a condition to allocating a book for any equity, option, or futures product that involves the licensing or other acquisition of an index, trademark, tradename, patent or other intellectual property, to: (1) Require a specialist unit to indemnify the Exchange and/or any third party against any potential liabilities associated with the product; (2) require a specialist unit to agree to pay the Exchange and/or any third party any amounts related to the product or use of the product; and (3) enter into any necessary agreements or undertakings with the Exchange and/or third party concerning the intellectual property, however, no such agreement or undertaking may confer any ownership or proprietary rights upon the specialist unit with respect to the intellectual property or the book.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with the requirements of sections 6(b)(4) and (5) of the Act[9] that the rules of an exchange, among other things, provide for the equitable allocation of reasonable fees, dues, and other charges among its members and issuers and other persons using its facilities, and be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.[10]

The Commission believes that the proposal to permit the Committees to allocate a new product to an eligible specialist unit that develops a new product or is instrumental in developing or bringing a new product to the Exchange without soliciting new applications from other specialist units will permit the Exchange to fulfill its obligation to protect investors and the public interest because specialist units will continue to be required to satisfy the existing specialist appointment criteria set forth in Phlx Rule 501. The proposal provides the Committees with the ability to consider a specialist's willingness to expend capital and other resources in developing and bringing new products to the Phlx. Further, the Commission notes that the Committees are not required to view the fact that an eligible specialist unit develops a new product or is instrumental in developing or bringing a new product to the Exchange as a conclusive factor in its allocation determination. The proposal merely provides the Committees with the discretion to consider such additional factors.

The Commission also believes that the proposal to permit the Committees to require certain indemnifications and agreements regarding payment and intellectual property is reasonable and should provide for the equitable allocation of charges incurred by the Exchange associated with the trading of new products. Further, the Commission believes that passing on these related costs should assist the Phlx in defraying some of the costs and may provide for a more effective utilization of Exchange resources.

The Commission also finds good cause for accelerating approval of Amendment No. 3 because it merely clarifies that the three types of business transactions enumerated in proposed Phlx Rule 511(b)(ii) are not business transactions contemplated under Phlx Rule 1023. Accordingly, the Commission finds that good cause exists, consistent with sections 6(b)(5) of the Act,[11] and section 19(b)(2) of the Act[12] to accelerate approval of Amendment No. 3 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–63 and should be submitted by August 15, 2002.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change, as amended, (File No. SR–Phlx–2001–63) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18840 Filed 7–24–02; 8:45 am]

BILLING CODE 8010–01–P

than common stock of an operating company, or options or futures on common stock of an operating company or straight debt of an operating company.

[8] *See, e.g.,* Phlx Rules 501, 506, and 511.

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3422]

State ofF Indiana; Amendment #3

In accordance with a notice received from the Federal Emergency Management Agency, dated July 15, 2002, the above numbered declaration is hereby amended to include Dearborn and Orange Counties in the State of Indiana as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring April 28, 2002 through June 7, 2002.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Franklin and Ohio Counties in Indiana; Boone County in Kentucky; and Butler and Hamilton Counties in Ohio. All other contiguous counties have been previously declared.

The economic injury number assigned to Ohio is 9Q6100.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is August 12, 2002, and for economic injury the deadline is March 13, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 17, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–18768 Filed 7–24–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9Q59]

State of New Mexico

Colfax, Rio Arriba, Santa Fe, San Miguel and Taos Counties and the contiguous Counties of Bernalillo, Guadalupe, Harding, Los Alamos, Mora, Quay, Sandoval, San Juan, Torrance and Union in the State of New Mexico; and Archuleta, Conejos, Costilla and Las Animas Counties in the State of Colorado constitute an economic injury disaster loan area as a result of wildfires that closed the Carson National Forest and the Santa Fe National Forest from May 9 through July 12, 2002. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on April 17, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.5 percent.

The number assigned for economic injury for this disaster is 9Q5900 for the State of New Mexico and 9Q6000 for the State of Colorado.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: July 17, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–18770 Filed 7–24–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3428]

State of Texas (Amendment #3)

In accordance with a notice received from the Federal Emergency Management Agency, dated July 16, 2002, the above numbered declaration is hereby amended to include Duval, McMullen and Jim Wells Counties in the State of Texas as disaster areas due to damages caused by severe storms and flooding occurring on June 29, 2002 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Brooks, Jim Hogg, Kleberg, Nueces and San Patricio Counties in Texas. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 2, 2002, and for economic injury the deadline is April 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: July 17, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–18769 Filed 7–24–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Federal Assistance To Provide Financial Counseling and Other Technical Assistance to Women

AGENCY: Small Business Administration.

ACTION: Amendment to **Federal Register** Notice, FR Doc. 02–16785, Filed 7–3–02, (67 FR 44920) pertaining to Program Announcement No. OWBO–2002–018. This amendment changes the application period and informs interested parties where to electronically access the program announcement and application materials.

SUMMARY: Whereas the previous notice stated that the application period is July 15, 2002 through August 12, 2002, this notice informs interested parties that the application period has changed to July 18, 2002 through August 15, 2002. Program Announcement No. OWBO–2002–018 may be electronically accessed at *http://www.onlinewbc.gov/grants.html.*

FOR FURTHER INFORMATION CONTACT: Sally S. Murrell at (202) 205–6673 or Mina Bookhard at (202) 204–7080.

Wilma Goldstein,

Assistant Administrator, SBA/Office of Women's Business Ownership.

[FR Doc. 02–18767 Filed 7–24–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4039]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct a series of open meetings, each at 9:30 a.m., on Thursday, August 15, September 12, October 10, November 14, December 12, 2002 and Wednesday, January 8, 2003. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street SW., Washington, DC 20950. The purpose of these meetings is to prepare for the Seventh Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications and Search and Rescue, to be held the week of January 13–17, 2003, at IMO headquarters in London, England.

Among the items of particular interest are:

- Maritime Safety Information for Global Maritime Distress Satellite System (GMDSS)
- Development of a procedure for recognition of mobile satellite systems
- Revision of performance standards for Navigational Telex (NAVTEX) equipment
- Emergency radiocommunications, including false alerts and interference
- Large passenger ship safety
- Issues related to maritime security
- Developments in maritime radiocommunication systems and technology
- Matters concerning Search & Rescue

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing; Mr. Russell S. Levin, U.S. Coast Guard Headquarters, Commandant (G–SCT–2), Room 6509, 2100 Second Street, SW., Washington, DC 20593–0001, by calling: (202) 267–1389, or by sending Internet electronic mail to *rlevin@comdt.uscg.mil.*

Dated: July 2, 2002.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 02–18851 Filed 7–24–02; 8:45 am]

BILLING CODE 4710–70–P

DEPARTMENT OF STATE

[Public Notice 4071]

Bureau of Nonproliferation; Imposition of Nonproliferation Measures Against Entities in the People's Republic of China and in India

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that the following persons have engaged in proliferation activities that require the imposition of measures pursuant to the Iran-Iraq Arms Non-Proliferation Act of 1992 and/or the chemical/biological nonproliferation provisions of the Arms Export Control Act and the Export Administration Act of 1979 (as continued by E.O. 13222 of August 17, 2001).

EFFECTIVE DATE: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: On general issues: Ron Parson, Bureau of Nonproliferation, Department of State, (202–647–0397). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State, (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to provisions of Section 1604 of the Iran-Iraq Arms Non-Proliferation Act of 1992 (Pub. L. 102–484), the President's Memorandum Delegation of Authority dated September 27, 1994 (59 FR 50685), and State Department Delegation of Authority No. 145 of February 4, 1980, as amended, the Under Secretary of State for Arms Control and International Security Affairs has determined that the following persons have engaged in proliferation activities that require the imposition of measures as described in section 1604(b) of the Iran-Iraq Arms Non-Proliferation Act of 1992 (Pub. L. 102–484).

Jiangsu Yongli Chemicals and Technology Import and Export Corporation (China), or any successor entities, parents or subsidiaries;

Q.C. Chen (China);

China Machinery and Equipment Import Export Corporation (China) and any successor entities, parents or subsidiaries;

China National Machinery and Equipment Import Export Corporation (China) and any successor entities, parents, or subsidiaries;

CMEC Machinery and Electric Equipment Import and Export Company Ltd. (China) and any successor entities, parents, or subsidiaries;

CMEC Machinery and Electrical Import Export Company, Ltd. (China) and any successor entities, parents, or subsidiaries;

China Machinery and Electric Equipment Import and Export Company (China) and any successor entities, parents, or subsidiaries;

Wha Cheong Tai Company Ltd. (China) and any successor entities, parents, or subsidiaries;

China Shipbuilding Trading Company (China) and any successor entities, parents, or subsidiaries;

Hans Raj Shiv (previously residing in India, and last believed to be in the Middle East).

Accordingly, until further notice and pursuant to the provisions of section 1604(b) of the Iran-Iraq Arms Non-Proliferation Act of 1992 (Pub. L. 102–484), the following measures are imposed on these persons:

1. For a period of two years, the United States Government shall not procure, or enter into any contract for the procurement of, any goods, or services from the sanctioned person;

2. For a period of two years, the United States Government shall not issue any license for any export by or to the sanctioned person.

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for two years, except to the extent subsequently determined otherwise.

Pursuant to section 81(a) of the Arms Export Control Act (22 U.S.C. 2798) and section 11C(a) of the Export Administration Act of 1979 (50 U.S.C. app 2410C (as continued by E.O. 13222 of August 17, 2001)), as amended by the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (Pub. L. 102–182), Executive Order 12851 of June 11, 1993 (58 FR 113), and State Department Delegation of Authority No. 145 of February 4, 1980, as amended, the Under Secretary of State for Arms Control and International Security Affairs has determined that the following foreign persons have engaged in chemical weapons proliferation activities that require the imposition of measures as described in section 81(c) of the Arms Export Control Act (22 U.S.C. 2798) and sections 11C(c)(1) of the Export Administration Act of 1979 (50 U.S.C. app 2410C (as continued by E.O. 13222 of August 17, 2001)).

Jiangsu Yongli Chemicals and Technology Import and Export Corporation, and its successors (China);

Q.C. Chen (China);

China Machinery and Equipment Import Export Corporation, and its successors (China);

China National Machinery and Equipment Import Export Corporation, and its successors (China);

CMEC Machinery and Electric Equipment Import and Export Company Ltd., and its successors (China);

CMEC Machinery and Electrical Import Export Company, Ltd., and its successors (China);

China Machinery and Electric Equipment Import and Export Company, and its successors (China);

Wha Cheong Tai Company Ltd., and its successors (China);

Accordingly, until further notice and pursuant to the provisions of section 81 (c) of the Arms Export Control Act (22 U.S.C. 2798) and section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. app 2410c (as continued by E.O. 13222 of August 17, 2001)), the following measures are imposed on these entities:

1. The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from the sanctioned persons;

2. The importation into the United States of products produced by the sanctioned persons shall be prohibited.

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for at least one year until further notice.

Dated: July 19, 2002.

John S. Wolf,

Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 02–18852 Filed 7–24–02; 8:45 am]

BILLING CODE 4710–27–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Services (ISAC–13)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a partially opened meeting.

SUMMARY: The Industry Sector Advisory Committee on Services (ISAC–13) will hold a meeting on July 30, 2002, from 1:30 p.m. to 4:30 p.m. The meeting will be opened to the public from 1:30 p.m. to 2:10 p.m. The meeting will be closed to the public from 2:10 p.m. to 4:30 p.m.

DATES: The meeting is scheduled for July 30, 2002, unless otherwise notified.

ADDRESSES: The meeting will be held in Room 6087B of the Department of Commerce located on 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jennifer Moll, at (202) 482–1316,

Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 or myself on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following agenda items will be discussed.

- Report on World Trade Organization (WTO) General Agreement on Trade in Services (GATS) Negotiations.
- Report from International Trade Commission representatives regarding their publication, Recent Trends in U.S. Services Trade.

Elizabeth A. Gianini,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison (A).

[FR Doc. 02–18871 Filed 7–24–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD09–01–123]

Great Lakes Regional Waterways Management Forum

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: ''The Great Lakes Regional Waterways Management Forum'' will hold a meeting to discuss various waterways management issues. Agenda items will include updates on the Great Lakes/St. Lawrence Seaway Navigation Study; maritime security issues; progress reports from Forum Subcommittees on Communications, Navigation Technologies, Outreach, Cruise Ships and Ballast Water; and discussions about the agenda for the next meeting. The meeting will be open to the public.

DATES: The meeting will be held August 13, 2002 from 1 p.m. to 4 p.m. Comments must be submitted on or before August 9, 2002 to be considered at the meeting

ADDRESSES: The meeting will be held in the U.S. Coast Guard Club located on the U.S. Coast Guard Moorings, 1055 East Ninth Street, Cleveland, OH 44199. Any written comments and materials should be submitted to Commander (map), Ninth Coast Guard District, 1240 E. 9th Street, Room 2069, Cleveland, OH 44199.

FOR FURTHER INFORMATION CONTACT: CDR Michael Gardiner (map), Ninth Coast Guard District, at (216) 902–6049. Persons with disabilities requiring assistance to attend this meeting should contact CDR Gardiner.

SUPPLEMENTARY INFORMATION: The Great Lakes Waterways Management Forum identifies and resolves waterways management issues that involve the Great Lakes region. The forum meets twice a year to assess the Great Lakes region, assign priorities to areas of concern and identify issues for resolution. The forum membership has identified agenda items for this meeting that include: updates on the Great Lakes/St. Lawrence Seaway Navigation Study; maritime security issues; progress reports from Forum Subcommittees on Communications, Navigation Technologies, Outreach, Cruise Ships and Ballast Water; and discussions about the agenda for the next meeting. Additional topics of discussion are solicited from the public.

Dated: July 16, 2002.

Ronald F. Silva,

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

[FR Doc. 02–18758 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–02–019]

Houston/Galveston Navigation Safety Advisory Committee Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its working groups will meet to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. All meetings will be open to the public.

DATES: The next meeting of HOGANSAC will be held on Thursday, September 19, 2002 from 9 a.m. to 12 p.m. The meeting of the Committee's working groups will be held on Thursday, September 5, 2002 at 9 a.m. to 11 a.m. Members of the public may present written or oral statements at either meeting.

ADDRESSES: The full Committee meeting will be held at the Offices of the Houston Pilots Association, 8150 South Loop East, Houston, Texas (713–645–9620). The working groups' meeting will be held at the Offices of the Army Corps of Engineers, 2000 Fort Point Road, Galveston, Texas (409–766–3004).

FOR FURTHER INFORMATION CONTACT: Captain Kevin Cook, Executive Director of HOGANSAC, telephone (713) 671–5199, or Lieutenant Junior Grade Kelly Tobey, assistant to the Executive Secretary of HOGANSAC, telephone (713) 671–5103, e-mail katobey@vtshouston.uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Casto) (or the Committee Sponsor's representative), Executive Director (CAPT Cook) and

Chairman (Tim Leitzell).

(2) Approval of the May 23, 2002 minutes.

(3) Old Business:

(a) Dredging projects.

(b) Electronic navigation.

(c) AtoN Knockdown Working Group.

(d) Mooring subcommittee report.

(e) Bolivar Roads anchorage areas.

(f) Recreational boating education initiative.

(g) Port Security Subcommittee report.

(h) Bridge Allision Working Group.

(i) Swimmers near Lynchburg.

(4) New Business:

(a) Bayport Terminal Project.

Working Groups' Meeting. The tentative agenda for the working groups' meeting includes the following:

(1) Presentation by each working group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each working group.

Procedural

Working groups have been formed to examine the following issues: dredging and related issues, electronic navigation systems, AtoN knockdowns, impact of passing vessels on moored ships, recreational boater education issues, and port security. Not all working groups will necessarily report out at this session. Further, working group reports may not necessarily include discussions on all issues within the particular working group's area of responsibility. All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. Members of the public may make presentations, oral or written, at either meeting.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director, or assistant to the Executive Secretary.

Dated: July 11, 2002.

Roy J. Casto,

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

[FR Doc. 02–18785 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request to Release Airport Property at the Garden County Airport, Oshkosh, NE

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

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Garden County Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before August 26, 2002.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, Missouri 64106–2325. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Diane J. Hofer, P.E., Deputy Director of Planning & Engineering at the following address: State of Nebraska, Department of Aeronautics, 3431 Aviation Road, Suite 150, Lincoln, Nebraska 68524.

FOR FURTHER INFORMATION CONTACT: Nicoletta Oliver, Airports Compliance Specialist, FAA, Central Region, 901 Locust, Kansas City, MO 64106–2325, (816) 329–2642.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property at the Garden County Airport under the provisions of AIR 21.

On May 23, 2002, the FAA determined that the request to release property at the Garden County Airport submitted by the Nebraska Department Aeronautics, as agent for the Garden County Airport Authority, met the procedural requirements of the Federal Aviation Administration. The FAA will approve or disapprove the request, in whole or in part, no later than September 30, 2002.

The following is a brief overview of the request.

The Garden County Airport Authority requests the release of approximately 52 acres of airport property. The land is currently not being used for aeronautical purposes. The purpose of this release is to transfer ownership to adjacent landowners in exchange for land that is needed for the extension of Runway 12.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the request in person at the Nebraska Department of Aeronautics, Lincoln, Nebraska.

Issued in Kansas City, Missouri, on May 23, 2002.

Glenn E. Helm,

Acting Manager, Airports Division, Central Region.

[FR Doc. 02–18761 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–44]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 14, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–200X–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

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

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Phone: (202) 267–8029.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 12, 2002.

Richard McCurdy,

Acting Assistant Chief Counsel for Regulations,

Petitions for Exemption

Docket No.: FAA–2002–11704.
Petitioner: Cirrus Design Corporation.
Section of 14 CFR Affected: 14 CFR 45.25(b)(2) and 45.29(b)(1), (c), (d) and (e).
Description of Relief Sought: To permit Cirrus to operate aircraft ''anywhere in the Duluth Class D airspace and within the Duluth Approach Control airspace between 190 degree and 090 degree radials from the DLH VOR, north and west, up to including 14,000 feet MSL'' without those aircraft displaying marks that meet the location and size requirements of part 45.

Docket No.: FAA–2002–12341.
Petitioner: EMBRAER—Empresa Brasileira de Aeronáutica S.A.
Section of 14 CFR Affected: 14 CFR part 36, appendix C, section C36.9(e)(1).

Description of Relief Sought: To permit EMBRAER to use the 1-g stall speed used for 14 CFR part 25 airworthiness certification for part 39 noise certification for the approach reference and test limitations on the EMBRAER EMB145XR model airplane.

Dispositions of Petitions

Docket No.: FAA–2001–8741.
Petitioner: Cessna Aircraft Company.
Section of 14 CFR Affected: 14 CFR 91.409(b).
Description of Relief Sought/Disposition: To permit the owners and operators of C–172R, C–172S, C–182S, C–208 and C–208B airplanes to use Cessna's applicable PhaseCard Inspection Program rather than completing the required 100-hour inspection. *Grant, 06/07/2002, Exemption No. 6901C.*

Docket No.: FAA–2002–11750.
Petitioner: DalFort Aerospace, L.P.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit DalFort to make its inspection procedures manual (IPM) available electronically to its supervisory and inspection personnel rather than give a copy to each. *Grant, 06/13/2002, Exemption No. 7292A.*

Docket No.: FAA–2002–11752.
Petitioner: Peninsula Airways, Inc., dba PenAir.
Section of 14 CFR Affected: 14 CFR 91.411(b) and 91.413(c).
Description of Relief Sought/Disposition: To allow PenAir to perform ATC transponder tests and inspections and altimeter system and altimeter reporting equipment tests and inspections for its 14 CFR part 121 aircraft maintained under its continuous airworthiness maintenance program. PenAir is also granted relief to perform similar tests and inspections on its 14 CFR part 135 aircraft maintained under an approved aircraft inspection program. *Grant 05/16/2002, Exemption No. 7770.*

Docket No.: FAA–2002–11764.
Petitioner: Executive Jet Management, Inc.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit EJM to assign copies of its IPM to key individuals within its departments and key areas within its shop and place an adequate number of copies of its IPM for access to all employees, rather than give a copy if the IPM to each of its supervisory and inspection personnel. *Grant, 06/13/2002, Exemption No. 7813.*

Docket No.: FAA–2002–11837.
Petitioner: F.S. Repair Services, Inc.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit FSRS to place and maintain its IPM in fixed locations within its facility rather than give a copy of its IPM to each of its supervisory and inspection personnel. *Grant, 06/13/2002, Exemption No. 7814.*

Docket No.: FAA–2002–11857.
Petitioner: L–3 Communications Integrated Systems.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit L–3 to make its IPM available electronically to its supervisory, inspection, and other personnel, rather than give a paper copy of the IPM to each of its supervisory and inspection personnel. *Grant, 06/13/2002, Exemption No. 7816.*

Docket No.: FAA–2002–11868.
Petitioner: The Boeing Company.
Section of 14 CFR Affected: 14 CFR 25.365(e).
Description of Relief Sought: To permit a time-limited exemption for a period of time not to exceed three years to allow continued delivery of Model 767 airplanes, both in production and retrofit, which incorporate enhanced security flight deck doors meeting the requirements of 14 CFR 25.795(a)(1) and (2). Petition Withdrawn, 05/28/2002.

Docket No.: FAA–2002–11926.
Petitioner: Minneapolis Community & Technical College.
Section of 14 CFR Affected: 14 CFR 65.17(a), 65.19(b), and 65.75.
Description of Relief Sought/Disposition: To permit MCTC to (1) administer oral and practical tests to its students at times and places identified in its FAA-approved operations handbook, (2) allow students to apply for retesting within 30 days after failure without presenting a signed statement certifying additional instruction in the failed area, (3) administer the aviation mechanic general written test immediately after students successfully complete the general curriculum but before they meet the experience requirements of § 65.77, and (4) administer oral and practical tests as an integral part of the AMT educational process rather than upon students' successful completion of the mechanic written tests. *Grant, 05/20/2002, Exemption No. 7771.*

Docket No.: FAA–2002–11942.
Petitioner: The Boeing Company.
Section of 14 CFR Affected: 14 CFR 47.69(b).
Description of Relief Sought/Disposition: To permit Boeing to conduct flight testing and sales demonstrations outside the United States with its Dealer Aircraft Registration Certificates and Temporary Registration Numbers. *Grant, 06/07/2002, Exemption No. 6627A.*

Docket No.: FAA–2002–11990.
Petitioner: Air Transport International, L.L.C.
Section of 14 CFR Affected: 14 CFR 121.310(d)(4).
Description of Relief Sought/Disposition: To permit ATI to operate its McDonnell Douglas DC–8 airplanes in passenger-carrying operations without a cockpit control device for each emergency light. *Grant, 06/13/2002, Exemption No. 7815.*

Docket No.: FAA–2002–12164.
Petitioner: The Goodyear Tire & Rubber Company.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit Goodyear to maintain a copy of its repair station IPM at fixed locations within its facilities, rather than give a copy of the manual to each of its supervisors and inspectors. *Grant, 05/31/2002, Exemption No. 5543E.*

Docket No.: FAA–2002–12246.
Petitioner: Midcoast-Little Rock, Inc.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit Midcoast to place copies of its IPM in strategic locations throughout its repair station rather than giving a copy of the IPM to each of its supervisory and inspection personnel. *Grant, 06/13/2002, Exemption No. 7277A.*

[FR Doc. 02–18022 Filed 7–24–02; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

ACTION: National Advisory Council public meeting.

SUMMARY: The Maritime Administration announces that the Marine Transportation System (MTS) National Advisory Council (MTSNAC) will hold a meeting to discuss SEA–21 and other MTS related issues. A public comment period is scheduled for 9 a.m.—9:30 a.m. on Wednesday, August 14, 2002. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three

minutes. Members of the public who would like to speak are asked to contact Raymond Barberesi by August 6, 2002. Mr. Barberesi can be reached at: telephone (202) 366–4357, fax (202) 366–6988, or e-mail *Raymond.Barberesi@marad.dot.gov.* Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by August 21, 2002. Send comments to the attention of Mr. Raymond Barberesi, Director, Office of Ports and Domestic Shipping, U.S. Maritime Administration, 400 7th Street, SW., Room 7201, Washington, DC 20590.

DATES: The meeting will be held on Tuesday, August 13, 2002, from 2:30 p.m. to 5:30 p.m. and Wednesday, August 14, 2002, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Long Beach Hotel, 200 South Pine Avenue, Long Beach, California 90802.

For further information contact: Raymond Barberesi, (202) 366–4357; Maritime Administration, MAR–830, Room 7201, 400 Seventh St., SW., Washington, DC 20590; Raymond.Barberesi@marad.dot.gov.

(Authority: 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR part 102–3 DOT Order 1120.3B)

Dated: July 22, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–18853 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–12732]

Notice of Receipt of Petition for Decision That Nonconforming 1997–2001 and 2002 Porsche Boxster Passenger Cars Manufactured Before September 1, 2002 Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition for decision that nonconforming 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002 are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002 that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 26, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Automobile Concepts, Inc. of North Miami, Florida (''AMC'') (Registered Importer 01–278) has petitioned NHTSA to decide whether 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002 are eligible for importation into the United States. The vehicles which AMC believes are substantially similar are 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002 that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002 to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

AMC submitted information with its petition intended to demonstrate that non-U.S. certified 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002 are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word ''brake'' on the dash in place of the international ECE warning symbol; (b) replacement of the speedometer with a U.S.-model component calibrated to read in miles.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps; (b) installation of U.S.-model side markers; (c) installation of U.S.-model tail lamp assemblies which incorporate rear sidemarker lights; (d) installation of a U.S.-model high mounted stop light assembly if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component, or inscription of the required warning statement on that mirror.

Standard No. 114 *Theft Protection:* activation of the warning buzzer.

Standard No. 118 *Power Window Systems:* reprogramming of the power window system so that the windows will not operate with the ignition off.

Standard No. 201 *Occupant Protection in Interior Impact:* inspection of each vehicle to ensure that appropriate components have been installed to meet the requirements of the standard, and replacement of any component that is not a U.S.-model part. The petitioner states that the manufacturer has identified the vehicle as meeting the upper interior head impact requirements of the standard.

Standard No. 208 *Occupant Crash Protection:* (a) Activation of the seat belt warning buzzer by reprogramming the unit; (b) inspection of all vehicles and replacement of the driver's and passenger's side air bags, control units, sensors, and seat belts with U.S.-model components on vehicles that are not already so equipped. Petitioner states that the front and rear outboard designated seating positions have combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton. Petitioner further states that the vehicles are equipped with a seat belt warning lamp that is identical to the lamp installed on U.S.-certified models.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner states that the bumpers and bumper support structure on all vehicles must be inspected and, where necessary, replaced with U.S.-model bumper shocks, reinforcements, and pads to meet the Bumper Standard found in 49 CFR Part 581.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

The petitioner states that because anti-theft devices are installed on the vehicles, they are with exempt from the parts marking requirements of the Theft Prevention Standard at 49 CFR Part 541

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 18, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–18756 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–12731]

Notice of Receipt of Petition for Decision That Nonconforming Left-Hand Drive Japanese Market 1997 Jeep Grand Cherokee Multipurpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming left-hand drive (LHD) Japanese Market 1997 Jeep Grand Cherokee multipurpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that LHD 1997 Jeep Grand Cherokee MPVs manufactured for sale in Japan that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 26, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Auto Enterprises of Warren Michigan (Registered Importer 93–013) has petitioned NHTSA to decide whether LHD 1997 Jeep Grand Cherokee MPVs originally manufactured for sale in Japan are eligible for importation into the United States. The vehicles which Auto Enterprises believes are

substantially similar are 1997 Jeep Grand Cherokee MPVs that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified LHD Japanese Market 1997 Jeep Grand Cherokee MPVs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Auto Enterprises submitted information with its petition intended to demonstrate that non-U.S. certified LHD Japanese Market 1997 Jeep Grand Cherokee MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified LHD Japanese Market 1997 Jeep Grand Cherokee MPVs are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 101 *Controls and* Displays, 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic and Electric Brake Systems,* 106 *Brake Hoses,* 111 *Rearview Mirrors* (noting that the required warning statement is inscribed on the passenger-side rearview mirror), 113 *Hood Latch Systems,* 114 *Theft Protection* (noting that an audible alarm is activated when the ignition key is left in the ignition lock and the driver's door is open), 116 *Motor Vehicle Brake Fluids,* 118 *Power Window Systems* (noting that the power window transport is not activated when the ignition is switched off) 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 120 *Tire Selection and Rims for Vehicles other than Passenger Cars* (noting the presence of an OEM Export label in the door jamb that contains the required tire and rim information), 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 208 *Occupant Crash Protection* (noting that the vehicle is equipped with a safety belt warning buzzer and dash panel light, with U.S.-model driver's and passenger's side air bags, and with Type 2 seat belts in all front and rear outboard seating positions), 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified LHD Japanese Market 1997 Jeep Grand Cherokee MPVs comply with the Bumper Standard found in 49 CFR part 581, and with the Vehicle Identification Number (VIN) plate requirement of 49 CFR part 565.

Petitioner further contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* replacement of the left and right headlamps, front markers, and front park lamps with U.S.-model components.

The petitioner states that all vehicles must be inspected prior to importation for compliance with the Theft Prevention Standard found in 49 CFR part 541, and that U.S.-model anti-theft devices must be installed on all vehicles lacking that equipment.

The petitioner also states that a certification label must be affixed to the left front door jamb to meet the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 18, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–18757 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2002–11270, Notice No. 02–07]

Modification to Safety Advisory Concerning the Retesting of Cylinders Without Calibration of Test Equipment

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Modification of a safety advisory notice.

SUMMARY: On July 9, 2002, Research and Special Programs Administration (RSPA; we) published a safety advisory notice in the **Federal Register** (67 FR 45582) advising the public that we are investigating the alleged improper marking of DOT-specification cylinders and/or tube trailers by BKC Industries, Inc. 2117 Will Suitt Road, Creedmore, NC 27522. This safety advisory notice modifies the July 9, 2002 safety advisory notice.

FOR FURTHER INFORMATION CONTACT: Raymond LaMagdelaine, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366–4700, Fax: (202) 366–2784; or Mark Toughiry, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366–4545, Fax: (202) 366–3650.

SUPPLEMENTARY INFORMATION: The cylinders and tube trailers at issue in the July 9, 2002 safety advisory and in this safety advisory notice were marked by BKC industries, Inc. with the retester identification number (RIN) D236 and stamped with a retest date between August 1998 and October 2001. In the previous safety advisory notice, RSPA recommended that filled cylinders and tube trailers should be vented or otherwise safely discharged and then taken to a DOT-authorized cylinder retest facility for retesting. In addition, we recommended that the cylinders and tube trailers not be filled, refilled, or used for the their intended purpose until they had been reinspected, retested and recertified by a DOT-authorized facility.

Upon further review of this matter, we believe that the cylinders and tube trailers subject to the safety advisory notice may continue in service provided each cylinder and tube trailer is thoroughly inspected by external visual

examination at the time the cylinder or tube trailer is to be refilled. The visual examination should be conducted to the extent practicable without removing the cylinders or tubes from the trailer assembly. Records of the first visual examination conducted after the date of this safety advisory notice should be retained until the cylinder or tube is requalified. RSPA expects that BKC Industries will work with cylinder and tube trailer owners to arrange for requalification of the cylinders and tube trailers at issue.

Issued in Washington, DC on July 18, 2002.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–18771 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34209]

Norfolk Southern Railway Company-Trackage Rights Exemption-Delaware and Hudson Railway Company, Inc.

Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railway (CPR), pursuant to a written trackage rights agreement entered into between CPR and Norfolk Southern Railway Company (NSR),[1] has agreed to grant overhead trackage rights to NSR over approximately 284.6 miles of CPR's freight main line, between NSR's connection with CPR at milepost 752.0 near Sunbury, PA, and CPR's connection with Guilford Rail System (GTI) at milepost 467.40 at Mechanicville, NY.

The transaction is expected to be consummated no sooner than the latter of (1) July 12, 2002 (7 days after the exemption was filed), or (2) the expiration of any labor notice period to which NSR may be subject.

Under the proposed transaction, NSR will obtain trackage rights for certain restricted types and volumes of traffic, including traffic for interchange with GTI and Canadian National Railway Company. The trackage rights will enable NSR to more efficiently access and serve customers in New York State, the New England States, and the eastern Canadian rail market, in conjunction with trackage rights concurrently being obtained in STB Finance Docket No. 34225, *Norfolk Southern Railway Company—Trackage Rights Exemption—Reading Blue Mountain and Northern Railroad Company.*[2]

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

The notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34209, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John V. Edwards, Norfolk Southern Corp., Three Commercial Place, Norfolk, VA 23510–2191.

Board decisions and notices are available on our Web site at *''WWW.STB.DOT.GOV.''*

Decided: July 18, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18847 Filed 7–24–02; 8:45 am]

BILLING CODE 4915–00–P

[1] NSR is a wholly owned subsidiary of Norfolk Southern Corporation, a holding company.

[2] Reading Blue Mountain and Northern Railroad Company (RBMN) has agreed to grant NSR overhead trackage rights over approximately 56.7 miles of RBMN's Lehigh Line between milepost 119.3 in Lehighton Yard and milepost 175.5 in Dupont, PA.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34225]

Norfolk Southern Railway Company—Trackage Rights Exemption—Reading Blue Mountain and Northern Railroad Company

Reading Blue Mountain and Northern Railroad Company (RBMN), pursuant to a written trackage rights agreement entered into between RBMN and Norfolk Southern Railway Company (NSR),[1] has agreed to grant overhead trackage rights to NSR over approximately 56.7 miles of RBMN's Lehigh Line between milepost 119.3 in Lehighton Yard and milepost 175.5 in Dupont, PA.[2]

The transaction is expected to be consummated no sooner than the latter of (1) July 12, 2002 (7 days after the exemption was filed), or (2) the expiration of any labor notice period to which NSR may be subject.

Under the proposed transaction, the trackage rights will enable NSR to efficiently route traffic between Allentown, PA, and points in New York State in conjunction with trackage rights concurrently being obtained in STB Finance Docket No. 34209, *Norfolk Southern Railway Company—Trackage Rights Exemption—Delaware and Hudson Railway Company,* Inc.[3]

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

The notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34225, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John V. Edwards, Norfolk Southern Corp., Three Commercial Place, Norfolk, VA 23510–2191.

STB Finance Docket No. 34225

Board decisions and notices are available on our Web site at *''WWW.STB.DOT.GOV.''*

Decided: July 18, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18848 Filed 7–24–02; 8:45 am]

BILLING CODE 4915–00–P

[1] NSR is a wholly owned subsidiary of Norfolk Southern Corporation, a holding company.

[2] According to NSR's representative, due to historic reasons concerning the varied ownership of the line, there is a discrepancy of approximately one-half mile between the apparent and actual mileage between the milepost locations.

[3] Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railway (CPR) has agreed to grant NSR overhead trackage rights over approximately 284.6 miles of CPR's freight main line, between NSR's connection with CPR at milepost 752.0 near Sunbury, PA, and CPR's connection with Guilford Rail System at milepost 467.40 at Mechanicville, NY.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 18, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 26, 2002 to be assured of consideration.

Special Instructions: The draft Suspicious Activity Report Money Services Businesses (SAR–MSB) form published in this **Federal Register** notice is for informational purposes only. Do not use the draft form to report suspicious activity. It is anticipated that the form will be final and available for use on October 1, 2002. Until that time, Money Services Businesses are to continue to use the Bank SAR form, Form TD F 90–22.47. *See*, 66 FR 67086 (December 28,2001) for further information about using the Bank SAR form until the final SAR–MSB form is available.

Money Services Businesses reporting possible terrorist financing suspicious activity must file a SAR as indicated above, but should also contact FinCEN's Financial Institutions Hotline ((866) 556–3974) to report the activity.

Contact FINCEN's Regulatory HelpLine at (800) 949–2732, if you have a question about the draft form.

Visit FinCEN's Internet site at *www.treas/fincen.gov* for a downloadable version of the draft SAR–MSB. Call FinCEN's Regulatory HelpLine ((800) 949–2732) after September 15, 2002, for individual copies of the form. Visit FinCEN's Internet site after September 15, 2002, for information about obtaining bulk copies of the form. Magnetic media filing specifications for filing the MSB SAR magnetically should be available on FinCEN's Internet site by December 31, 2002.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0015.

Form Number: TD F 90–22.56.

Type of Review: Revision.

Title: Reports by Money Services Businesses of Suspicious Transactions.

Description: Treasury is requiring certain money services businesses—money transmitters and money order and traveler's checks issuers, sellers, and redeemers—to report suspicious transactions.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 30,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 40 minutes.

Estimated recordkeeping/filing per response—5 minutes

Estimated record (SAR) completion time—35 minutes

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 20,000 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

BILLING CODE 4810–02–P

TD F 90-22.56
Treasury Form
July 2002

Suspicious Activity Report by Money Services Business

Please type or print. Always complete entire report (see instructions).

OMB No. 1506-0015

1 Check the box if this report corrects a prior report. (See instructions, page 7) ☐

2 Type of filer (check **all** financial services/products offered)

a ☐ Issuer of money order(s) b ☐ Redeemer of money order(s) c ☐ Seller of money order(s)
d ☐ Issuer of traveler's check(s) e ☐ Redeemer of traveler's check(s) f ☐ Seller of traveler's check(s)
g ☐ Money transmitter h ☐ U.S. Postal Service (see instructions) i ☐ Other _____

Part I Subject Information

3 ☐ Multiple subjects (See instructions, page 7)

4 Subject type (check only one box)
a ☐ Purchaser/Sender b ☐ Payee/Receiver c ☐ Both ("a" & "b") d ☐ Other

5* Individual's last name or Entity's full name	6* First name	7* Middle initial

8* Address

9* City	10* State	11* Zip code	12* Country (if not U.S.)
		—	

13* Government issued identification (if available)
a ☐ Driver's license/State I.D. b ☐ Passport c ☐ Alien registration d ☐ Other _____
e Number _____ f Issuing state or country _____

14* SSN/ITIN (individual) or EIN (entity)	15 Date of birth	16 Phone number (include area code)	17 Vehicle Lic.# / State (Optional) a number	b state
	___/___/___ MM DD YYYY	( ) —		

18 Customer number, if any	19 Occupation/Type of business

20* Endorser's (individual or Entity) name, if any	21* Bank account number of endorser, if any	22* Bank of first deposit, if any

Part II Suspicious Instrument/Money Transfer Information

23 Financial services involved in suspicious transaction(s) (Check **all** that apply.)
a ☐ Money Order b ☐ Traveler's Check c ☐ Money Transfer d ☐ Other_____

24 * Date or date range of suspicious activity	25 Total dollar amount involved in suspicious activity
From ___/___/___ MM DD YYYY To ___/___/___ MM DD YYYY	$, , .00

26.1* Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. _____ e Ending No. _____

26.2 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. _____ e Ending No. _____

26.3 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. _____ e Ending No. _____

27.1* Money transfer number	27.2 Money transfer number
a Issuer name _____	a Issuer name _____
b No.	b No.

Catalog No. XXXXXX

2

27.3 Money transfer number
a Issuer name _____
b No.

27.4 Money transfer number
a Issuer name _____
b No.

27.5 Money transfer number
a Issuer name _____
b No.

27.6 Money transfer number
a Issuer name _____
b No.

28* Category of suspicious activity (Check **all** that apply.)
a ☐ Money laundering b ☐ Structuring c ☐ Terrorist financing d ☐ Other (specify)_____

29* Character of suspicious activity (check only one box "a, b, or c", then check **all** of (1) through (9) that apply)
a ☐ Unusual use of money order(s) or traveler's check(s) b ☐ Unusual use of money transfer(s) c ☐ Both

Check all of the following that apply

(1) ☐ Alters transaction to avoid completion of funds transfer record or money order or traveler's check record ($3,000 or more)
(2) ☐ Alters transaction to avoid filing a CTR form ($10,000 or more)
(3) ☐ Comes in frequently and purchases less than $3,000
(4) ☐ Changes spelling or arrangement of name
(5) ☐ Individual(s) using multiple or false identification documents
(6) ☐ Two or more individuals using the similar/same identification
(7) ☐ Two or more individuals working together
(8) ☐ Same individual(s) using multiple locations over a short time period
(9) ☐ Offers a bribe in the form of a tip/gratuity

Part III Transaction Location Information

30 ☐ Multiple selling and/or paying business locations

31 Type of business location (check only one box)
a ☐ Selling business location b ☐ Paying business location c ☐ Both

32* Legal name of business

33 Doing business as

34* Permanent address (number, street, and suite no.)

35* City

36* State

37* Zip code

38* EIN (entity) or SSN/ITIN (individual)

39* Business phone number (include area code) ( ) —

40 Country (if not U.S.)

Part IV Law Enforcement Agency Information

41 If a law enforcement agency has already been contacted (excluding submission of a SAR-MSB), check **the** appropriate box.

a ☐ DEA
b ☐ FBI
c ☐ IRS
d ☐ U.S. Customs Service
e ☐ U.S. Postal Inspection Service
f ☐ U.S. Secret Service
g ☐ Other Federal
h ☐ State law enforcement
i ☐ Local law enforcement
j ☐ Tribal law enforcement

Include agency name when box g, h, i, or j is checked _____

42 Name of person contacted at law enforcement agency

43 Phone number (include area code) ( ) —

44 Date contacted ____/____/_____ MM DD YYYY

Part V Reporting Business Information (if *different* from Location Information in Part III)

45* Legal name of business

46 Doing business as

47* Permanent address (number, street, and suite no.)

48* City

49* State

50* Zip code

51* EIN (entity) or SSN/ITIN (individual)

52* Business phone number (include area code) ( ) —

53 Country (if not U.S.)

Part VI Contact for Assistance

54* Last name of individual to be contacted regarding this report

55* First name

56 Middle initial

57* Title/Position

58* Work phone number (include area code) ( ) —

59 Date report prepared ____/____/_____ MM DD YYYY

Paperwork Reduction Act Notice: The purpose of this form is to provide an effective means for a money services business (MSB) to notify appropriate law enforcement agencies of suspicious transactions and activities that occur by, through, or at a MSB. This report is authorized by law, pursuant to authority contained in 31 U.S.C. 5318(g). Information collected on this report is confidential (31 U.S.C. 5318(g)). Federal regulatory agencies, State law enforcement agencies, the U.S. Departments of Justice and Treasury, and other authorized authorities may use and share this information. Public reporting and recordkeeping burden for this form is estimated to average 35 minutes per response, and includes time to gather and maintain information for the required report, review the instructions, and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Office of Management and the Budget, Paperwork Reduction Project, Washington, DC 20503 and to the Financial Crimes Enforcement Network, Attn.: Paperwork Reduction Act. P.O. Box 39, Vienna VA 22183-0039. The agency may not conduct or sponsor, and an organization (or a person) is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part VII Suspicious Activity Information - Narrative* 3

Explanation/description of suspicious activity. This section of the report is **critical**. The care with which it is completed may determine whether or not the described activity and its possible criminal nature are clearly understood by investigators. Provide a clear, complete and chronological description of the activity, including what is unusual, irregular or suspicious about the transaction(s). Use the checklist below, as a guide, as you prepare your description. The description should cover the material indicated in Parts I, II and III, but the money services business (MSB) should describe any other information that it believes is necessary to better enable investigators to understand the suspicious activity being reported.

a. **Describe** conduct that raised suspicion.
b. **Explain** whether the transaction(s) was completed or only attempted.
c. **Describe** supporting documentation and retain such documentation for your file for five years.
d. **Indicate** a time period, if it was a factor in the suspicious transaction(s), for example, specify the time and whether it occurred during AM or PM. If the activity covers more than one day, identify the time of day when such activity occurred most frequently.
e. **Retain** any admission or explanation of the transaction(s) provided by the subject(s), or other persons. Indicate when and to whom it was given.
f. **Retain** any evidence of cover-up or evidence of an attempt to deceive federal or state examiners, or others.
g. **Indicate** where the possible violation of law(s) took place (e.g., main office, branch, agent location, etc.).
h. **Indicate** whether the suspicious activity is an isolated incident or relates to another transaction.
i. **Indicate** for a foreign national any available information on subject's passport(s), visa(s), and/or identification card(s). Include date, country, city of issue, issuing authority, and nationality.
j. **Indicate** whether any information has been excluded from this report; if so, state reasons.
k. **Indicate** whether any U.S. or foreign instrument(s) were involved. If so, provide the amount, name of currency, and country of origin.
l. **Indicate** whether any transfer of money to or from a foreign country, or any exchanges of a foreign currency were involved. If so, identify the currency, country, and sources and destinations of money.
m. **Indicate** any additional account number(s), and any foreign bank(s) account numbers which may be involved in transfer of money.
n. **Identify** any employee or other individual or entity (e.g., agent) suspected of improper involvement in the transaction(s).
o. **For issuers, indicate** if the endorser of money order(s) and/or traveler's check(s) is different than payee. If so, provide the individual's name or entity name; bank's name, city, state and country; ABA routing number; endorser's bank account number; foreign non-bank name (if any); correspondent bank name and account number (if any); etc.
p. **For selling or paying locations, indicate** if there is a video recording medium or surveillance photograph of the customer.
q. **For selling or paying locations,** if you do not have a record of a government issued identification document, describe the type, issuer and number of any alternate identification that is available (e.g., for a credit card specify the name of the customer and credit card number.)
r. **For selling or paying locations, describe** the subject(s) if you do not have the identifying information in Part I or if multiple individuals use the same identification. Use descriptors such as male, female, age, etc.
s. **If correcting** a prior report, complete the form in its entirety and note the changes here in Part VII.

Information already provided in earlier Parts of this form need not necessarily be repeated if the meaning is clear.

Supporting documentation should not be filed with this report. Maintain the information for your files.

Enter explanation/description in the space below. If necessary, continue the narrative on a duplicate of this page or a blank page.

Part II **Continued - Item 26** **4**

26.4 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.5 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.6 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.7 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.8 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.9 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.10 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.11 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.12 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.13 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.14 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.15 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.16 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.17 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.18 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.19 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.20 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.21 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

26.22 Serial number(s) of [a] money order(s) ☐ or [b] traveler's check(s) ☐ c Issuer name _____
d Starting No. | e Ending No. |

Part II **Continued - Item 27** 5

27.7 Money transfer number
a Issuer name
b No.

27.8 Money transfer number
a Issuer name
b No.

27.9 Money transfer number
a Issuer name
b No.

27.10 Money transfer number
a Issuer name
b No.

27.11 Money transfer number
a Issuer name
b No.

27.12 Money transfer number
a Issuer name
b No.

27.13 Money transfer number
a Issuer name
b No.

27.14 Money transfer number
a Issuer name
b No.

27.15 Money transfer number
a Issuer name
b No.

27.16 Money transfer number
a Issuer name
b No.

27.17 Money transfer number
a Issuer name
b No.

27.18 Money transfer number
a Issuer name
b No.

27.19 Money transfer number
a Issuer name
b No.

27.20 Money transfer number
a Issuer name
b No.

27.21 Money transfer number
a Issuer name
b No.

27.22 Money transfer number
a Issuer name
b No.

27.23 Money transfer number
a Issuer name
b No.

27.24 Money transfer number
a Issuer name
b No.

27.25 Money transfer number
a Issuer name
b No.

27.26 Money transfer number
a Issuer name
b No.

27.27 Money transfer number
a Issuer name
b No.

27.28 Money transfer number
a Issuer name
b No.

27.29 Money transfer number
a Issuer name
b No.

27.30 Money transfer number
a Issuer name
b No.

27.31 Money transfer number
a Issuer name
b No.

27.32 Money transfer number
a Issuer name
b No.

27.33 Money transfer number
a Issuer name
b No.

27.34 Money transfer number
a Issuer name
b No.

27.35 Money transfer number
a Issuer name
b No.

27.36 Money transfer number
a Issuer name
b No.

27.37 Money transfer number
a Issuer name
b No.

27.38 Money transfer number
a Issuer name
b No.

27.39 Money transfer number
a Issuer name
b No.

27.40 Money transfer number
a Issuer name
b No.

Suspicious Activity Report Instructions

6

Safe Harbor Federal law (31 U.S.C. 5318(g)(3)) provides complete protection from civil liability for all reports of suspicious transactions made to appropriate authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this report's instructions or are filed on a voluntary basis. Specifically, the law provides that a financial institution, and its directors, officers, employees and agents, that make a disclosure of any possible violation of law or regulation, including in connection with the preparation of suspicious activity reports, "shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure".

Notification Prohibited Federal law (31 U.S.C. 5318(g)(2)) provides that a financial institution, and its directors, officers, employees, and agents, who report suspicious transactions to the government voluntarily or as required by 31 CFR 103.20, may not notify any person involved in the transaction that the transaction has been reported.

In situations involving suspicious transactions requiring immediate attention, such as ongoing money laundering schemes, a money transmitter, or issuer, seller, or redeemer of money orders and/or traveler's checks shall immediately notify, by telephone, an appropriate law enforcement authority. In addition, a timely SAR-MSB form shall be filed, including recording any such notification in Part IV on the form.

When To File A Report:

1. Money transmitters and issuers, sellers and redeemers of money orders and/or traveler's checks that are subject to the requirements of the Bank Secrecy Act and its implementing regulations (31 CFR Part 103) are required to file a suspicious activity report (SAR-MSB) with respect to:

   a. Any transaction conducted or attempted by, at, or through a money services business involving or aggregating funds or other assets of at least $2,000 (except as described in section "b" below) when the money services business knows, suspects, or has reason to suspect that:

      i. The transaction involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the nature, source, location, ownership or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

      ii. The transaction is designed, whether through structuring or other means, to evade any regulations promulgated under the Bank Secrecy Act; or

      iii. The transaction has no business or apparent lawful purpose and the money services business knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

   b. To the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed, an issuer of money orders or traveler's checks shall only be required to report a transaction or a pattern of transactions that involves or aggregates funds or other assets of at least $5,000.

2. File a SAR-MSB no later than 30 calendar days after the date of initial detection of facts that constitute a basis for filing the report.

3. The Bank Secrecy Act requires that each financial institution (including a money services business) file currency transaction reports (CTRs) in accordance with the Department of the Treasury implementing regulations (31 CFR Part 103). These regulations require a financial institution to file a CTR (IRS Form 4789) whenever a currency transaction exceeds $10,000. If a currency transaction exceeds $10,000 and is suspicious, a money transmitter, or issuer, seller or redeemer of money orders and/or traveler's checks must file two forms, a CTR to report the currency transaction and a SAR-MSB to report the suspicious aspects of the transaction. If the suspicious activity involves a currency transaction that is $10,000 or less, the institution is only required to file a SAR-MSB. Appropriate records must be maintained in each case.

   See 31 CFR Part 103

General Instructions 7

A. Abbreviations and Definitions

1. AKA--also known as (individual)
2. DBA--doing business as (entity)
3. DEA--Drug Enforcement Administration
4. EIN-- Employer Identification Number
5. FBI-- Federal Bureau of Investigation
6. IRS-- Internal Revenue Service
7. ITIN-- Individual Taxpayer Identification Number
8. SSN-- social security number
9. USPS--U.S. Postal Service
10. Instruments-- As used in this form includes Money order(s) and/or Traveler's Check(s)

B. How To Make A Report

1. Send each completed suspicious activity report to:

Detroit Computing Center
ATTN: SAR-MSB
P.O. Box 33117
Detroit, MI 48232-5980

2. Leave blank any items that do not apply or for which information is unavailable.

3. Items marked with an **asterisk** * are considered critical and **are required to be completed if known.**

4. Complete each suspicious activity report by providing as much information as possible on initial and corrected reports.

5. Do not include supporting documentation with the suspicious activity report filed. Identify and retain a copy of the suspicious activity report and all supporting documentation or business record equivalent for your files for five (5) years from the date of the suspicious activity report. All supporting documentation such as, copies of instruments; receipts; sale, transaction or clearing records; photographs, surveillance audio and/or video recording medium, must be made available to appropriate authorities upon request.

6. If more than one subject is being reported, make a copy of page 1 and complete only the subject information in Part I, and attach the additional page(s) behind page 1. If more space is needed to complete any other item(s), identify that item in Part VII by "item number", and provide the additional information.

7. Type or complete the report using block written letters.

8. Enter all **dates** in MM/DD/YYYY format where MM=month, DD=day, and YYYY=year. Precede any single number with a zero, i.e., 01, 02, etc.

9. Enter all **telephone numbers** with (area code) first and then the seven numbers, using the format, i.e., (XXX) XXX-XXXX. List international telephone and fax numbers in Part VII.

10. Always enter an **individual's name** by entering the last name, first name, and middle initial (if known). If a legal entity is listed, enter its name in the last name field.

11. Enter all **identifying numbers** (alien registration, driver's license/state ID, EIN, ITIN, Foreign National ID, passport, SSN, vehicle license number, etc.) starting from left to right. Do not include spaces, dashes or other punctuation.

12. Enter all **Post Office ZIP codes** with at least the first five numbers (all nine ZIP+4, if known) and listed from left to right.

13. Enter all **monetary amounts** in U.S. dollars. Use whole dollar amounts rounded up when necessary. Use this format: $0,000,000.00. If foreign currency is involved, state name of the currency and country of origin.

14. **Addresses, general.** Enter the permanent street address, city, two letter state/territory abbreviation used by the U.S. Postal Service and ZIP code (ZIP+4, if known) of the individual or entity. A post office box number should not be used for an individual, unless no other address is available. For an individual also enter any apartment number or suite number, road or route number. If a P.O. Box is used for an entity, enter the street name, suite number, and road or route number. If the address of the individual or entity is in a foreign country, enter the city, province or state, postal code and the name of the country. Complete any part of the address that is known, even if the entire address is not known. If from the United States, leave country blank.

Item 1-- Check box, corrects prior report, if this report is filed to correct a previously filed SAR-MSB. To correct a report, a new SAR-MSB must be completed in its entirety. Also note corrected information in Part VII (see line "s").

Item 2-- Type of filer. Check the appropriate box(es) for the type of filer. USPS only required to check box "h".

Part I Subject Information

Item 3-- Multiple subjects. Check box if multiple subjects are involved. Attach additional copy(s) of Part 1 to this report.

Item 4-- Subject type. Check box "a" if the subject purchased a money order(s) or traveler's check(s) or sent a money transfer(s). Check box "b" if the subject cashed a money order(s) or traveler's check(s) or received payment of a money transfer(s). Check box "c" if both "a & b" apply. Check box "d" Other, and describe in Part VII, if the subject is an individual other than a customer, such as, an employee of an MSB or an individual serving as an agent of an MSB.

Items 5, 6, and 7-- *Name of subject. See General Instruction B10. If the name of the subject is known, complete Items 5 through 7. If the MSB knows that the individual has an "aka" or "dba" name, enter the name in Part VII. If the subject is an entity, enter its "dba" name in Item 5 if the legal name is not known. If there is more than one subject, make copies of page 1 and provide the information about each subject in Part I. Attach the additional copies to the SAR. When there is more than one purchaser and/or payee (*e.g.*, two or more transactions), indicate whether each subject is a purchaser or payee and list the instrument or money transfer numbers associated with each customer in Part VII.

Items 8, 9, 10, 11 and 12-- *Permanent address. See General Instructions B12 and B14.

Item 13-- *Government issued identification (if avaliable). See General Instruction B11. Check the appropriate box showing the type of document used to verify the subject's identity. If you check box "d" (Other), be sure to specify the type of document used. In box "e" list the number of the identifying document. In box "f" list the issuing state or country. If more space is required, enter the information in Part VII.

Item 14-- *SSN/ITIN (individual) or EIN (entity). See General Instruction B11 and definitions. If the subject named in Items 5 through 7 is a U.S. Citizen or an alien with a SSN, enter his or her SSN in Item 14. If that person is an alien who has an ITIN, enter that number. If the subject is an entity, enter the EIN.

Item 15-- Date of birth. See General Instruction B8. If an individual is named in Items 5 through 7, enter the date of birth. If the month and/or day is not available or unknown, fill in with zeros (*e.g.*, "01/00/1969" indicates an unknown date in January, 1969).

Item 16-- Telephone number. See General Instruction B9. Enter home or business number for individual or entity listed in Items 5 through 7. List any additional number(s) (*e.g.*, hotel, etc.) in Part VII.

Item 17-- Vehicle license number (optional). Enter the subject's vehicle license plate number and issuing state if known or available. Do not ask for or make a special effort to obtain the license plate number.

Item 18-- Customer number, if any. Enter a preferred customer card number or a frequent user card number, etc.

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Item 19-- Occupation/Type of business. If known, identify the occupation, profession or business that best describes the individual in Part I (e.g., attorney, car dealer, carpenter, doctor, farmer, plumber, truck driver, etc.). Do not use nondescript terms such as businessman, merchant, store owner (unless store's name is provided), self employed, unemployed, or retired, unless the regular or former occupation is provided. If the individual's business activities can be described more fully, provide the additional information in Part VII. Indicate in Item 19 if "unknown."

Item 20-- *Endorser's (individual or entity) name, if any. If the reported activity involves instruments and the endorser's name (found on the reverse side of the instrument) can be determined, enter the name in Item 20.

Item 21-- *Bank account number of endorser, if any. See General Instruction B11. If the reported activity involves instruments and the endorser's bank account number (found on the reverse side of the instrument) can be determined, enter the account number.

Item 22-- *Bank of first deposit, if any. Enter the bank name as shown on the reverse side of the instrument.

Part II Suspicious Instrument/Money Transfer Information

Item 23-- Financial services involved in suspicious transaction(s). Check appropriate box(es) to indicate the type of financial service(s) involved in the suspect transaction(s). If you check box "d" for "**Other**", specify briefly the type of services involved but not listed in Item 23 and describe the character of such services in Part VII.

Item 24-- *Date or date range of suspicious activity. See General Instruction B8. Enter the date of the reported activity in the **"From"** field. If more than one day, indicate the duration of the activity by entering the first date in the **From field** and the last date in the **To field**.

Item 25-- Total dollar amount. See General Instruction B13. Enter the total dollar value involved in the reported activity. If the amount cannot be determined or estimated, enter zero (0). If multiple instruments and/or money transfer(s) are reported, enter the total dollar amount in Item 25. If more than one type of financial service is involved, list separately each financial service with its name and dollar value in Part VII. Foreign currancy convert amount to US dollars.

Item 26-- *Serial number(s) of money order(s) or traveler's check(s). If the suspicious activity involves a single instrument or a series of instruments with consecutive serial numbers, check the appropriate box for money order,"a", or traveler's check "b" and enter in "c" the name of the issuer. Enter in "d" the serial number for each instrument involved in the reported activity, when the instruments are not consecutively numbered. In the case of instruments with consecutive serial numbers, enter the first number in the series in "d" and the last number in the series in "e". Enter up to 22 non-consecutive or 22 sets of consecutive serial numbers in "d" and "e" in items 26.1 through 26.22 on pages 1 and 4 (Continuation). If the suspicious activity involves more than 22 make as many copies of page 4 of the form as necessary. Attach the additional page(s) to the report. If the filer is the issuer and the name of the issuer is entered in Part III or V, "c" may be left blank.

Item 27-- *Money transfer number(s). If the suspicious activity involves a money transfer number, enter in "a" the name of the money transfer company. Enter in "b" the identifying number of each money transfer involved in the reported activity. Enter up to 40 money transfer numbers in Items 27.1 through 27.40 on pages 1, and 5 (Continuation). If the suspicious activity involves more than 40 make as many copies of page 5 of the form as necessary. Attach the additional page(s) to the report. If the filer is the issuer and the name of the issuer is entered in Part III or V, "a" may be left blank.

Item 28-- Category of Suspicious activity. Check the box(es) which best identify the suspicious activity. Check box "b" for **Structuring** when it appears that a person acting alone, or in conjunction with, or on behalf of other persons, conducts or attempts to conduct activity designed to evade any record keeping or reporting requirement promulgated under the Bank Secrecy Act. If you check box "d" specify briefly the type of suspicious activity which occurred, but is not listed in Item 28, then describe the character of such activity in Part VII. Box "d" should only be used if no other type of suspicious activity box adequately categorizes the transaction.

Item 29-- *Character of suspicious activity. Check box "a" for unusual use of instruments, check box "b" for unusual use of money transfer(s), or check box "c" for both. Check box(es) 1 through 9 for each description that applies.

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Part III Transaction Location Information

Item 30-- Multiple selling and/or paying business locations. If the reported activity occurred at multiple selling and/or paying business locations, check the box, make as many copies of page 2 of the form as necessary, and provide the additional information in duplicate Part III. Attach the additional copies of page 2 to the SAR.

Item 31-- Type of business location(s). Check box "a" if this is the selling location where the customer purchased a money order(s) or traveler's check(s) or initiated a money transfer(s). Check box "b" if this is the paying location where the customer cashed a money order(s) or traveler's check(s) or received payment of a money transfer(s). Check box "c" if multiple transactions are reported and the business functioned as both a selling and paying location for one or more transactions.

Item 32-- *Legal name of business. Enter the legal name of the business where the transactions took place. If the transactions occurred at more than one place make as many copies of page 2 of the form as necessary, and provide the additional information in duplicates of Part III. Attach the additional copies of page 2 to the SAR.

Item 33-- Doing business as. Enter the trade name by which the business is commonly known (if other than the legal name).

Items 34, 35, 36, 37-- *Permanent address. See General Instructions B12 and B14.

Item 38-- *EIN (entity) or SSN/ITIN (individual). See General Instruction B11 and definitions. If the business identified in Item 32 has an EIN, enter that number in Item 38. If not, enter individual owner's SSN or ITIN.

Item 39-- Business telephone number. See General Instruction B9. Enter the number of the business listed in item 32.

Item 40-- Country. Leave blank if U.S.

Part IV Law Enforcement Contact Information

Item 41-- Contacting Enforcement Authorities. If no contact go to **Part V or Part VI,** as appropriate. See general Instructions "Abbreviations and Definitions" for law enforcement identities. If the MSB has advised any law enforcement agency of the suspicious activity, by telephone or written communication (*excluding submission of a* SAR-MSB), check the appropriate box and complete Items 42 through 44. If you check boxes "g, h, i, or j" specify the agency name on the line provided.

Item 42, 43 and 44-- Law enforcement contact. Complete only if a contact (item 41) has been made. Identify the individual contacted, the telephone number and the date contacted. List any additional contacts in Part VII. Contact with law enforcement agencies does not eliminate the requirement to file the SAR-MSB.

Part V Reporting Business Information (complete only if *different* from Location Information in Part III).

Items 45 through 53-- *See instructions for completing items 32 through 40 above.

Part VI Contact for Assistance

Items 54, 55 and 56-- *Contact individual. See general instruction B10.

Item 57-- *Title/Position. Enter the job title/position of the contact individual.

Item 58-- *Work phone number. See General Instruction B9.

Item 59-- Date report prepared. See General Instruction B8.

Part VII Suspicious Activity Information — Narrative* See Page 3 for instructions

[FR Doc. 02–18828 Filed 7–24–02; 8:45 am]
BILLING CODE 4810–02–C

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0003]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), 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 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 needed to determine eligibility for burial benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 23, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0003'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 the information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Application for Burial Benefits (Under 38 U.S.C. Chapter 23), VA Form 21–530.

OMB Control Number: 2900–0003.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to apply for burial benefits, including transportation expenses. The information is used to determine if the deceased veteran had appropriate service and/or disability and that the applicant has made payment for burial or has contracted to make appropriate payment.

Affected Public. Individual or households and Business or other for-profit.

Estimated Annual Burden: 100,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 300,000.

Dated: July 10, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–18786 Filed 7–24–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0251]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) 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 for information needed to determine the status of a loan account that is in default.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 23, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0251'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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.

Title: Present Status of Loan, VA Form 26–8778.

OMB Control Number: 2900–0251.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8778 is used to collect information from the servicer regarding a defaulted loan and as a code sheet to input data in the automated Loan Service and Claims System. The information is needed to take the necessary action to cure the defaulted loan.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 29,167 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 175,000.

Dated: July 10, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–18787 Filed 7–24–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0519]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 26, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0519.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0519'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Locality Pay System for Nurses and Other Health Care Personnel, VA Form 10–0132.

OMB Control Number: 2900–0519.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0132 is used to collect data to determine locality pay rates for registered nurses and nurse anesthetists at VA facilities. VA medical facility directors establish rates of pay based on rates of compensation for corresponding positions in the local labor market. The law requires that where available, data from the Bureau of Labor Statistics or other third party industry surveys will be used in determining the beginning rates of compensation. Without this information, VA cannot provide for a locality pay system to maintain competitive pay rates for the recruitment and retention of affected healthcare personnel.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 15, 2002, at pages 18304–18305.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,519 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 2,025.

By direction of the Secretary.

Dated: July 15, 2002.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–18788 Filed 7–24–02; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
July 25, 2002

Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM–10 Nonattainment Area; Serious Area Plan for Attainment of the PM–10 Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ092–002; FRL–7141–3]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM–10 Nonattainment Area; Serious Area Plan for Attainment of the PM–10 Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the serious area particulate matter (PM–10) plan for the Maricopa County portion of the metropolitan Phoenix (Arizona) PM–10 nonattainment area. We are also granting Arizona's request to extend the Clean Air Act deadline for attaining the annual and 24-hour PM–10 standards in the area from 2001 to 2006. Finally, we are approving Maricopa County Environmental Services Department's fugitive dust rules, Maricopa County's Residential Woodburning Restrictions Ordinance, and commitments by Maricopa County jurisdictions to implement PM–10 controls.

EFFECTIVE DATE: August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 947–4155, email: *wicher.frances@epa.gov.*

This document and the Technical Support Document are also available as electronic files on EPA's Region 9 Web Page at *http://www.epa.gov/region09/air.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means EPA. This supplementary information is organized as follows:

I. Summary of Today's Actions
II. The Serious Area PM–10 Plan for the Phoenix Area
III. Proposals for and Information Related to Today's Actions
A. The Proposals for Today's Actions
B. Already-Approved Elements of the Phoenix Serious Area PM–10 Plan
C. Effect of Today's Actions on the 1998 Federal PM–10 Plan for the Phoenix Area
D. Clean Air Act Sanctions in the Phoenix Area
E. EPA's Policies on Approving Serious Area PM–10 Plans and Granting Attainment Date Extensions
IV. Response to Comments on the Proposed Actions
A. Comments on EPA's Policy on Approving Serious Area PM–10 Plans and Granting Attainment Date Extensions
B. Comments on EPA's Detailed Evaluation of the Phoenix Serious Area PM–10 Plan
V. Final Actions
A. Approval of the Serious Area Plan
B. Extension of the Attainment Date
C. Approvals of Rules and Commitments
D. Correction of Previous SIP Disapprovals
VI. Administrative Requirements

I. Summary of Today's Actions

We are approving the serious area state implementation plan (SIP) for attainment of the annual and 24-hour PM–10 standards in the metropolitan Phoenix (Maricopa County), Arizona, area. This action is based on our determination that this plan complies with the Clean Air Act's (CAA) requirements for attaining the PM–10 standards in serious PM–10 nonattainment areas such as the metropolitan Phoenix area.

Specifically, we are approving the following elements of the plan as they address both the 24-hour and annual PM–10 standards:

- The base year emissions inventory of PM–10 sources;
- The demonstration that the plan provides for implementation of reasonably available control measures (RACM) and best available control measures (BACM) for all source categories that contribute significantly to PM–10 standard violations;
- The demonstrations that attainment by the CAA deadline of December 31, 2001 is impracticable;
- The demonstrations that attainment will occur by the most expeditious alternative date practicable, in this case, December 31, 2006;
- The demonstration that the plan provides for reasonable further progress and quantitative milestones;
- The demonstration that the plan includes to our satisfaction the most stringent measures found in the implementation plan of another state or are achieved in practice in another state and can feasibly be implemented in the area;
- The demonstration that major sources of PM–10 precursors such as nitrogen oxides and sulfur dioxide do not contribute significantly to violations of the PM–10 standards;
- Contingency measures; and
- The transportation conformity mobile source emissions budget.

We are also approving Maricopa County's fugitive dust rules, Rules 310 and 310.01, and its residential woodburning restriction ordinance as well as commitments by the local jurisdictions in the Phoenix area to implement control measures.

Finally, we are granting Arizona's request to extend the attainment date for both the annual and 24-hour PM–10 standards from December 31, 2001 to December 31, 2006.

With today's action, EPA has now approved all elements of the serious area PM–10 plan for the Phoenix area. Today's final approvals also correct disapprovals of previous Phoenix PM–10 plans that resulted in the imposition of one CAA sanction in the Phoenix area and a clock running for the imposition of another. With these approvals, the sanction is lifted and the clock stopped.

This preamble summarizes our actions on the Phoenix serious area plan, gives some background to this action, and provides responses to the most significant comments we received on the proposals for this final action. We have not repeated the concise evaluation of the plan that we provided in the two proposals for today's action. We refer the reader to these proposals for this evaluation. See the annual standard proposal at 65 FR 19964 (April 13, 2000) and the 24-hour standard proposal at 66 FR 50252 (October 2, 2001). Our complete evaluation can be found in our technical support document (EPA TSD) that accompanies this final action. The EPA TSD also includes our full responses to all comments received on both proposals. The EPA TSD can be downloaded from our website or obtained by calling or writing the contact person listed above.

II. The Serious Area PM–10 Plan for the Phoenix Area

Arizona has made several submittals to address the CAA requirements for serious PM–10 nonattainment area plans in the Phoenix area. These submittals include the 1997 Microscale plan,[1] the 1997 BACM submittal,[2] the 2000 Revised Maricopa Association of Governments (MAG) plan,[3] the 2001 Best Management Practices (BMP) submittal (BMP TSD),[4] and a number of

[1] *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area,* Arizona Department of Environmental Quality (ADEQ), May, 1997, submitted May 9, 1997, approved in part and disapproved in part on August 3, 1997 (62 FR 41856).

[2] *Serious Area Committed Particulate Control Measures for PM–10 for the Maricopa County Nonattainment Area and Support Technical Analysis,* MAG, December 1997, submitted December 11, 1997.

[3] *Revised Maricopa Association of Governments 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area,* February 2000, submitted February 16, 2000. On January 8, 2002, Arizona submitted revisions to the Maricopa County's commitments to improve its fugitive dust rule which were in this plan.

[4] *Maricopa County PM–10 Serious Area State Implementation Plan Revision, Agricultural Best Management Practices (BMP),* ADEQ, June 2000, submitted on June 13, 2001.

rules.[5] These submittals collectively comprise the full serious area PM–10 plan for the Phoenix area.

The MAG plan is the primary document for the serious area plan. It contains the base year inventory, the BACM demonstrations for all significant source categories (except agriculture) for both standards, the demonstration that attainment of both standards by 2001 is impracticable, the demonstration that attainment of the annual standard and the 24-hour standard (at all but four sites addressed by the microscale plan) will occur as expeditiously as practicable, the reasonable further progress (RFP) demonstration and quantitative milestones for the annual standard, contingency measures for the annual standard, the transportation conformity budget, and the request and supporting documentation—including the most stringent measure analysis (except for agriculture)—for an attainment date extension for both standards under CAA section 188(e).

The BMP TSD updates the MAG plan to reflect the State's May, 2000 adoption of the agricultural general permit rule to control PM–10 from agricultural sources in Maricopa County. It includes a background document which provides the BACM and most stringent measure demonstrations for agricultural sources for both standards, the final demonstration of attainment and RFP for the 24-hour standard at two monitoring sites, quantitative milestones for the 24-hour standard, and revisions to the contingency measure provisions for both standards. It also includes documentation quantifying emission reductions from the agricultural general permit rule and documentation related to implementing this rule. The BMP TSD was prepared by ADEQ.

The 1997 BACM submittal contains the initial commitments by the cities and towns in the Maricopa County portion of the Phoenix nonattainment area to implement BACM within their jurisdictions. These commitments were resubmitted in the revised MAG plan.

The Microscale plan is a serious area PM–10 plan that includes BACM, RFP, and attainment demonstrations for the 24-hour PM–10 standard at four Phoenix area monitoring sites: Salt River, Maryvale, Gilbert, and West Chandler. It was prepared and submitted by ADEQ in 1997 as a component of the overall serious area PM–10 plan for the Phoenix area.[6]

III. Proposals for and Information Related to Today's Actions

A. The Proposals for Today's Actions

Two proposals preceeded today's final action. The first proposal was published on April 13, 2000 (65 FR 19964) and addresses the Phoenix serious area plan's provisions for attaining the annual standard. The initial comment period for this proposal was 60 days but was extended twice and finally closed on July 27, 2000. We received 14 comments on this proposal from both public and private groups and from numerous private citizens.

The second proposal was published on October 2, 2001 (66 FR 50252) and addresses the Phoenix serious area plan's provisions for attaining the 24-hour standard and contingency measures for both PM–10 standards. In this second proposal, we also revised and reproposed several findings from the annual standard notice. These reproposals were necessary because of SIP submittals made by Arizona after the April 2000 proposal. The 30-day comment period for this proposal ended on November 1, 2001. We received one comment letter.

B. Already-Approved Elements of the Phoenix Serious Area PM–10 Plan

Two important elements of the metropolitan Phoenix serious area PM–10 plan have already been approved. These elements were submitted as either part of the Microscale plan or the BMP general permit rule and its TSD.

We approved the Microscale plan in part and disapproved the plan in part on August 4, 1997. We approved provisions for implementing BACM for 3 of the 8 source categories found to be significant contributors to 24-hour exceedances in the Phoenix area and disapproved them for 5 others. We also approved the attainment and RFP demonstrations for the Salt River and Maryvale sites because the Mircoscale plan demonstrated expeditious attainment at these sites but disapproved these demonstrations for the West Chandler and Gilbert sites because the plan did not demonstrate attainment at them. Except for our findings related to the implementation of BACM, we have not reevaluated and are not approving again those 24-hour provisions already approved as part of our actions on the Microscale plan.[7]

On October 11, 2001, we approved the State's agricultural BMP general permit rule and found that it provided for the implementation of RACM for the agriculture source category. See 66 FR 51869. We are today finding that the rule also provides for the implementation of BACM and meets the most stringent measure requirement in CAA section 188(e). These latter findings are in addition to and not in substitution for the October 11, 2001 RACM finding.

With today's action and these previous approvals, we have now approved all elements of the Phoenix serious area PM–10 plan.

C. Effect of Today's Actions on the 1998 Federal PM–10 Plan for the Phoenix Area

On August 3, 1998, we promulgated a moderate area PM–10 federal implementation plan (FIP) for the Phoenix area. In the FIP, we included a rule for controlling fugitive dust from vacant lots, unpaved parking lots, and unpaved roads. See 40 CFR 52.128 (modified, December 21, 1999). We also included a commitment to adopt and implement RACM for agricultural source categories. *See* 40 CFR 52.127 as published at 63 FR 41326, 41350 (August 3, 1998) (withdrawn at 64 FR 34726 (June 29, 1999)). With the Federal fugitive dust rule and commitment and already approved State and local controls, we demonstrated that the Phoenix area had in place RACM on all significant source categories, that the area would make reasonable further progress toward attainment but that attainment by 2001 was impracticable. *See* 63 FR 41326.

On June 29, 1999, we replaced the federal commitment to develop agricultural controls in the FIP with a

[5] These include the revised Maricopa County Environmental Services Department (MCESD) Rule 310, Fugitive Dust Sources (adopted February 16, 2000) and Rule 310.01, Fugitive Dust from Open Areas, Vacant Lots, Unpaved Parking Lots, and Unpaved Roadways (adopted February 16, 2000), both submitted on March 2, 2000; the revised Maricopa County Residential Woodburning Restrictions Ordinance (adopted November 17, 1999) submitted on January 28, 2000; and the Agricultural BMP General Permit Rule submitted on July 11, 2000, approved October 11 2001 (66 FR 51869).

[6] A complete history of the Microscale plan, including the reasons for its development, can be found in the proposal and final actions for that plan and in proposal for the 24-hour standard. See 62 FR 31025 (June 6, 1997), 62 FR 41856 (August 4, 1997) and the 24-hour standard proposal at 50254.

[7] According to the approved serious area plan attainment demonstration in the Microscale plan, the Salt River site should not have violated the 24-hour PM–10 standard after May, 1998. The site, however, continues to violate the standard. Because there is already an approved serious area plan attainment demonstration, the remedy under the CAA for correcting this demonstration is for EPA to issue a formal request to the State to revise it SIP pursuant to section 110(k)(5), a process known as a ''SIP call.'' We will be proposing that SIP call soon. However, because the elements of the Phoenix serious area plan that we are approving today do not address the attainment of the 24-hour standard at the Salt River site, the issues with the site's attainment demonstration do not affect today's action.

State commitment to adopt best management practices for the agricultural sources. 64 FR 34726.

Today's actions do not withdraw or otherwise modify the demonstrations in the FIP or the federal fugitive dust rule.

D. Clean Air Act Sanctions in the Phoenix Area

In the 1998 FIP, we also disapproved the RACM and attainment demonstrations for the annual PM–10 standard in the 1991 MAG moderate area PM–10 plan. See 63 FR 41326 (August 3, 1998, effective September 2, 1998). Under CAA section 179(a), once we disapprove a SIP provision because it fails to meet a CAA requirement, a State has 18 months from the effective date of the disapproval to correct the deficiency before the first of two sanctions goes into place. If the state still has not corrected the deficiency within 24 months of the effective date of the disapproval, the second sanction goes into place.[8]

On March 2, 2000, before Arizona could submit and we could act to approve substitute RACM and attainment demonstrations, the 18-month clock expired and the 2:1 offset sanction went into place in the Phoenix area. The second clock for the highway funding limitations was set to expire on September 2, 2000.

Under section 179(a) and our sanctions regulations at 40 CFR 52.31(d)(1), we must approve a SIP revision that corrects the deficiencies to permanently end the sanctions clocks and lift any imposed sanctions. However, we may temporarily stay the clocks and any imposed sanctions if we have proposed to approve a SIP revision that corrects the deficiencies and have issued an interim final determination that the State has corrected the deficiencies. 40 CFR 52.31(d)(2)(i).

We proposed to approve the RACM and attainment demonstrations for the annual standard on April 13, 2000. 65 FR 19964. In a rule published concurrently with that proposal, we issued an interim final determination that stayed both the offset sanction and the clock running on the highway sanctions. 65 FR 19992.

With today's action, we are fully approving the State's substitute RACM and attainment demonstrations for the annual standard. These full approvals correct the deficiencies that resulted in the disapproval and permanently end the offset sanction and stop the clock for the highway sanctions.

The serious area plan for the Phoenix area was due on December 10, 1997; however, Arizona submitted only a partial plan. On February 6, 1998, we made a finding that the State had failed to submit a required SIP (published on February 25, 1998 at 63 FR 9423). This finding also started sanctions clocks and a two-year clock under CAA section 110(c) for EPA to promulgate a substitute federal implementation plan if the State did not have a fully approved one.

On July 8, 1999, Arizona submitted the full serious area plan, and on August 4, 1999, we found the plan complete. This finding stopped the sanction clocks for failure to submit; however, it did not stopped the FIP clock. Under section 110(c), the FIP clock continues until we approve the full serious area plan. Today's action approves the plan and ends our obligation to promulgate a serious area PM–10 FIP for the Phoenix area.

E. EPA's Policies on Approving Serious Area PM–10 Plans and Granting Attainment Date Extension

We have issued a General Preamble, 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992), and Addendum to the General Preamble (''Addendum''), 59 FR 41998 (August 16, 1994), describing our preliminary views on how we intend to review SIPs submitted to meet the Clean Air Act's requirements for PM–10 plans. The General Preamble mainly addresses the requirements for moderate areas and the Addendum, the requirements for serious areas.

In the proposal for the 24-hour standard, we also provided our preliminary interpretation of and policy on granting an extension of the attainment date under CAA section 188(e). We are finalizing this extension policy today only as it relates specifically to our action on the attainment date extension requested by the State of Arizona for the Phoenix area.

IV. Response to Comments on the Proposed Actions

The following are our responses to the most significant comments that we received on the proposals for today's actions. In section 7 of the EPA TSD, we provide more detailed responses to these comments as well as responses to all comments received. A copy of the EPA TSD may be downloaded from our website or obtained by writing or calling the contact listed above.

A. Comments on EPA's Policies for Approving Serious Area PM–10 Plans and Granting Attainment Date Extensions

Comment: EPA interprets the CAA to not require a state to apply BACM to any source or source category that it has demonstrated to be de minimis. See 59 FR 41998, 42011 (August 16, 1994). In its July 2000 comments on the annual standard proposal, ACLPI disagrees that EPA can exempt de minimis sources from the Act's BACM requirement. ACLPI argues that there are no exceptions to the Act's requirement that serious area plans include ''provisions to assure that the best available control measures for the control of PM–10 shall be implemented.'' ACLPI incorporates by reference its arguments in its Brief for the Petitioners in *Ober* v. *Whitman* (9th Cir., No. 98–71158) (*Ober II*) at pp. 21–19, noting that although *Ober II* involves a challenge to our exemption of de minimis sources from the RACM requirement, the same reasoning applies to invalidate the BACM exemption as well.

Response: Ober II was a challenge to our 1998 PM–10 moderate area FIP for the Phoenix area. In the FIP, we exempted from the RACM requirement, source categories with de minimis impacts on PM–10 levels. We established a de minimis threshold of 1 μg/m\3\ for the annual standard and 5 μg/m\3\ for the 24-hour standard, initially taking these thresholds from the new source review (NSR) program for attainment areas. We showed that these were the correct thresholds for determining which source categories were de minimis for the RACM requirement by showing that the application of RACM on the de minimis source categories would not make the difference between attainment and nonattainment by the applicable attainment deadline. See 63 FR 41326, 41330 (August 3, 1998). In *Ober II*, ACLPI challenged our ability to exempt de minimis source categories from the RACM requirement and the specific thresholds that we used.

In March, 2001 (well after the close of the comment period on the annual standard proposal), the 9th Circuit issued its opinion in *Ober II. Ober* v. *Whitman*, 243 F.3d 1190 (9th Cir. 2001). The court held that we have the power to make de minimis exemptions to control requirements under the Clean Air Act and that our use of the de minimis levels from the NSR program is appropriate. In addition, the Court determined that it is appropriate for us

[8] The two CAA sanctions are a limitation on certain highway approvals and funding and an increase in the emissions offset ratio to 2 to 1 for any major new stationary source or major modification. See CAA section 179(b). Our sanctions regulations provide that the first sanction to be imposed is the offset ratio unless we have established at the time of the disapproval that the highway sanction will be first. 40 CFR 52.31(d).

to use, as a criterion for identifying de minimis sources, whether controls on the sources would result in attainment by the attainment deadline. *Ober II* at 1198

In finding that EPA had the authority to exempt de minimis source categories of PM–10 from CAA control requirements, the Court wrote:

> Courts have refused to allow de minimis exemptions where the statutory language does not allow it. * * * There is no explicit provision in the Clean Air Act prohibiting the exemption from controls for de minimis sources of PM–10 pollution. Nor is the statutory language uncompromisingly rigid. The Act provides that a plan must include ''reasonably'' available control measures to bring the area into attainment unless attainment is ''impracticable.'' Those terms allow for the exercise of agency judgment. * * * We conclude that EPA, in discharging its duty to enforce the Act, is permitted under [*Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)] to exempt de minimis sources of PM–10 from pollution controls.

Ober II at 1194 (internal cites and quotes omitted).

The Court's reasoning is equally applicable to the BACM requirement. Like the RACM requirement, there is no explicit provision in the Act prohibiting the exemption from the BACM requirement for de minimis sources of PM–10 pollution. Nor is the language in section 189(b)(1)(B) requiring the implementation of BACM ''uncompromisingly rigid.'' Like RACM, the Act and EPA policy provide that a PM–10 plan must include the ''best'' available control measures to bring the area into attainment unless attainment is ''impracticable.'' The term ''best''—no less than the term ''reasonably''—allows for the exercise of agency judgment.

In *Ober II*, the Court also upheld the procedures and criteria we used to determine what constituted a de minimis source or source category for RACM. *Ober II* at 1198. We have applied exactly the same procedures and criteria for BACM. For BACM, we proposed the same NSR thresholds as a starting point for determining what constitutes a de minimis source category. See 24-hour standard proposal at 50281. We also required the State to demonstrate that its identified de minimis sources are in fact de minimis by showing that controls on them would not make the difference between attainment and nonattainment by the applicable deadline. See 24-hour standard proposal at 50281.

Finally, we note that we invoke a de minimis exemption from the Act's general but open-ended control requirements like RACM, BACM, and MSM as a means of ensuring that states focus their always limited resources on the controls most likely to result in real air quality benefits. It is more likely to harm air quality than to help it if these limited resources are diverted away from more substantive measures into the adoption and implementation of measures with trivial impacts.

Nowhere is the need to concentrate resources on the most significant sources more necessary then in large urban areas dominated by PM–10 fugitive dust sources, such as the metropolitan Phoenix area. Adequate controls in these types of areas require very large investments of both financial and human resources because of the number of sources and the type of needed controls.[9] As the court has recognized in *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 360 (D.C.Cir. 1979), ''[c]ourts should be reluctant to apply the literal terms of a statute to mandate pointless expenditures of effort. * * * The ability * * * to exempt de minimis situations from a statutory command is not an ability to depart from the statute, but rather a tool to be used in implementing the legislative design.'' Cited in *Ober II* at 1194.

Comment: In its July 2000 comments on the annual standard proposal, ACLPI argues that our de minimis exception violates the Act's central mandate for attainment of the PM–10 standards by December 31, 2001 or as expeditiously as possible thereafter because it allows us and the states to eschew otherwise available control measures based on an arbitrary de minimis test even if the aggregate effect of implementing controls on all ''de minimis'' sources would hasten attainment. It further comments that even if the de minimis exception is allowed, the thresholds set by EPA are arbitrary because they were not based on actual PM–10 conditions in the nonattainment area, but on levels borrowed from the wholly unrelated new source review (NSR) program.

Response: ACLPI misstates the scope of the BACM de minimis exemption. We do *not* consider a source category or groups of source categories to be de minimis if applying BACM to it or them would meaningfully expedite attainment in areas demonstrating attainment by December 31, 2001 or would make the difference between attainment and nonattainment by December 31, 2001 in areas requesting an extension. See 24-hour standard proposal at 50281 and Addendum at 42011.

Under our de minimis policy, whether the NSR thresholds are appropriate for an area depends on the specific facts of that area's PM–10 nonattainment problem, that is, it depends on the actual PM–10 conditions in the nonattainment area. We do not accept the NSR thresholds as the correct de minimis thresholds without first requiring a conclusive showing that they do not adversely affect the area's ability to show expeditious attainment. See Addendum at 42011.

We used these NSR thresholds in our 1998 FIP. ACLPI raised the same objections to their use there for the RACM requirement as it does here for the BACM requirement. *Ober II* at 1196. The Ninth Circuit in reviewing the FIP found that it was permissible for us to adopt the PM–10 de minimis thresholds already in place in the new source review program to identify de minimis sources for the RACM requirement. *Ober II* at 1196. Our reasoning for applying those thresholds for BACM is the same as our reasoning for applying them for RACM; therefore, we believe that the NSR thresholds are an appropriate starting point for determining which source categories are significant and which are de minimis for the purposes of applying BACM.

Comment: Under the section 188(e) extension provisions, a state must show that it has complied with all requirements and commitments in its implementation plan. We interpret this requirement to apply only to the control measures in the state's previously submitted PM–10 implementation plans. See 24-hour standard proposal at 50282. ACLPI argues that in addition to fully implementing the control measures in the SIP revisions that it has submitted, a state must also show that it has implemented other provisions of its SIP. ACLPI also comments that EPA's attempt to limit this requirement to PM–10 commitments has no basis in the Act.

Response: We believe that this criterion's purpose is to assure that a state is not rewarded with additional time to attain the PM–10 standards if it has not implemented earlier commitments and requirements to reduce PM–10 levels. Given this purpose, the focus of the test to determine if a state has met this

[9] There are literally thousands of sources subject to fugitive dust controls in the Phoenix area, including constructions sites, agricultural fields, vacant lots, unpaved roads, and paved roads. For example, MCESD issued 2500 construction permits in 1999; we mailed 50,000 letters to owners of vacant lots as part of our 1999 outreach on the PM–10 FIP. Effective fugitive dust control from many of these sources requires either an ongoing and extensive compliance and enforcement presence or large capital expenditures (e.g., paving unpaved roads, purchasing and operating PM–10 street sweepers).

criterion should be on the implementation of PM–10 emission reducing control measures rather then on the implementation of programs, such as monitoring and permitting, that make up the overall air quality program's infrastructure but are not emission reducing measures themselves.

Limiting the section 188(e) review to just the PM–10 implementation plan is firmly based on the structure, purpose and language of the Act. The attainment date extension provisions are located in title I, part D, subpart 4 ''Additional Provisions for Particulate Matter Nonattainment Areas.'' Hence, any reference to *the* implementation plan within this subpart is to the PM–10 implementation plan, absent specific language to the contrary. The criterion ''the State has complied with all requirements and commitments pertaining to that area in *the* implementation plan'' in section 188(e) (emphasis added) contains no language that implies a reference to all of an area's implementation plans. Moreover, section 188(e) addresses setting the most expeditious attainment date for meeting the PM–10 air quality standards. There is at best a tenuous and strained connection between the implementation status of plans for attaining other air quality standards (*e.g.,* ozone or carbon monoxide) and the appropriate and most expeditious date for attaining the PM–10 standard.

The language in section 188(e) is almost identical to the language in section 188(d) that allows a one-year extension of the moderate area attainment date if, in part, ''the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan.'' In interpreting and applying section 188(d), we have always considered ''the applicable implementation plan'' in question to be the State's SIP for PM–10. *See Memorandum,* Sally L. Shaver, OAQPS, to Regional Air Directors, ''Criteria for Granting 1-Year Extensions of Moderate Area Attainment Dates, Making Attainment Determinations, and Reporting on Quantitative Milestones,'' November 14, 1994. *See* also, 66 FR 32752, 32754 (June 18, 2001) (Attainment date extensions for Utah's PM–10 nonattainment areas).

Comment: EPA interprets the CAA to allow states to exempt from the most stringent measures requirement in section 188(e) any source or source category that it has demonstrated to be de minimis. 24-hour standard proposal at 50283. ACLPI disagrees that EPA can exempt de minimis sources of PM–10 from the Act's MSM requirement, arguing that the Act requires areas seeking an extension of the serious area PM–10 attainment deadline to demonstrate that their plans include the most stringent measures that are included in the implementation plan of any State or achieved in practice in any State, and can feasibly be implemented in the area,'' and that there is no de minimis exception to this explicit mandate.

Response: As stated above in response to a similar comment regarding the exemption of de minimis sources from the BACM requirement, we believe the *Ober II* Court's reasoning in upholding that exemption for the RACM requirement is also applicable to the MSM requirement. Again, we invoke a de minimis exemption from the Act's general but open-ended control requirements like RACM, BACM, and MSM as a means to ensure that states focus their always limited resources on the controls most likely to result in real air quality benefits.

Like the RACM requirement, there is no explicit provision in the Act prohibiting a de minimis source category exemption from the MSM requirement. Nor is the language in section 188(e) ''uncompromisingly rigid.'' In fact, the phrase—''to the satisfaction of the Administrator''—in the MSM provision specifically calls for the Agency to exercise its judgement in deciding how exactingly to apply the requirement. *See Ober II* at 1194.

In our policy on the MSM requirement, we are using the same principles for determining when a source is considered de minimis under the MSM requirement that we used for the RACM requirement upheld by the *Ober II* Court. In doing so, we have carefully constructed the de minimis exemption for the MSM requirement to prevent states from eliminating any controls on sources or source categories that alone or together would result in more expeditious attainment of the PM–10 standards. See annual standard proposal at 19967 and 24-hour standard proposal at 50583. We note that the Phoenix serious area plan did not reject any potential MSM on de minimis grounds.

Comment: ACLPI argues that EPA's proposed de minimis exception violates the Act's requirement that states seeking an extension demonstrate attainment by the most expeditious alternative date practicable because it allows EPA and the states to reject otherwise available control measures based on an arbitrary de minimis test even if the aggregate effect of implementing MSM on all de minimis sources would hasten attainment. It also argues EPA's proposal to determine an appropriate de minimis level by determining whether applying MSM to proposed de minimis source categories would ''meaningfully hasten attainment'' is vague and fails to comport with the Act.

Response: ACLPI misstates the scope of the MSM de minimis exemption. We do not consider a source category or groups of source categories to be de minimis if applying MSM to it or to them would hasten attainment. We stated this clearly in both the proposal for the annual standard provisions and for the 24-hour standard provisions: Annual standard proposal at 19969; 24-hour standard proposal at 50583.

In Ober II, the Court found:

> Using the [attainment] deadline to determine whether controls must be imposed makes sense. The deadline is not an arbitrary date unrelated to air quality concerns. * * * In this case, the [FIP] concludes that the deadline will not be met even if these small sources of PM–10 were controlled. Under those circumstances, it is reasonable to decline to control the de minimis sources of pollution.

Ober II at 1198.

In interpreting the MSM requirement to allow exemptions on de minimis grounds, we are also using the applicable attainment date to determine whether controls should be imposed. At the time a state submits its application for an attainment extension, (including the showing that its plan includes MSM), it must also submit a demonstration that attainment will occur by the ''most expeditious alternative date practicable.'' See CAA section 188(e). If it can be shown that including a certain set of potential MSM would not result in more expeditious attainment, then it is consistent with the Act to not require their inclusion as a condition of approval.

What constitutes ''meaningfully hastening attainment'' depends on the actual PM–10 conditions in the nonattainment area and the particular PM–10 standard under consideration.[10] Because of this dependence, we cannot in policy specify a time period that is appropriate in all situations. We can propose the appropriate time period only within the context of acting on a specific extension request. For today's rulemaking, the plan did not invoke a de minimis exemption for evaluating MSM; therefore, we did not need to propose the time period we would

[10] This is similar to the de minimis thresholds which we also cannot specify in advance because they too must be set based on the actual PM–10 conditions in the nonattainment area and the particular PM–10 standard under the consideration. See Addendum at 42011.

consider meaningful for evaluating its de minimis exemption.

Comment: Under our policy on MSM, a state may reject a measure as infeasible for the area on economic grounds. *See* 24-hour standard proposal at 50283. ACLPI disagrees that a state can take economic considerations into account when determining the feasibility of MSM for the purposes of the MSM demonstration required under section 188(e). ACLPI argues that the Act only allows for the rejections of an MSM if it cannot feasibly be implemented in the area and any measure that is included in another SIP or achieved in practice in another state is by definition economically feasible because it is capable of being done or carried out if sufficient resources are devoted to it. ACLPI also argues that only its interpretation of MSM fits within the Act's strategy of offsetting longer attainment time frames with more stringent control requirements and that by allowing for the rejection of MSM based on cost, EPA has made MSM virtually indistinguishable from BACM.

Response: We believe that Congress very clearly intended that the phrase ''feasible in an area'' in section 188(e) to include economic considerations. Section 188(e) lists five criteria that we may consider in determining whether to grant an extension and the length of an extension, the last of which is ''the technological *and economic* feasibility of various control measures.'' Emphasis added. The term ''various control measures'' clearly refers back, in part, to the requirement in the first part of section 188(e) that contains the requirement that the plan include ''the most stringent measures that * * * can feasibly be implemented in the area.''

By allowing us to consider the economic feasibility of measures in judging whether to grant an extension and how long an extension to grant, Congress necessarily also allowed states to consider economic feasibility in demonstrating the need for an extension of a given length. If section 188(e) compelled states to adopt all MSM that were technologically feasible no matter their cost, then there would be no economic feasibility issues for us to review in exercising our discretion to grant an extension. ACLPI's position would read the very explicit criterion—the technological and economic feasibility of various control measures—out of section 188(e). A statute should not be interpreted to render any provision of that statute meaningless. See *Northwest Forest & Resource* v. *Glickman,* 82 F.3d 825, 834 (9th Cir. 1996). See also *Gustafson* v. *Alloyd Co.,* 115 S. Ct. 1061, 1067 (1995) (no Act of Congress should ''be read as a series of unrelated and isolated provisions.''); *Department of Revenue of Oregon* v. *ACF Industries,* 114 S. Ct. 843, 848 (1994) (''a statute should be interpreted so as not to render one part inoperative'') (quotation omitted).

We agree that the Act's general strategy is to offset longer attainment time frames with more stringent control requirements. We do not agree that the MSM requirement in section 188(e) is the primary mechanism that assures that increasingly stringent control requirements are adopted in areas requesting an extension. In fact, the most stringent control measure provision in section 188(e) will not necessarily result in the adoption of any additional control measures above and beyond those already adopted by the state to provide for BACM and expeditious attainment.

The MSM provision is written to assure that a state consider the most effective controls from elsewhere in the country for implementation in the area requesting an attainment date extension. The results of the analysis are completely dependent on how well other areas have controlled their PM–10 sources. If other areas have not controlled a particular source category well, then the resulting MSM for that source category will not be the more effective level of control than what is actually feasible for the area. The MSM provision, however, does not require a state to determine if the feasibility of controlling a source category at a level greater than the most stringent level from another area. In other words, it does not require states to determine the maximum level of control that could be applied to a source category given local conditions and the additional implementation time afforded by an extension.

In considering the MSM provision, there is a tendency to assume that there are always better controls elsewhere than there are in the local area. This assumption is unwarranted, especially for an area that has already gone through a systematic process of identifying and adopting BACM for their significant sources. These areas are likely to have already evaluated the best controls from other areas (as Arizona did, see MAG plan, Chapter 5) and either adopted them as BACM or rejected them as not feasible for their area. As a result, the likelihood of uncovering substantial new controls during a MSM evaluation is low.

More important than the MSM provision for assuring adoption of additional controls is the requirement in CAA sections 189(b)(1)(A)(ii) and 188(e) that the PM–10 plan demonstrate attainment by the most expeditious alternative date practicable but no later than December 31, 2006. The SIP revision containing this demonstration must accompany any request for extension of the attainment date under section 188(e). Because we are required to grant the shortest possible extension, a state must demonstrate that it has adopted the set of control measures that will result in the most expeditious date practicable for attainment. This requirement may mean that a state must adopt controls that go beyond the most stringent measures adopted or implemented elsewhere.

Comment: ACLPI disagrees with EPA's interpretation of the phrase ''to the satisfaction of the Administrator'' in section 188(e). Specifically, ACLPI rejects the notion that by using this phrase, Congress intended to grant EPA discretion to accept an MSM demonstration even if it falls short of having every MSM possible because this interpretation contradicts the express language of section 188(e) as well as the requirement that the area achieve attainment by the most expeditious date practicable. ACLPI argues that the Act uses the phrase to grant EPA the authority to determine whether a state has adequately demonstrated that its plan includes the most stringent measures that are feasible, not to give the agency carte blanche to circumvent the will of Congress by ignoring the State's failure to meet this requirement.

Response: First, the Act does not require states to adopt every possible MSM. There is nothing in the express language of section 188(e) that requires such an outcome. The MSM requirement in section 188(e) is not phrased as ''all most stringent measures'' or as ''every most stringent measure practicable or possible.''

Our interpretation of the MSM requirement is consistent with how we have historically interpreted the general RACM requirement in CAA section 172(c)(1), a requirement which does use the word ''all.'' This section requires that nonattainment area plans ''provide for the implementation of *all* reasonably available control measures * * * ''. (emphasis added). In interpreting this requirement, we have long held that a state is not obligated to adopt and implement measures that will not contribute to expeditious attainment.[11]

[11] We would not consider a measure to be reasonable if it does not contribute to expeditious attainment. See General Preamble at 13560; 63 FR 15920, 15932 (April 1, 1998) (proposed Phoenix area PM–10 FIP); and 66 FR 26913, 26929 (May 15,

Continued

We established this position in a policy that predates the CAA Amendments of 1990. 44 FR 20372, 20375 (April 4, 1979). Congress did not revise the RACM requirement in the 1990 Amendments and thereby endorsed our position. We reaffirmed this position in 1992, see General Preamble at 13560 (April 16, 1992). The court has also endorsed this position in the specific context of the section 189(a) RACM requirement where the court found that using the attainment deadline to determine whether controls must be reasonable ''makes sense.'' *Ober II* at 1198.

We are interpreting the MSM requirement using the same principle. We are again using the applicable attainment date to determine whether the MSM provision requires a particular control or set of controls to be imposed. Before we can grant an attainment date extension, the state must show that its plan will result in attainment by the ''most expeditious alternative date practicable.'' See CAA sections 188(e) and 189(b)(1)(A)(ii). If a state can be shown that including a certain set of potential MSM would not result in more expeditious attainment, then it is reasonable and consistent with the Act not to require their inclusion as a condition of approval.

Second, Congress did not need to add the phrase ''to the satisfaction of the Administrator'' to grant us the authority to review the adequacy of a state's MSM demonstration. It had already given it to us by granting us the discretionary authority under section 188(e) to grant or to deny a state's extension request. By attaching the phrase specifically to the MSM requirement, Congress emphasized EPA's administrative authority to determine an appropriate interpretation of what is conceivably a very open-ended and exacting requirement.

Finally, in reviewing whether Arizona has appropriately excluded an otherwise feasible measure or group of feasible measures in its MSM analysis, we have invoked only one criterion: whether or not the measure or group of measures are necessary for attainment by the earliest alternative date practicable. Given that this is our sole criterion, our interpretation of ''to the satisfaction of the Administrator'' does not conflict with the Act's requirement for attainment by the earliest alternative date practicable.

2001) (approval of the Beaumont/Port Arthur ozone nonattainment area plan). Similarly, for the purposes of the MSM requirement, we would not consider such a measure to be feasible for the area.

Comment: ACLPI argues that EPA's proposed methodology for determining MSM is flawed because it apparently does not require states to quantify expected emission reductions from measures for purposes of making MSM demonstrations.

Response: We do not believe that quantification is always necessary or possible or can always be done accurately enough to be meaningful and therefore cannot be required as the sole means of determining relative stringency. Often, control measures are easily comparable without quantification. In these cases, quantification adds no additional information and is unnecessary. In other cases, quantification is not possible or cannot be done accurately enough because there is no methodology and/or insufficient data to calculate the difference in emissions reductions between measures.

Because quantification is often problematic, we have not established in our policy on the MSM provision a specific method that a state must use to compare the stringency of measures, rather we expect a state to select the best method for making this comparison on a case-by-case basis taking into account the need to provide a clear and conclusive demonstration. See 24-hour standard proposal at 50284.

B. Comments on EPA's Detailed Evaluation of the Phoenix Serious Area PM–10 Plan

Comment: ACLPI disagrees with EPA's statement that the Act does not require the metropolitan Phoenix serious area plan to address the adequacy of the PM–10 monitoring network, asserting that section 110(a)(2)(B)(i) specifically mandates this.

Response: Section 110(a)(2)(B)(i) in title 1, part A of the CAA requires implementation plans to provide for the establishment and operation of a system to monitor, compile and analyze data on ambient air quality. These systems must necessarily be in place and operating long before a state can develop a nonattainment area plan under title I, part D of the CAA (such as the Phoenix serious area plan) because it is the data from this monitoring network which establish the area's nonattainment status and its initial classification as well as the degree of control needed to attain the applicable standard. Therefore, SIP monitoring provisions are addressed separately and well in advance of the development of nonattainment area plans.

Nonattainment area plans are not, in general, required to address how the area's air quality network meets our monitoring regulations. Nor do we generally approve or disapprove monitoring networks as part of nonattainment area plans. These plans are submitted too infrequently to serve as the vehicle for assuring that monitoring networks remain adequate and current. Instead, our monitoring regulations in 40 CFR part 58 require states to submit reports on the adequacy of their ambient air quality monitoring networks annually. We discuss the adequacy of the monitoring network as part of our proposed action on the Phoenix plan to support our finding that the plan appropriately evaluates the PM–10 problem in the area. Reliable ambient data is necessary to validate the base year air quality modeling which in turn is necessary to assure sound attainment demonstrations. The network, however, does not need to meet all our regulatory requirements to be found adequate to support air quality modeling. A good spatial distribution of sites, correct siting, and quality-assured and quality-controlled data are the most important factors for generating adequate data for air quality modeling.

Comment: Several times in its comments, ACLPI asserts that the Phoenix serious area plan fails to includes a specific measure and also fails to provide a reasoned justification for the rejection of the measures and that this violates both the CAA and EPA guidance, which require serious area PM–10 SIP revisions to provide for the implementation of all BACM or provide a reasoned justification for their rejection.

Response: ACLPI is incorrectly characterizing both the CAA's BACM requirement and our guidance regarding it. Neither requires the implementation of *all* BACM. CAA section 189(b)(1)(B) requires that SIPs include ''provisions to assure that the best available control measures for the control of PM–10 shall be implemented * * *'' There is nothing in this express language of this section that requires the implementation of all BACM; the requirement is not phrased as ''all best available control measures'' or as ''every best available control measure possible.''

In our serious PM–10 nonattainment area planning guidance (Addendum at 42014), we have interpreted the BACM requirement to mean that a state must only provide for the implementation of BACM on its significant source categories: ''in summary [of the process for selecting BACM for area sources], the State must document its selection of BACM by showing what control measures applicable to each source category (not shown to be de minimis)

were considered. The control measures selected should preferably be measures that will prevent PM–10 emissions rather than temporarily reduce them.'' See also Addendum at 42011 (De Minimis Source Categories). Again, this guidance does not require the implementation of all BACM.

Comment: ACLPI notes that the Arizona legislature repealed the remote sensing program during the 2000 regular session and thus the plan fails to demonstrate adequate legal authority for that measure. ACLPI also notes that the September 10, 2001 ruling by the Arizona Federal District Court found the State's repeal and discontinuation of the RSD program a violation of the CAA and asked that the ruling be included in the record for this rulemaking. Finally, ACLPI asserts that as a measure that has been implemented in the State for 3 years, it is a MSM and thus required under CAA section 188(e).

Response: The remote sensing (RSD) program is not a measure developed specifically for the MAG serious area PM–10 plan, but rather one Arizona adopted in 1994 as part of its carbon monoxide and ozone plans. In the MAG PM–10 plan, Arizona used the RSD program in the same manner as it used a number of other existing measures: to support its demonstration that the State has provided for the implementation of BACM for the on-road motor vehicle category.

In the 24-hour standard proposal, we reviewed the plan's BACM and MSM demonstrations for this source category assuming that the RSD program was no longer in place and determined that the plan still provided for the implementation of BACM and inclusion of MSM without it. See 24-hour standard proposal at 50259. Arizona has in place one of the nation's most comprehensive programs to address on-road motor vehicle emissions. With the additional measures in the serious area plan (including a more stringent diesel I/M program and measures both encouraging and requiring diesel fleet turnover), we believe the plan easily provides for the implementation of BACM and inclusion of MSM for on-road motor vehicle exhaust. See 24-hour proposal at 50258.

The plan included a very small NO_X benefit of 4 kg per day, 0.003 percent of the daily NO_X inventory. See email, Cathy Arthur (MAG) to Frances Wicher (EPA), ''Impact of Removal of Remote Sensing Program on NO_X in 2006,'' October 2, 2001. While not calculated in the serious area plan, a rough estimate of potential directly-emitted PM–10 reductions from the program is no more than one-half ton *per year* (or 2.6 lbs per day). Neither the NO_X benefit nor the directly-emitted PM–10 benefit would contribute to expeditious attainment of the PM–10 standards in the Phoenix area, so the State did not need to include the measure to assure expeditious attainment.

Arizona stopped implementing the RSD program because of its high cost per ton of reductions, in the order of thousands of dollars per ton of pollutant reduced; that is, its economic infeasibility. See ADEQ, Final Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Program, June 2001, p. 26. Under EPA's MSM policy, economic infeasibility is a valid reason for rejecting a measure as MSM. See 24-hour standard proposal at 50283.

Because we have determined that the Metropolitan Phoenix serious area plan provides for the implementation of BACM, inclusion of MSM and expeditious attainment without the RSD program, any deficiency in legal authority for the program does not affect our approving the plan or granting an attainment date extension under CAA section 188(e).

Comment: ACLPI disagrees that the plan provides a reasoned justification for the rejection of CARB diesel which ACLPI claims both EPA and MAG conceded is an MSM. ACLPI asserts that EPA did not accept the State's justification and developed its own justification for the failure to adopt the measure. Citing *Delaney* v. *EPA,* 898 F.2d 695 (9th Cir. 1990), ACLPI states that it is not EPA's role to supply justifications that the state has not itself claimed. ACLPI also asserts that BACM cannot be excused if it would not advance the attainment date by one year; a measure must be adopted if it would advance the attainment date by even one day.

Response: Neither EPA nor MAG concedes that CARB diesel is a most stringent measure that is feasible for the Phoenix area. The serious area plan rejects CARB diesel as infeasible for the Phoenix area based on costs. MAG plan, p. 9–46. Noting the uncertainties regarding this cost estimate, we could not judge whether this justification was reasonable or not. Annual standard proposal at 19973. The question then was whether we could still approve the MSM demonstration without CARB diesel and absent a reasoned justification for not including it.

Our sole criterion for determining if the plan provides for MSM is whether it has excluded any feasible MSM or a group of feasible MSM that, if adopted and implemented early, would result in attainment of the PM–10 standards more expeditiously. On-road and nonroad engines (the source categories that would be affected by CARB diesel) are not implicated in 24-hour exceedances of the PM–10 standard. Microscale plan, tables 3–2 to 3–5. Except for the Salt River monitoring site with its fugitive dust generating industrial sources, 24-hour exceedances in the Phoenix area are due exclusively to windblown dust from disturbed ground. Microscale plan, p. 16. Introducing CARB diesel would not contribute to expeditious attainment of the 24-hour standard.

Annual standard exceedances are also dominated by fugitive dust sources with on-road and nonroad engines contributing little to annual PM–10 levels in the area. The small emission reduction associated with the introduction of CARB diesel would not advance the attainment date in the area, either by itself or in combination with other measures. It takes a reduction of more than 4 metric tons per day to advance the annual standard attainment by a year in the Phoenix area. EPA TSD section ''Reasonable Further Progress and Quantitative Milestones.'' The MAG plan estimates reductions from introducing CARB diesel at less than 0.8 mtpd in 2006. MAG plan, p. 10–37. Advancing attainment by one year is the appropriate increment for judging whether a measure would expedite attainment of the annual standard. One year is the smallest increment of time that one can advance attainment of the annual standard because the annual standard is measured over a calendar year, from January 1 to December 31. See 40 CFR part 50.

Because the including CARB diesel would not result in more expeditious attainment of either PM–10 standard, we find that the Phoenix serious area plan has meet the MSM requirement without it and without including a reasoned justification for rejecting it ACLPI's reliance on *Delaney* is misplaced. In that case, the Court found that EPA's 1979 guidance explicitly provided that certain measures were presumptively reasonably available and that it was the state's burden to overcome that presumption. In 1992, we repealed the provisions of the 1979 guidance at issue in *Delaney* and added provisions specifically for PM–10 that establishes no presumption for those measures. See General Preamble at 13560. Here, there was no EPA policy presumption that CARB diesel was a feasible measure for the Phoenix area which Arizona had to overcome.

Comment: ACLPI argues that the metropolitan Phoenix plan improperly rejects various TCMs related to congestion management and idling

reduction on the grounds that individually each measure would have a relatively small impact on PM–10 emissions because the CAA does not contain a ''small impact'' exception from BACM and the plan's purported justification for rejecting the TCMs does not comport with EPA's BACM guidance. ACLPI also argues that the omission of these measures based solely on the amount of their individual impact violates the requirement of attainment as expeditiously as practicable because collectively, the measures might have a significant impact.

Response: Table TCM–3 in the EPA TSD lists four congestion management or idling measures that were identified as potential BACM but were not adopted as part of the plan: off-peak movement of goods, truck restrictions during peak times, limit excessive car dealership vehicle starts, and limit idling time to 3 minutes. Contrary to ACLPI's assertions, the plan did not reject these measures on ''small impact'' grounds. Rather, it provides no clear justification for rejecting any of these measures.

Prior to the development of the serious area plan, the Phoenix area already had in place a comprehensive set of TCMs. See EPA TSD, Table TCM–2. With the additional measures in the serious area plan (including additional traffic light synchronization, transit improvements, and bicycle and pedestrian facility improvements), we believe the plan easily provides for the implementation of BACM for on-road motor vehicles even without the four measures listed above. See annual standard proposal at 19974 and 24-hour standard proposal at 50260. In addition, these measures have little PM–10 benefit; therefore, their adoption and implementation would not contribute to expeditious attainment of the PM–10 standards in the Phoenix area.

As we have discussed previously, neither the CAA nor EPA guidance requires the implementation of all BACM, only that a state provide for the implementation of best available control measures on its significant source categories. *See* CAA section 189(b)(1)(B) and the Addendum at 42014. Moreover, we do not believe that the CAA requires us to reject an otherwise sound plan because of minor issues that do not affect the principal purposes of the plan: implementation of BACM and progress towards and expeditious attainment. Because the measures would not contribute to expeditious attainment and the State has provided for the implementation of BACM without them, we do not believe that the lack of these measures or a reasoned justifications for rejecting the measures is grounds for disapproving the plan.

Comment: Several times in its comment letter, ACLPI states that some jurisdictions in the nonattainment area have not made commitments to adopt certain measures when other jurisdictions have and that the plan provides no explanation as to why the implementation of these measures by all jurisdictions is infeasible. ACLPI asserts that EPA guidance indicates that BACM should be adopted and implemented throughout a serious PM–10 nonattainment area unless 100 percent implementation is infeasible. ACLPI also contents that because some jurisdictions have committed to more stringent control measures than other jurisdictions, their measures must be considered BACM/MSM and the plan must either provide for these measures' implementation by all jurisdictions or demonstrate why this is infeasible.

Response: ACLPI cites our serious PM–10 nonattainment area planning guidance at Addendum at 42014 to support its first premise. This guidance states:

> When evaluating economic feasibility, States should not restrict their analysis to simple acceptance/rejection decisions based on whether full application of a measure to all sources in a particular category is feasible. Rather, a State should consider implementing a control measure on a more limited basis, *e.g.,* for a percentage of the sources in a category if it is determined that 100 percent implementation of the measure is infeasible. This would mean, for example, that an area should consider the feasibility of paving 75 percent of the unpaved roadways even though paving all of the roads may be infeasible.

Contrary to ACLPI's assertion, this guidance does not demand states implement a measure 100 percent unless 100 percent implementation is infeasible. Rather, it suggests that states not consider ''full implementation on all sources in the nonattainment area'' as the only possible implementation scenario for evaluating a measure's economic feasibility and that, before it rejects a measure as economically infeasible, it should first consider less extensive implementation.

The CAA's requirements to implement BACM and include MSM apply to the nonattainment area as a whole and not to each individual jurisdiction within that nonattainment area.[12] Consequently, we have reviewed whether the combined effect of all controls adopted in the metropolitan Phoenix area for a particular source category results in the implementation of BACM and the inclusion of MSM for that source category. Because BACM and MSM are nonattainment area-wide requirements, the actions of one jurisdiction within the nonattainment area cannot set a standard for BACM and/or MSM that must either be implemented by all other jurisdictions within the area or demonstrated to be infeasible.

Comment: Several times in its comment letter, ACLPI states that some jurisdictions in the nonattainment area have not made commitments to adopt certain measures when other jurisdictions have. In this context, ACLPI asserts that CAA section 110(a)(2)(E) requires that plans provide assurances of adequate personnel, funding and authority to implement control measures.

Response: ACLPI is incorrectly applying CAA section 110(a)(2)(E). Under this section, a state needs to provide assurances of adequate personnel, funding and authority only for those control measures that it has included in its submitted implementation plan. It does not need to provide such assurances for control measures that are not included in its submitted implementation plan, whether or not an argument could be made that such measures should have been included to meet another CAA provision. This is clear from the language of the section: ''[e]ach implementation plan *submitted by a State* * * * shall * * * provide (i) necessary assurances that the State * * * will have adequate personnel, funding, and authority under State * * * law to carry out *such* implementation plan.'' (emphasis added). Therefore, where a jurisdiction has not committed to implement a measure, it is not required to provide assurances of adequate resources as part of its submittal in order to have it approved under CAA section 110(a)(2)(E).

Comment: For a number of reasons, ACLPI asserts that Rule 310.01 weakens the FIP rule requirements for disturbed vacant lots and unpaved roads. ACLPI further asserts that EPA's conclusion that the differences between the FIP rule

[12] This is clear from the language of the applicable CAA sections. CAA section 189(b)(1)(b) requires that ''a state in which all or part of a serious area is located shall submit an implementation plan for such area that includes * * * provisions to assure that [BACM] * * * shall be implemented * * * '' CAA section 188(e) requires that ''the State [requesting an extension of the attainment date] demonstrates * * * that the plan for that [serious] area includes the most stringent measures * * * '' The requirements in both sections apply to the serious area and not to the individual jurisdictions within the serious area.

and Rule 310.01 will not have a significant impact on emission reductions is unsupported by quantification or analysis of the relative emission reductions and thus EPA's approval of the rule change as sufficient to provide the same level of control as the FIP rule is therefore arbitrary and capricious and violates the Act and EPA guidance that require BACM to go beyond existing RACM-level controls.

Response: We are not withdrawing or modifying the FIP fugitive dust rule in this action. Therefore, comments regarding the effect of approving Rule 310.01 on the FIP rule are not germane.

Neither the CAA nor EPA guidance mandates that a BACM-level control measure always go beyond the existing RACM-level control measure. While both the CAA and EPA guidance intend a greater level of stringency to apply in areas that are required to implement BACM than in those areas required only to implement RACM, the intent is that the *overall* PM–10 control strategy for a category should, in general, be more stringent rather than that every individual control measure in that strategy be more stringent.

A state can show that it has implemented BACM in more than one way. It can show it by demonstrating that its BACM-level control measures for a source category collectively go beyond existing RACM-level measures for that category. Addendum at 42013. It can also show it by demonstrating that its adopted measures meet the definition of BACM. Addendum at 42010. Thus, if a state has already adopted measures to meet the RACM requirement that are collectively the ''maximum degree of emissions reduction achievable from a source or source category which is determined on a case-by-case basis, considering energy, economic and environmental impacts'' then it need not strengthen the measures further to meet the BACM requirement.

We also emphasize that a BACM demonstration is done source category by source category and not measure by measure. In determining whether a state has provided for the implementation of BACM on a particular source category, we need to look at all the control measures for that category. In this particular instance, Rule 310.01 alone does not constitute the entire BACM-level control strategy for vacant lots and unpaved roads. Rather, it is the combination of Rule 310.01, Rule 310, and city and town commitments that constitute the BACM strategy for this category. See annual standard proposal at 19977 and 19978 and 24-hour standard proposal at 50263 and 50264.

Comment: ACLPI comments that EPA's approval of the BACM/MSM demonstration for construction sites is contingent upon commitments by MCESD to add additional control requirements for dust suppression and to make other changes to MCESD Rule 310. While ACLPI agrees that Rule 310 needs strengthening, it asserts that a commitment to make unspecified changes to the rule to achieve a BACM/MSM level of control is inadequate because it does not meet the requirements of the Act for enforceable measures no later than June 10, 2000 (BACM) or as expeditiously as practicable (MSM) and offers no assurances that adequate changes will ever be adopted. ACLPI claims that the techniques for controlling emissions from construction activities and sites are well known.

ACLPI further asserts that EPA may only approve a plan based on a commitment pursuant to CAA section 110(k)(4) and then only if the state commits to adopt specific enforceable measures by a date certain but not later than 1 year after the date of approval of the plan revisions. ACLPI claims that MCESD's commitments to improve Rule 310 do not meet the requirements of CAA section 110(k)(4) because it does not commit to adopt specific enforceable measures but only to ''research, develop and incorporate'' additional unspecified measures for dust suppression practices/equipment into Rule 310 or the dust control plans required under that rule. Finally, ACLPI states that the serious area plan must include the BACM/MSM measures identified from South Coast, Clark County and Imperial County or provide a reasoned justification for their rejection and it is not enough for Maricopa County to commit to studying these measures.

Response: We are approving MCESD's commitments under CAA section 110(k)(3) and not section 110(k)(4). We believe—consistent with past practice—that the Act allows approval of enforceable commitments under section 110(k)(3) that are limited in scope where circumstances exist that warrant the use of commitments in place of adopted measures. These commitments are enforceable by EPA and citizens under, respectively, CAA sections 113 and 304 of the Act.[13]

Section 110(k)(4) provides for the conditional approval of State commitments; however, these commitments do not need to be enforceable. Commitments approved under section 110(k)(3) are not enforceable by either EPA or citizens, rather the Act provides that the conditional approval will convert to a disapproval if ''the State fails to comply with such commitment.''

MCESD's commitments have been adopted by the Maricopa County Board of Supervisors after appropriate public notice and hearing and meet Arizona state requirements for the adoption of enforceable SIP commitments by local jurisdictions. See A.R.S. 49–406 G. and Maricopa County Resolutions. Once we have approved them into the SIP under CAA section 110(k)(3), the commitments are fully enforceable against MCESD and the Board under CAA sections 113 and 304.

We are allowing the use of these enforceable commitment here because it is the only approach available at this time to assure the needed improvements to Rule 310. The information needed to make these improvements and to specify the details of these improvements does not currently exist and must be developed through additional research and investigation.

While the general techniques for controlling dust from construction activities are well known (*e.g.* watering), the most effective applications of these general techniques for controlling emissions from any particular construction site in Maricopa County (*e.g.,* how much water and when to apply it) are not well known. Construction sites differ in soils (affecting the quantity of water needed for effective control), meteorological conditions (affecting the frequency with which water must be applied), equipment size/use (affecting quantity and plume characteristics of dust generated), project phase (affecting quantity and time period of dust generated), and level of activity (affecting quantity of dust generated). The specifics of how controls should be applied to meet the 20 percent opacity standard and other applicable Rule 310 standards will vary depending on these and other site and activity parameters.

[13] In the past, we have approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. See, for example, *American Lung Association of New Jersey* v. *Kean,* 670 F. Supp. 1285 (D.N.J. 1987), affirmed, 871 F.2d 319 (3rd Cir. 1989); *NRDC* v. *N.Y. State Dept. of Environmental Conservation,* 668 F. Supp. 848 (S.D.N.Y.1987); *Citizens for a Better Environment* v. *Deukmejian,* 731 F. Supp. 1448, reconsideration granted in part, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air, et al.* v. *South Coast Air Quality Management District, CARB, and EPA,* No. CV 97–6916 HLH, (C.D. Cal. August 27, 1999). Further, if a state fails to meet its commitments, we can make a finding of failure to implement the SIP under Section 179(a), which would start an 18-month period for the State to begin implementation before mandatory sanctions are imposed.

One of the enforceable commitments by MCESD is to develop parameters that address various site conditions and are sufficient to ensure that Rule 310's performance standards are met more consistently. The concern captured in this enforceable commitment is that, while it is important for sites to have some flexibility in selecting which control measure(s) to implement, there are field circumstances where the technique must be implemented in a certain manner to be effective. For example, where hydrophobic soils exist under dry meteorological conditions, it may be necessary to water several days prior to ground disturbance to allow water to penetrate to the depth of cut. In some other situations, a tackifyer or surfactant needs to be added to the water for better penetration. However, these approaches may be needed only under certain field conditions. MCESD needs additional time to investigate when and where it would be appropriate to require more specific controls and what those controls should be.

Another one of MCESD's commitments is to modify Rule 310's existing opacity standard/test method or add an additional opacity standard(s)/test method(s), so that they better characterize fugitive dust sources that create intermittent plumes. Information on how to do this most effectively is currently lacking. While derivations on EPA Reference Method 9 (the standard opacity test method) observations have been adopted in Rules 310 and 310.01 for unpaved roads and unpaved parking areas to better accommodate the temporal nature of plumes from vehicle passes, additional field research is needed to determine how observation intervals and other aspects of opacity readings can be better tailored to the variety of intermittent plumes generated by construction equipment and activities.

Once we determine that circumstances warrant the use of an enforceable commitment, we believe that three factors should be considered in determining whether to approve the enforceable commitments: (1) whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time.[14]

First, MCESD's commitments address a very limited portion of the CAA's requirements for the implementation of BACM and the inclusion of MSM. In this case, MCESD's commitments are improvements to aspects of the already-adopted and implemented Rule 310; improvements that, we again emphasize, cannot be made at this time because additional research is needed.[15] Second, MCESD has committed resources adequate to fulfill its commitments and has provided information on its work plan for completing the necessary technical work. *See* Maricopa County commitments as revised December 19, 2001.

The final factor is whether the commitment is for a reasonable and appropriate period. All but one of the commitments have deadlines of December 2002, less than a year after their approval. The other commitment is the implementation of a second level of dust control education that will begin in the March to June 2003 time frame. *See* Maricopa County commitments as revised December 19, 2001. Given the complexity of the tasks required by the commitments, we believe that these schedules are expeditious. Moreover, they are consistent with the attainment and RFP demonstrations in the plan.

Our approach here of accepting enforceable commitments that are limited in scope is not new. We have historically recognized that under certain circumstances, issuing a full approval may be appropriate for a submission that consists, in part, of an enforceable commitment. *See e.g.,* 62 FR 1150, 1187 (January 8, 1997) (ozone attainment demonstration for the South Coast Air Basin); 65 FR 18903 (April 10, 2000) (revisions to attainment demonstration for the South Coast Air Basin); 63 FR 41326 (August 3, 1998) (federal implementation plan for PM–10 for Phoenix); 48 FR 51472 (State Implementation Plan for New Jersey).

Nothing in the Act speaks directly to the approvability of enforceable commitments. However, we believe that our interpretation is consistent with its provisions. For example, CAA section 110(a)(2)(A) provides that each SIP ''shall include enforceable emission limitations and other control measures, means or techniques * * * *as well as schedules and timetables for compliance,* as may be necessary or appropriate to meet the applicable requirement of the Act.'' (Emphasis added.) The emphasized terms mean that enforceable emission limitations and other control measures do not necessarily need to be fully adopted to meet the Act's applicable requirements for the implementation of BACM and inclusion of MSM. Rather, the emissions limitations and other control measures may be supplemented with other SIP rules—for example, the enforceable commitments we are approving today—as long as the entire package of measures and rules provides for BACM and MSM.[16]

Comment: ACLPI comments that the CAA requires that SIPs must provide for the implementation of all RACM and that the Governor's Agricultural Best Management Practices Committee identified a variety of available and feasible control measures which are included in the agricultural general permit rule as BMPs. ACLPI asserts that the Rule does not meet the CAA requirement for all RACM because it only requires the implementation of one BMP from each of three categories of farm activities even if the implementation of more than one BMP would be technologically and economically feasible.

Response: This comment is neither germane to today's action nor timely. In today's action, we have addressed only whether Arizona's BMP general permit rule provides for the implementation of BACM and the inclusion of MSM. We have not addressed whether it also provided for the implementation of RACM because we have already done so in an earlier rulemaking that was finalized on October 11, 2001. The appropriate time for ACLPI to raise issues regarding whether the general permit rule meets the CAA's RACM requirement for agricultural sources in the Phoenix area was during the comment period on this earlier rulemaking. ACLPI made comments on this earlier rulemaking, and we fully addressed those comments in the final

[14] In 1994, in considering EPA's authority under section 110(k)(4) to conditionally approve unenforceable commitments, the Court of Appeals for the District of Columbia Circuit struck down an EPA policy that would allow States to submit (under limited circumstances) commitments for entire programs. *Natural Resources Defense Council* v. *EPA,* 22 F.3d 1125 (D.C. Cir. 1994). While we do not believe that case is directly applicable here, we agree with the Court that other provisions in the Act contemplate that a SIP submission will consist of more than a mere commitment. See *NRDC,* 22 F.3d at 1134.

[15] As we will discuss later, MCESD has also committed to adopt a rule for certain types of charbroilers. This commitment does not change our analysis here because, even when combined with the commitments to improve Rule 310, it is a very small part of the demonstration that the plan includes MSM.

[16] Our interpretation that the Act allows for an approval of limited enforceable commitments has been upheld by the Ninth Circuit Court of Appeals, as well as by other circuits. See *Kamp* v. *Hernandez,* 752 F.2d 1444 (9th Cir. 1985); *City of Seabrook* v. *EPA,* 659 F.2d 1349 (5th Cir. 1981); *Connecticut Fund for the Environment* v. *EPA,* 672 F.2d 998 (2d Cir.), cert. denied 459 U.S. 1035 (1982); *Friends of the Earth* v. *EPA,* 499 F.2d 1118 (2d Cir. 1974).

action. See 66 FR 51869, 51871. See also, 66 FR 34598 (June 29, 2001).

Comment: ACLPI asserts that the metropolitan Phoenix area plan fails to include the most stringent measures as required by CAA section 188(e) because it does not uniformly require the cessation of tilling on high wind days as South Coast Rule 403 rule does but rather includes it as one measure among several that a farmer may choose to implement. ACLPI further asserts that ADEQ's attempt to justify this deviation by stating that ''no research currently exists which demonstrates that cessation of high wind tilling when gusty winds exceed 25 mph in the Maricopa County area is more effective at reducing PM–10 then the agricultural PM–10 general permit * * *'' is irrelevant because the appropriate inquiry is whether the cessation of tilling on high wind days combined with the implementation of at least one other BMP would be more effective at reducing PM–10 which ACLPI claims, without support, it would be.

Response: South Coast Rule 403 does not require cessation of tilling on high wind days. Rule 403 includes a list of optional measures an affected source can use to reduce PM–10. For agricultural sources affected by Rule 403, the South Coast AQMD developed a series of farming practices that can be used by a grower as alternative means to comply with the requirements of Rule 403. These practices are listed in ''Rule 403 Agricultural Handbook: Measures to Reduce Dust from Agricultural Operations in the South Coast Air Basin'' (''Handbook''). If a grower decides to opt for compliance with the Rule by utilizing the dust control practices in the Handbook, the grower must cease tilling and soil preparation operations when winds are over 25 mph.

The requirement to cease tilling on high wind days is found in Rule 403.1 (''Wind Entrainment of Fugitive Dust''). The requirement is applicable only to the Coachella Valley (Palm Springs area) of the South Coast air basin and has a number of exemptions. *See* South Coast Rule 403.1, sections (a), (d)(4), and (h)(4).

The BMP general permit includes ''limited activity during high wind events'' among the list of BMPs from which a grower can select. The BMP Committee and Arizona decided not to require cessation of tilling on high wind days as a provision in the general permit for a number of technical and practical reasons, the main ones being the infrequency of high wind events in the Phoenix area, especially in comparison to the frequency of high wind events in the Coachella Valley.

Based on local meteorological data, MAG estimated that there were 11 days in 1995 with winds greater than 15 mph. In the Phoenix nonattainment area, the State determined that a small percentage (*i.e.,* 15 percent) of tilling occurs during the high wind season (*i.e.,* March through September). Within the high wind season, only 4 percent of days have wind speeds greater than 15 mph.[17] The Coachella Valley is much more windy, typically experiencing high wind greater than 25 mph on 47 days per year.[18] Based on this information, the BMP Committee and the State determined that an agricultural requirement developed specifically for Coachella Valley high wind conditions was not appropriate for the Phoenix area and that requiring cessation of tilling on high wind days would not be reasonable because since it would impact a small number of growers and provide minimal reductions.

Arizona has provided a reasonable justification for not requiring cessation of tilling during high wind events. In the Microscale plan, the State shows that it was windblown dust from an already tilled agricultural field and not the active tilling of that field that contributed to the 24-hour exceedance at West Chandler. *See* Microscale plan, pp. 16. In the serious area plan, the State demonstrates that the BMP general permit rule as adopted in combination with other adopted measures provides for expeditious attainment of the 24-hour PM–10 standard in the Phoenix area and is not necessary for expeditious attainment of the annual standard in the area. Finally, the State through its BMP committee has determined that the requirement for one BMP per category is the most effective economically and technologically feasible control measure for agricultural sources in the Phoenix area. Given all of this, the State has reasonably declined to mandate the cessation of tilling during high winds when faced with an absence of data that it would make the BMP rule more effective.[19]

Comment: ACLPI asserts that because Arizona is seeking an extension of the PM–10 nonattainment date to December 31, 2006, it must show that its plan includes the most stringent measure for each source category, including agriculture, citing CAA section 188(e). It then contends that South Coast Rule 403 is significantly more stringent than the general permit rule, noting that Rule 403 establishes six categories of management practices and requires operators to implement at least one of the listed practices in 5 of 6 categories (*i.e.,* Active, Farm Yard Area, Track-Out, Unpaved Roads, and Storage Pile) and three measures in the ''Inactive'' category. ACLPI claims that when the cessation of tilling on high wind days is included, each commercial farmer is required to implement a minimum of nine control measures and that Arizona's program only requires a total of three control measures. To qualify and obtain an extension of the attainment date, the Arizona SIP must include agricultural measures that are at least as stringent as Rule 403.

Response: Neither the CAA nor EPA policy requires that areas seeking attainment date extensions include without exception the most stringent measures for each source category. The CAA requires only that the plan include the most stringent measures found in the implementation plan of other States or used in practice that are feasible in the area. *See* CAA section 188(e). We interpret the MSM provision to not require any measure that is infeasible on technological or economic grounds, any measure for insignificant source categories, and any measure or group of measures that would not contribute to expeditious attainment. See 24-hour standard proposal at 50282–84.

ACLPI is not correctly characterizing the requirements of the South Coast's agricultural control measures (which are found in Rules 403 and 403.1). Agricultural operations are required to comply with the provisions of Rule 403 unless the person responsible for such

[17] In fact, when using mean hourly wind speed observations averaged over all monitoring sites in the Maricopa County nonattainment area for 1995, it was estimated that there 29 hours with wind speeds between 15 and 19.9 mph, 7 hours with wind speeds between 20 and 24.9 hours, and only one hour with wind speeds over 25 mph. MAG TSD, Appendix II, Exhibit 7 ''Wind Criteria and Associated Emissions for Regional Particulate Matter Modeling,'' Updated April 13, 1999, p. 3.

[18] The Coachella Valley is not the only agricultural area in the South Coast district. Riverside (outside of the Coachella Valley) and San Bernardino Counties are the predominant agricultural areas in the region. These areas experience winds greater than 25 mph approximately 25 and 23 days per year, respectively, yet the South Coast does not impose the cessation of tilling requirement in these areas unless a grower opts to use the practices listed in the Handbook as the means of complying with Rule 403.

[19] We note that one exemption from Rule 403.1's cessation of tilling requirement is when tilling activities result in a net reduction of wind blown fugitive dust, an exemption that is applicable only if wind blown fugitive dust is not visible from tilled soil, but is visible from untilled soil within the same agricultural parcel. Rule 403.1 (h)(4)(B). This exemption shows that there are some situations when cessation of tilling during a high wind event is actually counter-productive and thus it is not always more effective to combine it with another BMP.

operations voluntarily implements the conservation practices contained in the most recent Rule 403 Handbook. See Rule 403 (h)(1)(B). The Handbook, and not the rule itself, has the requirement to implement at least one of the listed practices in 5 of 6 categories and three measures in the Inactive category. A grower, however, only has to implement practices for those categories of agricultural operations that they actually have; thus if s/he does not have one of the activity categories and/or inactive fields then the number of practices s/he must implement is fewer. As we have noted above, the requirement for cessation of tilling on high wind days applies only in the Coachella Valley portion of the South Coast district and is a requirement on all agricultural operations in the other portion of the district only when a grower opts for using the Handbook to comply with Rule 403. Therefore, ACLPI exaggerates the requirements of the South Coast agricultural control program when it claims the program requires each commercial farmer to implement a minimum of nine management practices.[20]

We agree that in general Rule 403 (or the Handbook) is likely to be more stringent than the general permit rule. We, however, also agree, as discussed below, with the State's assessment that the South Coast requirements are infeasible for the Phoenix area and that the general permit rule represents the most stringent economically and technologically feasible agricultural control program for the area.

In assessing South Coast's requirements, the BMP Committee and ADEQ determined that because of the lack of adequate technical information concerning BMP costs and effectiveness, requiring at least one BMP for the three agricultural categories adequately addressed agricultural sources of PM–10 in the Maricopa County nonattainment area. ADEQ concluded that:

> The agricultural general permit cannot mirror South Coast Rule 403 for a variety of reasons. One main reason is that agriculture in Maricopa area is primarily flood irrigated. The South Coast has dryland, irrigated, and sprinkler irrigated agriculture. The actual amount of irrigation water and frequency of irrigation can effect wind erosion estimates and the effectiveness of different control measures under different conditions. Therefore, the BMPs for Maricopa County were based on practical applications during those times when the fields were not flooded. Also, because the application of more than one BMP at a time for a selected category would only provide incremental PM–10 reductions, sometimes at an uneconomical cost, flexibility was provided in the rule to allow the expert (the farmer) to decide what BMP should be applied when and where.

As we discussed in the proposal for the 24-hour standard (see 24-hour standard proposal at 50268) and as we concluded in our original FIP measure for the agricultural sector (63 FR 41332), the BMP Committee found that agricultural PM–10 strategies must be based on local factors because of the variety, complexity, and uniqueness of farming operations and because agricultural sources vary by factors such as regional climate, soil type, growing season, crop type, water availability, and relation to urban centers.

While the Committee surveyed measures adopted in other geographic areas, including South Coast, these measures were of limited utility in determining what measures are available for the Maricopa County area. Given the limited scientific information available and the myriad factors that affect farming operations, the BMP Committee concluded that requiring more than one BMP could not be considered technologically justified and could cause an unnecessary economic burden to farmers. BMP TSD, p. 18.

Adding to concerns about the economic feasibility of requiring more BMPs per farming activity is the general uncertainty regarding the cost of the BMPs and continued viability of agriculture in Maricopa County. Between 1987 and 1997, the number of farms operating in Maricopa County declined by approximately 30 percent and the amount of land farmed declined by approximately 50 percent. This trend is expected to continue. Finally, in order to justify additional requirements for farming operations in the area beyond those in the general permit rule, the BMP Committee determined that a significant influx of money and additional research would be needed.

Based on all of these factors, the BMP Committee concluded that the Handbook's control requirements were neither technologically nor economically feasible for agricultural sources in Maricopa County and therefore are not feasible for the Phoenix area. BMP TSD, p. 18.

We agree with the analysis of the BMP Committee. As noted previously, the development of the general permit rule was a multi-year endeavor involving an array of agricultural experts familiar with Maricopa County agriculture. Maricopa County is only the second area in the country where formal regulation of PM–10 emissions from the agricultural sector has ever been attempted. We conclude that the Rule 403's and the Handbook's requirements are neither technologically nor economically feasible for Maricopa County and thus Arizona need not include them in the Phoenix serious area plan in order for us to grant an attainment date extension under CAA section 188(e).

Comment: ACLPI claims that there is no justification for relaxing the stringency of Rule 403 because virtually all of the control measures listed in Rule 403 are in the Arizona rule and so it is clear that their implementation is feasible. ACLPI asserts that Arizona's contention that ''the application of more than one BMP at a time for a selected category would only provide for incremental PM–10 reductions sometimes at an uneconomical cost,'' is not supported by any competent data, improperly delegates regulatory discretion to the regulated community, and ignores the clear mandates of the Act.

Response: We agree that the many of the individual best management practices in the Rule 403 Agricultural Handbook are also feasible practices for the Phoenix area. Arizona, through the BMP committee, also agreed and incorporated many of them into the general permit rule. However, the feasibility and adoption of any one BMP has little relevance here because neither Rule 403, the Handbook, nor the general permit rule requires the implementation of any specific BMP, rather they require the implementation of at least one BMP from a list of possible BMPs for each of several categories of farm operations.

As has been noted many times before, little data is available on the cost of implementing specific BMPs in the Phoenix area. Using what little data was available and the technical expertise of local farmers, state and federal agricultural agencies,[21] and agricultural experts from the University of Arizona, Arizona determined that requiring the implementation at least one BMP for each of the three categories of

[20] We also note that for inactive fields, the Handbook allows agricultural operators to comply with local jurisdiction requirements in lieu of implementing three practices (Handbook, section II, p. 4.) and that a field which has been withdrawn from agricultural use in the Phoenix area becomes subject to MCESD Rule 310.01's BACM/MSM-level requirements for open areas and vacant lots. All these control options demonstrate that the six categories/nine practices versus three categories/three practices comparison is misleading.

[21] The BMP Committee is composed of five local farmers, the Director of ADEQ, the Director of the Arizona Department of Agriculture, the State Conservationist for the United States Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS) state office, the Dean of the University of Arizona's College of Agriculture, and a soil scientist from the University of Arizona.

agricultural activities is the most stringent level of control that is economically and technologically feasible for the Phoenix area. This conclusion was arrived at only after a lengthy and open process and only after taking into consideration South Coast's approach to agricultural control. See 66 FR 3458, 34601.

We do not agree that the general permit rule improperly delegates regulatory discretion to the regulated community. The general permit rule follows the same general control format as Rules 310 and 310.01. This format allows the regulated entity (e.g., construction site operator, vacant lot owner, unpaved parking lot owner, etc.) to choose from a list of options for controlling its source.[22] For example, an unpaved parking lot owner may pave, gravel, or apply a chemical stabilizer. See Rule 310.01, section 303.1. This control format is the standard model for fugitive dust rules and has developed over time because of the need to impose effective but reasonable and feasible controls on a large number of similar but distinct sources. For the Phoenix serious area plan, we have found that the control measures using this format provide for the implementation of BACM and the inclusion of MSM for a number of significant source categories. As much as (if not more so than) an unpaved parking lot owner or a vacant lot owner, a grower is in the best position to determine which BMPs are best and most effective for the conditions on his/her farm.

Comment: ACLPI asserts that because the general permit rule fails to require any specific control requirements, there is no way that the State can know or meaningfully predict what the effect of the rule will be and thus any estimated emissions reduction is entirely speculative and thus inadequate under the CAA.

Response: As we noted in a previous comment, the general permit rule follows the same standard control format used by many fugitive dust rules, such as Rules 310 and 310.01 (and Rule 403 and the Rule 403 Agricultural Handbook). This format allows the regulated entity to choose from a list of options for controlling its source.

Emission reductions from these types of rules need to be quantified because they often constitute the primary control strategy needed to demonstrate attainment and/or RFP. The accepted methodology for quantifying them is to assume that some fraction of the regulated sources will choose a particular control option. For example, the assumption used in the Phoenix plan to quantify emission reductions from the unpaved parking lot measure is that one third of the regulated lots will be paved, one-third will be graveled, and one-third will be chemically stabilized. See MAG TSD, p. V–17. Provided that the assumptions are reasonable, we accept the resulting emission reductions estimate.

To prepare the emission reductions estimates for the general permit rule, ADEQ hired URS. To estimate the reductions, URS determined the most likely implementation scenario. This scenario was based on available data on the crops grown and their acreage in the Phoenix area as well as on interviews of growers in the Phoenix area about which BMPs they would most likely use in certain situations. The growers, having intimate knowledge of the crops and growing conditions in the area, are the technical experts on how the BMP rule will be implemented. By going to the technical experts, URS and Arizona reduced the level of uncertainty in the emission reduction estimates to the extent practicable.

We believe that their approach is reasonable given the situation. Most of the BMPs have never been applied in Maricopa County or elsewhere, and until the BMPs are fully implemented and ADEQ has had adequate time to evaluate their effectiveness, there will always be some degree of uncertainty regarding actual emission reductions. While it is possible that the reductions could be less than expected, it is equally plausible that the reductions will be greater than expected.

We note that no matter how specifically a rule is written, no one can ever know for certain what the future emission reductions from it will be. Estimates of future emission reductions require assumptions about future activities that are always speculative to a degree. In making emission reduction estimates, we attempt to reduce the uncertainties to the extent possible, but we can never totally eliminate them.

Quantification of emission reductions from rules is a necessary part of meeting the Act's requirements for reasonable further progress and attainment demonstrations and quantitative milestones. Beyond setting the requirements (and requiring attainment demonstrations be based on air quality modeling, see, for example, CAA section 189(b)(1)(A)), the Act leaves it to EPA's expertise to determine what constitutes technically acceptable demonstrations. As we have discussed above, Arizona followed standard and accepted procedures for quantifying emission reductions from the BMP general permit rule and as a result we find the resulting estimates acceptable for the serious area plan.

Comment: ACLPI disagrees with EPA's conclusion that the metropolitan Phoenix serious area plan adequately demonstrates that attainment by December 31, 2001 is impracticable because the plan fails to adopt all BACM for significant sources, fails to implement some measures in a timely manner or relies on mere commitments and improperly excludes BACM for de minimis sources. ACLPI asserts that the plan improperly fails to analyze whether the area would be in attainment by the 2001 deadline if all BACM were adopted and implemented on time.

Response: We have carefully reviewed the plan and have found that it provides for the implementation of BACM, assures timely implementation of measures, and relies on enforceable commitments only where they are the only feasible means of providing for the implementation of BACM as required by CAA section 189(b)(1)(B). *See* annual standard proposal at 19984 and the 24-hour standard proposal at 50273.

As we have discussed previously, neither the CAA or EPA guidance requires the implementation of all BACM. Both only require that a state provide for the implementation of best available control measures on its significant source categories. Both also allow the de minimis sources to be exempted from the BACM requirement. See CAA section 189(b)(1)(B) and the Addendum at 42014.

Contrary to ACLPI's assertion, the plan does provide a clear demonstration that even with the implementation of BACM on all source categories including de minimis categories, the Phoenix area would not be in attainment of either PM–10 standard by the end of 2001. This demonstration is a necessary part of showing that the plan correctly determines which source categories are de minimis and which are significant. *See* MAG plan, pp. 9–9 to 9–15 and the section ''BACM Analysis—Step 2, Model to Identify Significant Sources'' in the EPA TSD.

Comment: ACLPI disagrees with EPA's conclusion that the metropolitan Phoenix serious area plan adequately demonstrates attainment by the earliest date practicable after December 31, 2001 because the plan fails to adopt all feasible MSM, fails to implement some measures in a timely manner or relies on mere commitments and improperly excludes MSM for de minimis sources. ACLPI asserts that the plan improperly

[22] This control format is also used in South Coast's fugitive dust rules, including Rules 403, 403.1, and 1186. We approved these rules on December 9, 1998 (63 FR 67784).

fails to analyze whether the area would be in attainment earlier if all MSM were adopted and implemented in a timely manner.

Response: We have carefully reviewed the plan and have found that it includes all feasible MSM to our satisfaction, assures timely implementation of measures, and relies on enforceable commitments only where they are the only feasible means of providing for the implementation of MSM or other measures necessary for timely attainment. See annual standard proposal at 19984 and the 24-hour standard proposal at 50274. We note again that the Phoenix serious area plan did not exclude any MSM on the basis of de minimis source categories.

Comment: ACLPI comments that the plan fails to include contingency measures, noting the purpose of contingency measures is to assure continued progress toward attainment while the SIP is being revised if a state fails to make RFP or attain by the applicable attainment date. ACLPI asserts that if a state fails to make RFP or timely attain, the obvious conclusion is that the currently implemented control measures are insufficient and additional measures are needed and that this is true regardless of whether the implemented measures were relied upon in the RFP and attainment demonstrations and for this reason, EPA's suggestion that the contingency measure requirement can be satisfied by committed measures that are implemented but not relied upon in the demonstrations defeats the purpose. ACLPI contends that the proposed SIP must include contingency measures that will take effect without further action by the State or Administrator and the SIP does not include any such measures.

Response: The metropolitan Phoenix serious area plan does contain contingency measures. For the annual standard, the plan relies on the agricultural BMP general permit rule as a contingency measure. For the 24-hour standard, the plan relies on the paving or treatment of unpaved roads measure. Both measures are currently being implemented but the emission reductions from them are not necessary for demonstrating RFP and attainment for the annual standard (general permit rule) and 24-hour standard (unpaved road measures).

Failure to make RFP or attain does not necessarily mean that new controls must be adopted. Failure to make RFP or attain can be the result of the failure to implement already committed to or adopted controls, delays in the implementation of control measures, and noncompliance. In these cases, correcting the implementation problem or noncompliance corrects the RFP or attainment failure.

There are a number of benefits to allowing and even encouraging the early implementation of contingency measures. The chief benefit is that their emission reductions and thus their public health benefit are realized early. Another is that it allows states to build uncredited cushions into their attainment and RFP demonstrations, a cushion which makes actual failures to make progress or attain less likely.

Measures that have already been implemented clearly meet the section 172(c)(9) requirement that contingency measures take effect without further action by the State or Administrator.

Comment: ACLPI asserts that the Agricultural BMP general permit rule cannot be used as a contingency measure because it is not a ''specific measure[ ] to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] * * *'' and there is nothing in the rule that is triggered upon a showing of failure to make RFP. ACLPI quotes EPA guidance at 60 FR 56129 that ''[c]ontingency measures should consist of other control measures that are not part of the area's control strategy.''

Response: We note that the Agricultural BMP general permit rule is a contingency measure for the annual standard only. Emission reductions from the rule are not necessary to demonstrate RFP or expeditious attainment, and therefore, the rule is not part of Arizona's primary control strategy for attaining the annual standard. Emission reductions from the rule are necessary to demonstrate RFP and expeditious attainment of the 24-hour standard and the State chose a different measure, the unpaved road measure, to serve as the contingency measure for the 24-hour standard.

Nothing in CAA section 172(c)(9) requires that contingency measure be triggered only if there is a failure to make RFP or to attain. Contingency measure must be undertaken if there is a failure to make RFP or attain but the Act does not bar a state from using other triggers as a reason to implement them, *e.g.,* a determination that the measure is needed for attainment of another standard or to meet another CAA requirement. This is the case here; the BMP general permit rule is both needed for attainment of the 24-hour standard and to meet the CAA's BACM requirement.

Areas that must meet the BACM, MSM, and ''attainment by the earliest alternative date practicable'' requirement are in a difficult position when it comes to contingency measures. Adopted but unimplemented contingency measures are likely to be feasible BACM and/or MSM. We discussed this dilemma in the proposed approval for the 24-hour standard at 24-hour standard proposal at 50279:

> Certain core control measure requirements such as RACM, BACM, and MSM may result in a state adopting and expeditiously implementing more measures than are strictly necessary for expeditious attainment and/or RFP. Because of this and because these core requirements effectively require the implementation of all non-trivial measures that are technologically and economically feasible for the area, states are left with few, if any, substantive unimplemented control measures. In fact, under the Act's PM–10 planning provisions, if there were a measure or set of measures that were technologically and economically feasible and could collectively generate substantial emission reductions, *e.g.,* one year's worth of RFP, then a state would be hard pressed to justify withholding their implementation.
>
> If we read the CAA to demand that the only acceptable contingency measure are those that are adopted but not implemented, then states face a difficult choice: adopt the controls for immediate implementation and clearly meet the core control measure requirements but fail the contingency measure requirement or adopt the control measures but hold implementation in reserve to meet the contingency measure requirement but potentially fail the core control measure requirements.
>
> However, states do not need to face this difficult choice if we read the CAA to allow adopted and implemented measures to serve as contingency measures, provided that those measures' emission reductions are not needed to demonstrate expeditious attainment and/or RFP. There is nothing in the language of section 172(c)(9) that prohibits this interpretation.

ACLPI cites as EPA guidance, our 1995 proposed approval of the moderate area PM–10 SIP for the Yakima, Washington nonattainment area. This proposal, however, simply affirms our position here. In this case, Washington State used as a contingency measure for the Yakima area, a wood stove buy back program. At the time we proposed to approve it as a contingency measure, the program had been in operation for more than two years and had already replaced 70 wood stoves. We proposed to approve it as a contingency measure because the emission reductions from the program were ''100 percent overcontrol,'' that is, not necessary for attainment. *See* 60 FR 56129, 56132 (November 7, 1995). We finalized this approval at 63 FR 5269 (February 2, 1998).

V. Final Actions

A. Approval of the Serious Area Plan

We are taking final action to approve the following elements of the serious area PM–10 plan for the metropolitan Phoenix area.

For the annual standard:

CAA provision (cite)	SIP submittal and date	Cite for proposed approval
Base year emission inventory (section 172(c)(3)).	MAG plan, February 16, 2000	Annual standard proposal at 19970.
Demonstration that the plan provides for the implementation of RACM and BACM for each significant source category (sections 189(a)(1)(c) and 189(b)(1)(b)):		
• On-road motor vehicles	MAG plan, February 16, 2000	Annual standard proposal at 19973 and 24-hour standard proposal at 50258.
• Non-road motor vehicles	MAG plan, February 16, 2000	24-hour standard proposal at 20260.
• Paved road dust	MAG plan, February 16, 2000	Annual standard proposal at 50274.
• Unpaved parking lots	MAG plan, February 16, 2000	Annual standard proposal at 19976.
• Disturbed vacant lots	MAG plan, February 16, 2000	Annual standard proposal at 19977.
• Unpaved roads	MAG plan, February 16, 2000	Annual standard proposal at 19978.
• Construction activities and sites	MAG plan, February 16, 2000	24-hour standard proposal at 50265.
• Agriculture (BACM only)	BMP TSD, June 13, 2001	24-hour standard proposal at 50268.
• Residential wood combustion	MAG plan, February 16, 2000	Annual standard proposal at 19982.
• Secondary ammonium nitrate sources	MAG plan, February 16, 2000	Annual standard proposal at 19982.
Demonstration of the impracticability of attainment by 2001 where the State has applied for an attainment date extension under section 188(e) (section 189(b)(1)(A) (ii)).	MAG plan, February 16, 2000	Annual standard proposal 19984.
Demonstration of attainment by the most expeditious alternative date practicable (section 189(b)(1)(A) (ii)).	MAG plan, February 16, 2000	Annual standard proposal 19985.
Demonstration of reasonable further progress (section 172(c)(2)).	MAG plan, February 16, 2000	Annual standard proposal 19988.
Quantitative Milestones (section 189(c))	MAG plan, February 16, 2000	Annual standard proposal 19988.
Inclusion of the most stringent measures (section 188(e)).	MAG plan, February 16, 2000 (except for agricultural sources); BMP TSD, June 13, 2001 (agricultural sources).	Annual standard proposal at 19984 (except for agricultural sources); 24-hour standard proposal at 50268 (agricultural sources).
Demonstration that major sources of PM-10 precursors such as nitrogen oxides and sulfur dioxide do not contribute significantly to violations (section 189(e)).	MAG plan, February 16, 2000	Annual standard proposal 19971.
Contingency measures (section 172(c)(9))	MAG plan, February 16, 2000 as revised by BMP TSD, June 13, 2001.	24-hour standard proposal at 50279.
Transportation conformity budget (section 176(c)).	MAG plan, February 15, 2000	Annual standard proposal at 19970.
Provisions for assuring adequate resources, personnel, and legal authority to carry out the plan (section 110(a)(2)(E)(i)).	MAG plan, February 16, 2000 (for all categories for both standards except for agriculture sources).	Annual standard proposal at 19988 (except for agriculture sources), 24-hour standard proposal at 50280.
For the 24-hour standard:		
Base year emission inventory (section 172(c)(3)).	MAG plan, February 16, 2000	Annual standard proposal at 19970.
Demonstration that the plan provides for the implementation of RACM and BACM for each significant source category (sections 189(a)(1)(c) and 189(b)(1)(b)):		
• On-road motor vehicles	MAG plan, February 16, 2000	24-hour standard proposal at 50258 and 50259.
• Non-road motor vehicles	MAG plan, February 16, 2000	24-hour standard proposal at 50259.
• Paved road dust	MAG plan, February 16, 2000	24-hour standard proposal at 50260.
• Unpaved parking lots	MAG plan, February 16, 2000	24-hour standard proposal at 50263.
• Disturbed vacant lots	MAG plan, February 16, 2000	24-hour standard proposal at 50263.
• Unpaved roads	MAG plan, February 16, 2000	24-hour standard proposal at 50264.
• Construction activities and sites	MAG plan, February 16, 2000	24-hour standard proposal at 50265.
• Agriculture (BACM only)	BMP TSD, June 13, 2001	24-hour standard proposal at 50268.
• Residential wood combustion	MAG plan, February 16, 2000	24-hour standard proposal at 50271.
• Secondary ammonium nitrate sources	MAG plan, February 16, 2000	24-hour standard proposal at 50271.
Demonstration of the impracticability of attainment by 2001 where the State has applied for an attainment date extension under section 188(e) (section 189(b)(1)(A) (ii)).	MAG plan, February 16, 2000 (regional); BMP TSD, June 13, 2001 (Gilbert and West Chandler).	24-hour standard proposal at 50273.
Demonstration of attainment by the most expeditioius alternative date practicable (section 189(b)(1)(A)(ii)).	Mag plan, February 16, 2000 (regional); BMP TSD, June 13, 2001 (Gilbert and West Chandler).	24-hour standard proposal at 50275.

CAA provision (cite)	SIP submittal and date	Cite for proposed approval
Demonstration of reasonable further progress (section 172(c)(2)).	BMP TSD, June 13, 2001	24-hour standard proposal at 50278.
Quantitative Milestones (section 189(c))	BMP TSD, June 13, 2001	24-hour standard proposal at 50279.
Inclusion of the most stringent measures (section 188(e)).	MAG plan, February 16, 2000 except for (agricultural sources) BMP TSD, June 13, 2001 (agricultural sources).	24-hour standard proposal at 50274.
Demonstration that major sources of PM–10 precursors such as nitrogen oxides and sulfur dioxide do not contribute significantly to violations (section 189(e)).	MAG plan, February 16, 2000	24-hour standard proposal at 50257.
Contingency measures (section 172(c)(9))	MAG plan, February 16, 2000 as revised by BMP TSD, June 13, 2001.	24-hour standard proposal at 50279.
Transportation conformity budget (section 176(c)).	MAG plan, February 15, 2000	24-hour standard proposal at 50256.
Provisions for assuring adequate resources, personnel, and legal authority to carry out the plan (section 110(a)(2)(E)(i)).	MAG plan, February 16, 2000 (except for agriculture sources).	24-hour standard proposal at 50280.

B. Extension of the Attainment Date

As authorized by CAA section 188(e), we are granting Arizona's request for a five-year extension of the date for attaining both the annual and 24-hour PM–10 standards. Our decision to grant the extension is based on our determination that the State has met the necessary requirements for granting an extension of the attainment date under CAA section 188(e). See annual standard proposal at 19988 and 24-hour standard proposal at 50278. The five-year extension means that the statutory attainment date for both standards in the Phoenix nonattainment area is now December 31, 2006.

C. Approvals of Rules and Commitments

We are also approving the following rules and commitments that we proposed for approval in the annual standard proposal at 65 FR 19964:

Rule/commitment (Date of adoption of revision)	Submittal date
MCESD Rule 310 (Revised February 16, 2000)	March 2, 2000.
MCESD Rule 310.01 (Adopted February 16, 2000)	March 2, 2000.
Maricopa County Residential Woodburning Ordinance (Revised November 17, 1999)	January 28, 2000.

We are also approving numerous resolutions adopted in 1997, 1998, and 1999 by the cities and town of the metropolitan Phoenix area as well as by the Arizona Department of Transportation, Regional Public Transportation Agency, and ADEQ. Finally, we are approving Maricopa County's commitments including the revised commitments adopted on December 19, 2001 and submitted on January 8, 2002.

CAA section 110(l) prohibits us from approving a revision to the applicable implementation plan if that revision would interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act. We interpret section 110(l) to mean, among other things, that we cannot approve a plan revision if that revision would mean that the state's plans would no longer provide for attainment or RFP as these are required by the CAA or if the revision would mean that the State's plans would no longer meet another applicable requirement of the Act.

We are revising the Arizona SIP to incorporate the amended Rule 310, Rule 310.01 and the Maricopa County Residential Woodburning Ordinance in place of the previous version of Rule 310 approved in August, 1997 and of the ordinance approved in November, 1999. In addition to the effect on attainment and RFP, the ''other applicable requirement of the Act'' that we are concerned with here are the Act's requirements for implementation of RACM and BACM and the inclusion in the plan of MSM.

We are approving the expeditious attainment and RFP demonstrations for both PM–10 standards in the Phoenix serious area plan. These demonstrations are in part dependent on approval of the revised Rule 310, Rule 310.01, and the woodburning ordinance.

We are also finding that the Phoenix serious area plan provides for the implementation of RACM and BACM and the inclusion of the MSM for the sources subject to these rules and ordinance (construction sites, unpaved roads, unpaved parking lots, and disturbed vacant lands, and residential wood burning). Again, these findings are in large part dependent on approval of the revised Rule 310 and Rule 310.01. We, therefore, find that the approval of the revised Rule 310, Rule 310.01, and the Residential Woodburning Restrictions Ordinance will not interfere with Arizona PM–10 applicable implementation plan's compliance with the Clean Air Act's requirements for attainment, RFP, implementation of RACM and BACM, and inclusion of MSM.[23]

D. Correction of Previous SIP Disapprovals

We are finding that Arizona has corrected the deficiencies that resulted in the following disapprovals:

[23] Because the woodburning restrictions ordinance is also a provision in the State's carbon monoxide SIP, we have also considered the impact on the CO plan of approving the revised version. The revision to the ordinance strengthens its PM–10 provisions but does not make changes to its CO provisions; therefore, its approval will not interfere CO SIP's provisions for attainment, RFP, or RACM.

Disapproved element	Date and cite of disapproval	Correction
Implementation of RACM and BACM for unpaved roads, unpaved parking lots, disturbed vacant lots, and agriculture (24-hour standard).	August 4, 1997 62 FR 41856, 41862.	Approved RACM and BACM demonstration for the affected categories.[1]
Demonstration of attainment and RFP for the West chandler site (24-hour standard).	August 4, 1997 62 FR 41856, 41862.	Approved attainment and RFP demonstration.
Demonstration of attainment and RFP for the Gilbert site (24-hour)	August 4, 1997 62 FR 41856, 41862.	Approved attainment and RFP demonstration.
Implementation of RACM (annual standard)	August 3, 1998 63 FR 41326, 41329.	Approved RACM demonstration.
Demonstration of attainment (moderate area deadline, annual standard).	August 3, 1998 63 FR 41326, 41329.	Approved attainment demonstration.

[1] We approved the RACM demonstration for agricultural sources on October 11, 2001 at 66 FR 51869.

The correction of the deficiencies that caused the last two listed disapprovals also permanently lifts the offset sanction currently imposed but stayed on the Phoenix area and ends the clock for imposition of the highway funding sanction.

The full approval of the metropolitan Phoenix serious area PM–10 plan also ends the FIP clock started by the February 6, 1998 finding that the State had failed to submit the plan by the required deadline. See 63 FR 9423 (February 23, 1998).

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state plan and rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 14, 2002.

Wayne Nastri,

Regional Administrator, Region 9.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

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

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraphs (c)(99), (100), (101), and (102) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(99) Plan revisions submitted on January 28, 2000 by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County, Arizona.

(*1*) Residential Woodburning Restriction Ordinance adopted on November 17, 1999.

(100) Plan revisions submitted on February 16, 2000 by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa Association of Governments, Maricopa County, Arizona.

(*1*) Resolution to Adopt the Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area (including Exhibit A, 2 pages), adopted on February 14, 2000.

(B) City of Avondale, Arizona.

(*1*) Resolution No. 1711–97; A Resolution of the City Council of the City of Avondale, Maricopa County, Arizona, To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 14 pages), adopted on September 15, 1997.

(*2*) Resolution No. 1949–99; A Resolution of the Council of the City of Avondale, Maricopa County, Arizona, Implementing Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 7 pages), adopted on February 16, 1999.

(C) Town of Buckeye, Arizona.

(*1*) Resolution No. 15–97; A Resolution of the Town Council of the Town of Buckeye, Maricopa County, Arizona, To Implement Measures in the MAG 1997 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 5 pages), adopted on October 7, 1997.

(D) Town of Carefree, Arizona.

(*1*) Town of Carefree Resolution No. 97–16; A Resolution of the Mayor and Common Council of the Town of Carefree, Arizona, To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 3 pages), adopted on September 2, 1997.

(*2*) Town of Carefree Resolution No. 98–24; A Resolution of the Mayor and Common Council of the Town of Carefree, Arizona, To Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 4 pages), adopted on September 1, 1998.

(*3*) Town of Carefree Ordinance No. 98–14; An Ordinance of the Town of Carefree, Maricopa County, Arizona, Adding Section 10–4 to the Town Code Relating to Clean-Burning Fireplaces, Providing Penalties for Violations (3 pages), adopted on September 1, 1998.

(E) Town of Cave Creek, Arizona.

(*1*) Resolution R97–28; A Resolution of the Mayor and Town Council of the Town of Cave Creek, Maricopa County, Arizona, Implementing Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 4 pages), adopted on September 2, 1997.

(*2*) Resolution R98–14; A Resolution of the Mayor and Town Council of the Town of Cave Creek, Maricopa County, Arizona, To Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 1 page), adopted on December 8, 1998.

(F) City of Chandler, Arizona.

(*1*) Resolution No. 2672; A Resolution of the City Council of the City of Chandler, Arizona To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 16 pages), adopted on August 14, 1997.

(*2*) Resolution No. 2929; A Resolution of the City Council of the City of Chandler, Arizona, To Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 9 pages), adopted on October 8, 1998.

(G) City of El Mirage, Arizona.

(*1*) Resolution No. R97–08–20; Resolution To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 8 pages), adopted on August 28, 1997.

(*2*) Resolution No. R98–08–22; A Resolution of the Mayor and Common Council of the City of El Mirage, Arizona, Amending Resolution No. R98–02–04 To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 5 pages), adopted on August 27,1998.

(*3*) Resolution No. R98–02–04; A Resolution To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 5 pages), adopted on February 12,1998.

(H) Town of Fountain Hills, Arizona.

(*1*) Resolution No. 1997–49; A Resolution of the Common Council of the Town of Fountain Hills, Arizona, Adopting the MAG 1997 Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area and Committing to Certain Implementation Programs (including Exhibit B, 5 pages and cover), adopted on October 2, 1997.

(*2*) Town of Fountain Hills Resolution No. 1998–49; Resolution To Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 7 pages), adopted on October 1, 1998. [**Incorporation Note:** Incorporated materials are pages 4 to 10 of the 11-page resolution package; pages 1 and 2 are cover sheets with no substantive content and page 11 is a summary of measures previously adopted by the Town of Fountain Hills.]

(I) Town of Gilbert, Arizona.

(*1*) Resolution No. 1817; A Resolution of the Common Council of the Town of Gilbert, Maricopa County, Arizona, Authorizing the Implementation of the MAG 1997 Serious Area Particulate Plan for PM–10 and the MAG Serious Area Carbon Monoxide Plan for the Maricopa County Area (including 15 pages of attached material), adopted on June 10, 1997.

(*2*) Resolution No. 1864; A Resolution of the Common Council of the Town of Gilbert, Arizona, Implementing Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Attachment A, 5 pages), adopted on November 25, 1997. [**Incorporation note:** Attachment A is referred to as Exhibit A in the text of the Resolution.]

(*3*) Ordinance 1066; An Ordinance of the Common Council of the Town of Gilbert, Arizona Amending the Code of Gilbert by Amending Chapter 30 *Environment*, by adding New Article II *Fireplace Restrictions* Prescribing Standards for Fireplaces, Woodstoves, and Other Solid-Fuel Burning Devices in New Construction; Providing for an Effective Date of January 1, 1999; Providing for Repeal of Conflicting Ordinances; Providing for Severability (3 pages), adopted on November 25, 1997.

(*4*) Resolution No. 1939: A Resolution of the Common Council of the Town of Gilbert, Arizona, Expressing its Commitment to Implement Measures in

the Maricopa Association of Governments (MAG) 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Attachment A, 5 pages), adopted on July 21, 1998. [**Incorporation note:** Attachment A is referred to as Exhibit A in the text of the Resolution.]

(J) City of Glendale, Arizona.

(*1*) Resolution No. 3123 New Series; A Resolution of the Council of the City of Glendale, Maricopa County, Arizona, Implementing Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 20 pages), adopted on June 10, 1997.

(*2*) Resolution No. 3161 New Series; A Resolution of the Council of the City of Glendale, Maricopa County, Arizona, Implementing Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 6 pages), adopted on October 28, 1997.

(*3*) Resolution No. 3225 New Series; A Resolution of the Council of the City of Glendale, Maricopa County, Arizona, Implementing Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 9 pages), adopted on July 28, 1998.

(K) City of Goodyear, Arizona.

(*1*) Resolution No. 97–604 Carbon Monoxide Plan; A Resolution of the Council of the City of Goodyear, Maricopa County, Arizona, Implementing Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 21 pages), adopted on September 9. [**Incorporation note:** Adoption year not given on the resolution but is understood to be 1997 based on resolution number.]

(*2*) Resolution No. 98–645; A Resolution of the Council of the City of Goodyear, Maricopa County, Arizona, Implementing Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Attachment III, 7 pages), adopted on July 27, 1998.

(L) City of Mesa, Arizona.

(*1*) Resolution No. 7061; A Resolution of the City Council of the City of Mesa, Maricopa County, Arizona, to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 13 pages plus index page), adopted on June 23, 1997.

(*2*) Resolution No. 7123; A Resolution of the City Council of the City of Mesa, Maricopa County, Arizona, to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 10 pages), adopted on December 1, 1997.

(*3*) Resolution No. 7360; A Resolution of the City Council of the City of Mesa, Maricopa County, Arizona, to Implement Measures in the MAG Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 8 pages), adopted on May 3, 1999.

(*4*) Ordinance No. 3434; An Ordinance of the City Council of the City of Mesa, Maricopa County, Arizona, Relating to Fireplace Restrictions Amending Title 4, Chapter 1, Section 2 Establishing a Delayed Effective Date; and Providing Penalties for Violations (3 pages), adopted on February 2, 1998.

(M) Town of Paradise Valley, Arizona.

(*1*) Resolution Number 913; A Resolution of the Town of Paradise Valley, to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 9 pages), adopted on October 9, 1997.

(*2*) Resolution Number 945; A Resolution of the Mayor and Town Council of the Town of Paradise Valley, Arizona, to Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 5 pages), adopted on July 23, 1998.

(*3*) Ordinance Number 454; An Ordinance of the Town of Paradise Valley, Arizona, Relating to Grading and Dust Control, Amending Article 5–13 of the Town Code and Sections 5–13–1 Through 5–13–5, Providing Penalties for Violations and Severability (5 pages), adopted on January 22, 1998. [**Incorporation note:** There is an error in the ordinance's title, ordinance amended only sections 5–13–1 to 5–13–4; see section 1 of the ordinance.]

(*4*) Ordinance Number 450; An Ordinance of the Town of Paradise Valley, Arizona, Adding Section 5–1–7 to the Town Code Relating to Clean-Burning Fireplaces, Providing Penalties for Violations (3 pages), adopted on December 18, 1997.

(N) City of Peoria, Arizona.

(*1*) Resolution No. 97–37; A Resolution of the Mayor and Council of the City of Peoria, Arizona, to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibits A, 5 pages, and B, 19 pages), adopted on June 17, 1997.

(*2*) Resolution No. 97–113; A Resolution of the Mayor and Council of the City of Peoria, Arizona, to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area and Directing the Recording of This Resolution with the Maricopa County Recorder and Declaring an Emergency (including Exhibit A, 8 pages plus index page), adopted on October 21, 1997.

(*3*) Resolution No. 98–107; A Resolution of the Mayor and Council of the City of Peoria, Arizona, to Approve and Authorize the Acceptance to Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 7 pages), adopted on July 21, 1998.

(O) City of Phoenix, Arizona.

(*1*) Resolution No. 18949; A Resolution Stating the City's Intent to Implement Measures to Reduce Air Pollution (including Exhibit A, 19 pages), adopted on July 2, 1997.

(*2*) Resolution No. 19006; A Resolution Stating the City's Intent to Implement Measures to Reduce Air Pollution (including Exhibit A, 13 pages), adopted on November 19, 1997.

(*3*) Ordinance No. G4037; An Ordinance Amending Chapter 39, Article 2, Section 39–7 of the Phoenix City Code by Adding Subsection G Relating to Dust Free Parking Areas; and Amending Chapter 36, Article XI, Division I, Section 36–145 of the Phoenix City Code Relating to Parking on Non-Dust Free Lots, adopted on July 2, 1997 (5 pages).

(*4*) Resolution No. 19141; A Resolution Stating the City's Intent to Implement Measures to Reduce Particulate Air Pollution (including Exhibit A, 10 pages), adopted on September 9, 1998.

(*5*) Ordinance No. G4062; An Ordinance Amending the Phoenix City Code By Adding A New Chapter 40 ''Environmental Protections,'' By Regulating Fireplaces, Wood Stoves and Other Solid-Fuel Burning Devices and Providing that the Provisions of this Ordinance Shall Take Effect on December 31, 1998 (5 pages), adopted on December 10, 1997.

(P) Town of Queen Creek, Arizona.

(*1*) Resolution 129–97; A Resolution of the Town Council of the Town of Queen Creek, Maricopa County, Arizona to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 3 pages), adopted on June 4, 1997.

(*2*) Resolution 145–97; A Resolution of the Town Council of the Town of

Queen Creek, Maricopa County, Arizona to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 1 page), adopted on November 5, 1997.

(*3*) Resolution 175–98; A Resolution of the Town Council of the Town of Queen Creek, Maricopa County, Arizona to Implement Measures in the MAG 1998 Serious Area Particulate Plan for the Maricopa County Area (including Exhibit A, 9 pages), adopted on September 16, 1998.

(Q) City of Scottsdale, Arizona.

(*1*) Resolution No. 4864; A Resolution of the City of Scottsdale, Maricopa County, Arizona, To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area: Stating the Council's Intent to Implement Certain Control Measures Contained in that Plan (including Exhibit A, 21 pages), adopted on August 4, 1997.

(*2*) Resolution No. 4942; Resolution of the Scottsdale City Council To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 13 pages), adopted on December 1, 1997.

(*3*) Resolution No. 5100; A Resolution of the City of Scottsdale, Maricopa County, Arizona, To Strengthen Particulate Dust Control and Air Pollution Measures in the Maricopa County Area (including Exhibit A, 10 pages), adopted on December 1, 1998.

(R) City of Surprise, Arizona.

(*1*) Resolution No. 97–29; A Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 4 pages), adopted on June 12, 1997.

(*2*) Resolution No. 97–67; A Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 3 pages), adopted on October 23, 1997.

(*3*) Resolution No. 98–51; A Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 6 pages), adopted on September 10, 1998.

(s) City of Tempe, Arizona.

(*1*) Resolution No. 97.39; Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 18 pages), adopted on June 12, 1997.

(*2*) Resolution No. 97.71, Resolution of the Council of the City of Tempe Stating Its Intent to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 6 pages), adopted on November 13, 1997.

(*3*) Resolution No. 98.42, Resolution of the Council of the City of Tempe Implementing Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 8 pages), adopted on September 10, 1998.

(T) City of Tolleson, Arizona.

(*1*) Resolution No. 788, A Resolution of the Mayor and City Council of the City of Tolleson, Maricopa County, Arizona, Implementing Measures in the Maricopa Association of Governments (MAG) 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 12 pages), adopted on June 10, 1997.

(*2*) Resolution No. 808, A Resolution of the Mayor and City Council of the City of Tolleson, Maricopa County, Arizona, Implementing Measures in the Maricopa Association of Governments (MAG) 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A), adopted on July 28, 1998.

(*3*) Ordinance No. 376, N.S., An Ordinance of the City of Tolleson, Maricopa County, Arizona, Amending Chapter 7 of the Tolleson City Code by Adding a New Section 7–9, Prohibiting the Installation or Construction of a Fireplace or Wood Stove Unless It Meets the Standards Set Forth Herein (including Exhibit A, 4 pages), adopted on December 8, 1998.

(U) Town of Wickenburg, Arizona.

(*1*) Resolution No. 1308, Resolution To Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 4 pages), adopted on August 18, 1997.

(V) Town of Youngtown, Arizona.

(*1*) Resolution No. 97–15, Resolution To Implement Measures in the MAG 1997 Serious Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 4 pages), adopted on September 18, 1997.

(*2*) Resolution No. 98–15: Resolution To Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 8 pages), adopted on August 20, 1998.

(*3*) Resolution No 98–05: Resolution Stating Intent to Work Cooperatively with Maricopa County to Control the Generation of Fugitive Dust Pollution (including Exhibit A, 2 pages), adopted February 19, 1998.

(W) Maricopa County, Arizona.

(*1*) Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1A998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 16 pages), adopted on June 25, 1997. [**Incorporation note:** ''1A998'' error in the original.]

(*2*) Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 9 pages), adopted on November 19, 1997.

(*3*) Resolution to Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 10 pages), adopted on February 17, 1999.

(*4*) Resolution to Implement Measures in the MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 10 pages), adopted on December 15, 1999.

(X) Arizona Department of Transportation, Phoenix, Arizona.

(*1*) Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 24 pages plus index page), adopted on June 20, 1997.

(*2*) Resolution to Implement Measures in the MAG 1998 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 8 pages), adopted on July 17, 1998.

(Y) Regional Public Transportation Authority, Phoenix, Arizona.

(*1*) Resolution #9701: Resolution to Implement Measures in the MAG 1997 Serious Area Particulate Plan for PM–10 and MAG 1998 Serious Area Carbon Monoxide Plan for the Maricopa County Area (including Exhibit A, 23 pages), adopted on June 12, 1997.

(Z) State of Arizona.

(*1*) Arizona Revised Statute Section 49–542(F)(7) as added in Section 31 of Arizona Senate Bill 1002, 42nd Legislative Session, 7th Special Session (1996), approved by the Governor July 18, 1996.

(101) Plan revisions submitted on March 2, 2000, by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County Environmental Services Department.

(*1*) Rule 310 revised on February 16, 2000.

(*2*) Rule 310.01 adopted on February 16, 2000.

(*3*) Appendix C revised on February 16, 2000.

(102) Plan revisions submitted on January 8, 2002, by the Governor's designee.

(i) Incorporation by reference.

(1) Maricopa County, Arizona.

(*1*) Resolution to Update Control Measure 6 in the Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Area (including Exhibit A, 2 pages), adopted on December 19, 2001.

* * * * *

3. Section 52.123 is amended by removing and reserving paragraph (f)(1)(i)and adding paragraph (j) to read as follows:

§ 52.123 Approval status.

* * * * *

(j) The Administrator is approving the following elements of the Metropolitan Phoenix PM–10 Nonattainment Area Serious Area PM–10 Plan as contained in *Revised Maricopa Association of Governments 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area,* February 2000, submitted February 16, 2000 and *Maricopa County PM–10 Serious Area State Implementation Plan Revision, Agricultural Best Management Practices (BMP),* ADEQ, June 2000, submitted on June 13, 2001:

(1) 1994 Base year emission inventory pursuant to Clean Air Act section 172(c)(3).

(2) The Provisions for implementing on all significant source categories reasonably available control measures (except for agricultural sources) and best available control measures for the annual and 24-hour PM–10 NAAQS pursuant to section Clean Air Act sections 189(a)(1)(c) and 189(b)(1)(b)).

(3) The demonstration of the impracticability of attainment by December 31, 2001 for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 189(b)(1)(A)(ii).

(4) The demonstration of attainment by the most expeditious alternative date practicable for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 189(b)(1)(A)(ii).

(5) The demonstration of reasonable further progress for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 172(c)(2).

(6) The quantitative milestones for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 189(c).

(7) The inclusion of the most stringent measures for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 188(e).

(8) The demonstration that major sources of PM–10 precursors do not contribute significantly to violations for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 189(e).

(9) The contingency measures for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 172(c)(9).

(10) The transportation conformity budget for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 176(c).

(11) The provisions for assuring adequate resources, personnel, and legal authority to carry out the plan for the annual and 24-hour PM–10 NAAQS pursuant to Clean Air Act section 110(a)(2)(E)(i).

§ 52.124 [Amended]

4. Section 52.124 is amended by removing and reserving paragraphs (b) and (c).

[FR Doc. 02–18171 Filed 7–24–02; 8:45 am]

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