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Rules and Regulations

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30321; Amdt. No. 3015]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 26, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 26, 2002.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on July 19, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective August 8, 2002*

Manchester, NH, Manchester, RNAV (GPS) RWY 6, Orig
Manchester, NH, Manchester, RNAV (GPS) RWY 24, Orig
Manchester, NH, Manchester, GPS RWY 6, Orig–A, CANCELLED

** * * Effective October 3, 2002*

Wauchula, FL, Wauchula Muni, NDB RWY 36, Orig
Winter Haven, FL, Winter Haven's Gilbert, RNAV (GPS) RWY 4, Orig
Winter Haven, FL, Winter Haven's Gilbert, GPS RWY 4, Orig, CANCELLED
Winter Haven, FL, Winter Haven's Gilbert, VOR/DME–A, Amdt 6A
Kahului, HI, Kahului, RNAV (GPS) RWY 23, Orig
Portsmouth, NH, Pease Intl Tradeport, RNAV (GPS) RWY 16, Orig
Portsmouth, NH, Pease Intl Tradeport, GPS RWY 16, AMDT 1A, CANCELLED
Robbinsville, NJ, Trenton-Robbinsville, RNAV (GPS) RWY 29, Orig
Robbinsville, NJ, Trenton-Robbinsville, GPS RWY 29, Orig, CANCELLED
Asheboro, NC, Asheboro Muni, VOR–A, Amdt 3
Asheboro, NC, Asheboro Muni, NDB RWY 21, Amdt 3
Asheboro, NC, Asheboro Muni, RNAV (GPS) RWY 21, Orig
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Salisbury, NC, Rowan County, RNAV (GPS) RWY 2, Orig
Norfolk, VA, Norfolk Intl, RNAV (GPS) RWY 14, Orig
Norfolk, VA, Norfolk Intl, RNAV (GPS) RWY 32, Orig
Norfolk, VA, Norfolk Intl, GPS Rwy 14, Orig–C, CANCELLED
Norfolk, VA, Norfolk Intl, GPS Rwy 32, Amdt 1C, CANCELLED
Friday Harbor, WA, Friday Harbor, RNAV (GPS) RWY 34, Orig
Friday Harbor, WA, Friday Harbor, GPS RWY 34, Amdt 1, CANCELLED

The FAA published the following procedure in Docket No. 30313; Amdt. No. 3009 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 114, Page 40595; dated, June 13, 2002 under section 97.23 effective August 8, 2002 which is hereby rescinded:

Norfolk, VA, Chesapeake Regional, VOR/DME RWY 23, Orig–A

The FAA published an Amendment in Docket No. 30319, Amdt No. 3013 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 137, Page 46849; dated 17 Jul 2002) under section 97.27 effective 8 August 2002, which is hereby amended to change the effective date to 3 October 2002:

Gainesville, FL, Gainesville Regional, LOC/DME BC RWY 10, Orig, CANCELLED.
Smithville, TN, Smithville Muni, NDB RWY 24, Amdt 2, CANCELLED.

The FAA published an Amendment in Docket No. 30319, Amdt No. 3013 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 137, Page 46850; dated 17 Jul 2002) under section 97.27 effective 3 Oct 2002, which is hereby amended as follows:

Flora, IL, Flora Muni, NDB RWY 21, Amdt 5

[FR Doc. 02–21580 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30323; Amdt. No. 3017]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 26, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 26, 2002.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The Flight Inspection Area Office which originated the SIAM; or,
4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on August 2, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILSDME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective October 3, 2002*

Brawley, CA, Brawley Muni, VOR/DME–A, Amdt 1
Brawley, CA, Brawley Muni, VOR/DME–B, Amdt 2
Brawley, CA, Brawley Muni, RNAV (GPS) RWY 26, Orig
Mammoth Lakes, CA, Mammoth Yosemite, RNAV, (GPS) RWY 27, Orig
Mammoth Lakes, CA, Mammoth Yosemite, GPS RWY 27, Orig–A, CANCELLED
Oakland, CA, Metropolitan Oakland Intl, VOR/DME RWY 29, Amdt 1
San Francisco, CA, San Francisco Intl, RNAV (GPS) RWY 10L, Amdt 1
San Luis Obispo, CA, San Luis Obispo County Regional, ILS RWY 11, Amdt 1
Honolulu, HI, Honolulu Intl, VOR OR TACAN RWY 4R, Orig–B
Honolulu, HI, Honolulu Intl, NDB RWY 8L, Amdt 19B
Kahului, HI, Kahului, RNAV (GPS) RWY 20, Orig
Fort Meade (Odenton), MD, Tipton, NDB RWY 10, Orig
Frederick, MD, Frederick Muni, RNAV (GPS) RWY 23, Orig
Frederick, MD, Frederick Muni, GPS Rwy 5, Amdt 1A
Aurora, NE, Aurora Municipal, RNAV (GPS) RWY 16, Orig
Aurora, NE, Aurora Municipal, NDB Rwy 16, Amdt 3A
Aurora, NE, Aurora Municipal, VOR–A, Amdt 6A
Mesquite, NV, Mesquite, VOR/DME OR GPS–A, Orig, CANCELLED
Readington, NJ, Solberg-Hunterdon, VOR–A, Amdt 8
Readington, NJ, Solberg-Hunterdon, VOR RWY 4, Amdt 1
Readington, NJ, Solberg-Hunterdon, RNAV (GPS) RWY 4, Orig
Readington, NJ, Solberg-Hunterdon, (GPS) RWY 4, Orig, CANCELLED
Newburgh, NY, Stewart Intl, ILS RWY 9, Amdt 9
Weedsport, NY, Weedsport/Whitfords, RNAV (GPS) RWY 10, Orig
Weedsport, NY, Weedsport/Whitfords, RNAV (GPS) RWY 28, Orig
Mangum, OK, Scott Field, RNAV (GPS) RWY 17, Orig
Mangum, OK, Scott Field, RNAV (GPS) RWY 35, Orig
Junction, TX, Kimble County, RNAV (GPS) Rwy 17, Orig
Junction, TX, Kimble County, VOR–A Amdt 12
Junction, TX, Kimble County, VOR–DME RNAV OR GPS Rwy 17, Amdt 2, CANCELLED
Muleshoe, TX, Muleshoe Muni, RNAV (GPS)–B, Orig
Muleshoe, TX, Muleshoe Muni, VOR–DME–A, Amdt 1

The FAA published the following procedure in Docket No. 30313; Amdt. No. 3009 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 114, Page 40595; dated, June 13, 2002) under section 97.33 effective August 8, 2002 which is hereby rescinded:

Mammoth Lakes, CA, Mammoth Yosemite, RNAV (GPS) RWY 27, Orig
Mammoth Lakes, CA, Mammoth Yosemite, GPS RWY 27, Orig–A, CANCELLED

The FAA published the following procedure in transmittal letter 02–17 dated July 19, 2002 effective August 8, 2002 which is hereby rescinded:

Manchester, NH, Manchester, RNAV (GPS) RWY 6, Orig
Manchester, NH, Manchester, RNAV (GPS) RWY 24, Orig
Manchester, NH, Manchester, GPS RWY 6, Orig–A, CANCELLED

[FR Doc. 02–21582 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30324; Amdt. No. 3018]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 26, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 26, 2002.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: PO Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on August 2, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Aproach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, DOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
07/25/02	PA	State College	University Park	2/7517	ILS Rwy 24, Amdt 8B.
07/25/02	PA	State College	University Park	2/7518	VOR or GPS–B, Amdt 9A VOR/DME RNAV or GPS.
07/25/02	PA	State College	University Park	2/7519	Rwy 6, Amdt 6B.
07/25/02	PA	Bellefonte	Bellefonte	2/7521	VOR or GPS–A, Amdt 1.
07/26/02	VI	Christiansted, St. Croix	Henry E. Rohlsen	2/7594	NDB Rwy 9, Amdt 13.
07/26/02	VI	Christiansted, St. Croix	Henry E. Rohlsen	2/7595	VOR Rwy 27, Amdt 19.
07/26/02	VI	Christiansted, St. Croix	Henry E. Rohlsen	2/7596	ILS Rwy 9, Amdt 6.
07/26/02	VI	Christiansted, St. Croix	Henry E. Rohlsen	2/7597	RNAV (GPS) Rwy 9, Orig VOR/DME or GPS Rwy.
07/29/02	TN	Smyrna	Smyrna	2/7655	32, Amdt 12.
07/29/02	TN	Smyrna	Smyrna	2/7757	ILS Rwy 32, Admt 5A.
07/29/02	TN	Smyrna	Smyrna	2/7659	NDB Rwy 32, Amdt 8B VOR/DME or GPS Rwy.
07/29/02	TN	Smyrna	Smyrna	2/7662	14, Amdt 6 RNAV (GPS) Z Rwy 22R.
07/29/02	IL	Chicago	Chicago-O'Hare Intl	2/7668	ORIG.
07/31/02	AZ	Phoenix	Phoenix Sky Harbor	2/7764	ILS Rwy 7R, Amdt 1.

[FR Doc. 02–21583 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30322; Amdt. No. 3016]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: This rule is effective August 26, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 26, 2002.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: PO Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMS for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on July 19, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
6/27/02	TX	Anahuac	Chambers County	2/6133	NDB Rwy 12, Amdt 1.
6/27/02	TX	Anahuac	Chambers County	2/6188	RNAV (GPS) Rwy 12, Orig-A.
07/01/02	IA	Dubuque	Dubuque Regional	2/6402	VOR or GPS Rwy 36, Amdt 5E.
07/02/02	MO	Ozark	Air Park South	2/6443	VOR or GPS Rwy 17, AMDT 4A.
07/03/02	UT	Salt Lake City	Salt Lake City Intl	2/6477	ILS Rwy 16L (Cat I, II, III), Amdt 1A.
07/03/02	IL	Chicago	Chicago-O'Hare Intl	2/6497	RNAV (GPS) Rwy 32R, Orig.
07/03/02	IL	Chicago	Chicago-O'Hare Intl	2/6500	RNAV (GPS) Rwy 4R, Orig.
07/08/02	AZ	Phoenix	Phoenix Sky Harbor Intl	2/6653	ILS Rwy 25L, Amdt 1.
07/08/02	IL	Freeport	Albertus	2/6659	VOR or GPS Rwy 24, Amdt 6B.
07/08/02	IL	Freeport	Albertus	2/6660	LOC Rwy 24, Orig-B.
07/08/02	IL	Freeport	Albertus	2/6661	NDB Rwy 6, Orig-B.
07/08/02	IL	Freeport	Albertus	2/6662	VOR/DME RNAV or GPS Rwy 6, Amdt 5B.
07/08/02	TN	Lexington	Franklin Wilkins	2/6663	VOR or GPS Rwy 33, Amdt 10.
07/08/02	NC	Asheville	Asheville Regional	2/6665	ILS Rwy 34, Amdt 23E.
07/10/02	AK	Tanana	Ralph M. Calhoun Memorial	2/6715	NDB–B, Amdt 3A.
07/10/02	AK	Tanana	Ralph M. Calhoun Memorial	2/6728	VOR–A, Amdt 7.
07/11/02	WA	Richland	Richland	2/6773	NDB or GPS Rwy 19, Amdt 5A.
07/11/02	OK	Ada	Ada Muni	2/6781	VOR/DME–A, Orig-B.
07/11/02	AK	Tanana	Ralph M. Calhoun Memorial	2/6788	VOR/DME Rwy 6, Amdt 1.
07/12/02	NY	Durhamville	Kamp	2/6819	VOR or GPS Rwy 28, Amdt 1A.
07/12/02	OK	Cushing	Cushing Muni	2/6851	NDB or GPS Rwy 35, Amdt 3C.

FDC date	State	City	Airport	FDC No.	Subject
07/12/02	CA	Blythe	Blythe	2/7030	VOR/DME or GPS Rwy 26, Amdt 5A. This replaces 2/6374 in TL02–16.
07/12/02	CA	Blythe	Blythe	2/7044	VOR or GPS–A, Amdt 6A. This replaces 2/6375 in TL02–16.

[FR Doc. 02–21581 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

[T.D. 02–49]

RIN 1515–AC56

Administrative Rulings

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document makes two corrections to the document published in the **Federal Register** on August 16, 2002, as T.D. 02–49 which set forth final amendments to those provisions of the Customs Regulations that concern the issuance of administrative rulings and related written determinations and decisions on prospective and current transactions arising under the Customs and related laws.

EFFECTIVE DATE: These corrections are effective August 16, 2002.

FOR FURTHER INFORMATION CONTACT: John Elkins, Textiles Branch, Office of Regulations and Rulings (202–572–8790).

SUPPLEMENTARY INFORMATION:

Background

On August 16, 2002, Customs published in the **Federal Register** (67 FR 53483) T.D. 02–49 to set forth final amendments to those provisions of the Customs Regulations that concern the issuance of administrative rulings and related written determinations and decisions on prospective and current transactions arising under the Customs and related laws. The regulatory changes involve primarily the addition of a new § 177.12 to set forth procedures regarding the modification or revocation of rulings on prospective transactions, internal advice decisions, protest review decisions, and treatment previously accorded by Customs to substantially identical transactions. The amendments are in response to statutory changes made to the administrative ruling process by section 623 of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act and take effect on September 16, 2002.

This document makes two corrections to cross-reference citations within paragraphs (c) and (d) of § 177.12.

Corrections of Publication

The document published in the **Federal Register** as T.D. 02–49 on August 16, 2002 (67 FR 53483) is corrected as set forth below.

§ 177.12 [Corrected]

1. On page 53498, in the first column, in § 177.12, the first sentence of paragraph (c)(2)(ii) is corrected by removing the reference ''§ 177.19'' and adding, in its place, the reference ''§ 177.9''.

2. On page 53498, in the second column, in § 177.12, paragraph (d)(1)(viii) is corrected by removing the reference ''§ 177.22 of this part'' and adding, in its place, the reference ''§ 177.10(c)''.

Dated: August 20, 2002.

Harold Singer,

Chief, Regulations Branch.

[FR Doc. 02–21636 Filed 8–23–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 112, 116, 121, 123, 125, 154, 156, 178, and 243

RIN 1076–AE20

Trust Management Reform: Repeal of Outdated Rules

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; removal of rules.

SUMMARY: The Department of the Interior, Bureau of Indian Affairs (BIA) is removing nine outdated parts of Title 25 CFR. This action is meant to further fulfill the Secretary's responsibility to federally-recognized tribes and individual Indians by ensuring that regulations, policies, and procedures are up-to-date. The parts being removed include regulations relating to distribution of tribal funds among tribal members, establishment of private trusts for the Five Civilized Tribes, distribution of Osage Judgment Funds, assignment of future income from the Alaska Native Fund, payment of Sioux benefits, preparation of a competency roll of Osage Indians, reallotment of lands to Indian children, resale of lands within the Badlands Air Force Range, and registration of reindeer ownership in Alaska. In the interests of economy of administration, and because all of the regulations proposed to be removed are outdated, they are included in one rulemaking vehicle.

EFFECTIVE DATE: October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Linda L. Richardson, Trust Policies and Procedures Subproject, Bureau of Indian Affairs, 1849 C Street, NW., MS–4070–MIB, Washington, DC 20240, telephone 202–208–6411.

SUPPLEMENTARY INFORMATION:

I. Background
II. Response to Comments
III. Procedural Requirements
A. Review Under Executive Order 12866 (Regulatory Planning and Review)
B. Review Under Executive Order 12988 (Civil Justice Reform)
C. Review Under Executive Order 12291 and the Regulatory Flexibility Act
D. Review Under Small Business Regulatory Enforcement Fairness Act of 1996
E. Review Under the Paperwork Reduction Act
F. Review Under Executive Order 13132 (Federalism)
G. Review Under the National Environmental Policy Act of 1969
H. Review Under the Unfunded Mandates Reform Act of 1995
I. Review Under Executive Order 12630 (Takings Implication Assessment)
J. Review Under Executive Order 13175 (Tribal Consultation)

I. Background

Proper management of Indian trust assets has been hampered by a lack of comprehensive, consistent, up-to-date regulations, policies, and procedures covering the entire trust cycle. The BIA began revising its trust management regulations by issuing proposed revisions to regulations governing probate, trust funds, leasing, and grazing. Updated regulations affecting

these functions became effective on March 23, 2001.

In April 2001, BIA submitted a report to senior Departmental officials that provided a comprehensive review of regulations, manuals and handbooks that guide trust operations. The report included recommended actions to bring all policies and procedures current and outlined a multi-year schedule to accomplish this goal. The review identified a number of regulations still on the books that are no longer operative, either because all actions required by law have been fully implemented or because the regulation no longer comports with Federal Indian policy. On February 21, 2002 (67 FR 7985), BIA published a proposed rule with a request for comments to remove 25 CFR parts 112, 116, 121, 123, 125, 154, 156, 178, and 243.

II. Response to Comments

The BIA received comments from three Indian tribes, none of whom objected to the proposed removal of the nine parts; therefore, no changes have been made.

III. Procedural Requirements

A. Review Under Executive Order 12866 (Regulatory Planning and Review)

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the BIA must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The rule would remove a number of outdated regulations. As such, it does not impose a compliance burden on the economy generally or on any person or entity. Accordingly, this rule is not a ''significant regulatory action'' from an economic standpoint, and it does not otherwise create any inconsistencies or budgetary impacts to any other agency or Federal program.

B. Review Under Executive Order 12988 (Civil Justice Reform)

With respect to the review of existing regulations and the promulgation of new regulations, subsection 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 of proposed regulations, subsection 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.

Subsection 3(c) of Executive Order 12988 requires agencies to review proposed 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. The BIA has determined that the removal of outdated parts meets the relevant standards of Executive Order 12988.

C. Review Under Executive Order 12291 and the Regulatory Flexibility Act

Because this rule would remove outdated regulations, the BIA has determined that this rule is not a significant rule under Executive Order 12866. This rule was also reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities.

This rule updates the Department's policies and procedures that apply to certain Indian trust resources by eliminating unneeded regulatory requirements. Accordingly, the BIA has determined that this rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the economy of $100,000,000 or more. The effect of this rulemaking will be to streamline and modernize policies, procedures and management operations of the BIA by eliminating unnecessary regulations. No increases in costs for administration will be realized, and no prices would be affected through these revisions as, in practice, the regulations being removed are already inoperative.

This rulemaking will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation, nor on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. These administrative revisions to BIA policy and procedure will not have an impact on any small business businesses or enterprises.

E. Review Under the Paperwork Reduction Act

This rule is exempt from the requirements of the Paperwork Reduction Act, since it repeals existing regulations. An OMB form 83–1 is not required.

F. Review Under Executive Order 13132 (Federalism)

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. There is no Federalism impact on the trust relationship or balance of power between the United States government and the various tribal governments affected by this rulemaking. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

G. Review Under the National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental

Impact Statement is necessary for this proposed rule.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the Act, the BIA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

I. Review Under Executive Order 12630 (Takings Implication Assessment)

In accordance with Executive Order 12630, this rule does not have significant takings implications. This rule does not involve the ''taking'' of private property interests.

J. Review under Executive Order 13175 (Tribal Consultation)

The BIA determined that, because the removal of current regulations has tribal implications, it was an appropriate topic for consultation with tribal governments. This consultation is in keeping with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' In April 2001, BIA sent all tribal leaders a report that documents the results of a BIA review of existing regulations, policies, and procedures that affect delivery of trust services to tribal governments and individual Indians. Included in the report was a multi-year schedule for bringing all trust regulations, policies and procedures up-to-date. In May 2001, the BIA sent all tribal leaders a letter describing and identifying ten parts of Title 25 CFR that we were considering for removal. Regional directors followed up to determine if there were tribal concerns with any aspects of the proposal.

Following publication of the proposed rule, BIA again notified tribal governments of the substance of this rulemaking through a direct mailing. This enabled tribal officials and the affected tribal constituency throughout Indian Country to have meaningful and timely input in the development of the final rule.

List of Subjects

25 CFR Part 112

Indians—business and finance.

25 CFR Part 116

Estates, Indians—business and finance, Trusts and trustees.

25 CFR Part 121

Indians—claims, Indians—judgment funds.

25 CFR Part 123

Alaska, Indian—claims.

25 CFR Part 125

Indians—claims, Reporting and recordkeeping requirements.

25 CFR Part 154

Indians—lands.

25 CFR Part 156

Indians—lands.

25 CFR Part 178

Indians—lands.

25 CFR Part 243

Alaska, Indians—business and finance, Reindeer.

Accordingly, under the authority in 25 U.S.C. 9, 25 CFR chapter 1 is amended by removing parts 112, 116, 121, 123, 125, 154, 156, 178, and 243.

Dated: August 12, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–21692 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9003]

RIN 1545–AW64

Relief From Joint and Several Liability; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations that were published in the **Federal Register** on Thursday, July 18, 2002 (67 FR 47278), relating to relief from joint and several liability.

DATES: This correction is effective July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Charles A. Hall (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction is under section 6015 of the Internal Revenue Code.

Need for Correction

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

Correction of Publication

Accordingly, the publication of the final regulations (TD 9003), that were the subject of FR Doc. 02–17866, is corrected as follows:

On page 47294, column 3, § 1.6015–5(b)(3), line 10, the language ''CDP hearing procedures under sections'' is corrected to read ''CDP hearing procedures under section''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Income Tax & Accounting).

[FR Doc. 02–21693 Filed 8–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 02–016]

RIN 2115–AA97

Safety Zone; San Diego Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two (2) temporary safety zones: A stationary safety zone and a moving safety zone, both on the navigable waters of North San Diego Bay in support of the Parade of Ships-Festival of Sail. These temporary safety zones are necessary to provide for the safety of the crews, spectators, participants of the event, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 12:30 [PDT] to 4:30 [PDT] on September 12, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San

Diego 02–016] and are available for inspection or copying at U.S. Coast Guard, Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, CA 92101–1064, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

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. Final approval and permitting of this event were not issued in time to engage in full notice and comment rulemaking. Moreover, through various meetings and correspondence, the Coast Guard has attempted to involve other agencies within the port in the planning process of the Parade of Ships-Festival of Sail. The public will also be reminded about this event through Broadcast Notice to Mariners (BNM) announcements and Local Notice to Mariner (LNM) publications. Furthermore, the event will have minimal impact on the public since it is of a short duration, four (4) hours, and will take place during non-commute hours from 12:30 p.m. until 4:30 pm.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In addition to the reasons stated above, it would be contrary to the public interest not to publish this rule because the event has been permitted and participants and the public require protection.

Background and Purpose

The American Sail Training Association, in coordination with local sponsors like ''San Diego Maritime Museum'', is sponsoring the 2002 Tall Ships Challenge race series transiting the Pacific Ocean along the west coast of North America. Between the races, the participating vessels will visit several ports including San Diego Bay. These temporary safety zones are established in support of the Parade of Ships-Festival of Sail, a marine event that includes participating vessels transiting through San Diego Bay and, upon completion of the parade, mooring in San Diego Bay, giving spectators an opportunity to tour the participating vessels. These temporary safety zones are necessary to provide for the safety of the crews, spectators, and participants of the Parade of Ships-Festival of Sail and are also necessary to protect other vessels and users of waterway.

Discussion of Rule

The limits of the proposed stationary safety zone in North San Diego Bay are as follows: From a point on land at 32°42′26″ N, 117°10′25″ W, thence west to 32°42′26″ N, 117°11′07″ W, thence southwest to 32°42′59″ N, 117°11′20″ W, thence southeast to 32°42′35″ N, 117°10′38″ W, thence southeast to 32°42′13″ N, 117°10′06″ W, thence northeast to point on land 32°42′19″ N, 117°10′02″ W, thence along shoreline to the point of origin. All coordinates are North American Datum 1983.

The limits of the proposed moving safety zone in North San Diego Bay are as follows: 1000 yards forward, 200 yards on either side, and 500 yards behind the parade of ships transiting through San Diego Bay.

The Coast Guard proposes to establish two (2) safety zones that will be enforced from 12:30 p.m. to 4:30 p.m. on September 12, 2002. These safety zones are necessary to provide for the safety of the crews, spectators, and participants of the Parade of Ships-Festival of Sail and to protect other vessels and users of waterway. Participating escort vessels will fly an 8 foot white banner with a fluorescent green flag bearing the word ''official'', indicating their official association with the Parade of Ships-Festival of Sail. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the Captain of the Port, or his designated representative.

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). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of its limited duration of four and one-half (4.5) hours and the limited geographic scope of the safety zones.

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 would not have a significant economic impact on a substantial number of small entities. These safety zones would not have a significant economic impact on a substantial number of small entities because these zones are limited in scope and duration (in effect for only four (4) hours on August 28, 2002). In addition, the Coast Guard will publish local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via VHF–FM marine channel 16 before the safety zone is enforced.

Assistance for Small Entities

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 would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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 would not create an environmental risk to health or risk to safety that might 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 would 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.lD, this rule is categorically excluded from further environmental documentation because we are proposing to establish a safety zone. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add new § 165.T11–045 to read as follows:

§ 165.T11–045 Safety Zone; San Diego Bay, CA.

(a) *Location.* The following areas are safety zones:

(1) *Stationary safety zone.* From a point on land at 32°42′26″ N, 117°10′25″ W, thence west to 32°42′26″ N, 117°11′07″ W, thence southwest to 32°42′59″ N, 117°11′20″ W, thence southeast to 32°42′35″ N, 117°10′38″ W, thence southeast to 32°42′13″ N, 117°10′06″ W, thence northeast to point on land 32°42′19″ N, 117°10′02″ W, thence along shoreline to the point of origin. All coordinates are North American Datum 1983.

(2) *Moving safety zone.* A moving safety zone within one-thousand (1000) yards forward, two-hundred (200) yards on either side, and five-hundred (500) yards behind all vessels participating in the Parade of Ships-Festival of Sail as they transit through San Diego Bay. Escort vessels participating in this event will be distinguished by their 8 foot white banners and fluorescent green flags bearing the word ''official''.

(b) *Effective period.* This section is effective from 12:30 p.m. until 4:30 p.m. on September 12, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through or anchoring within these safety zones is prohibited unless authorized by the Coast Guard Captain of the Port, San Diego, or his designated representative.

Dated: July 29, 2002.

S.P. Metruck,

Commander, Coast Guard, Captain of the Port, San Diego.

[FR Doc. 02–21645 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 8

RIN 2900–AK43

National Service Life Insurance

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs regulations regarding National Service Life Insurance (NSLI) by revising the texts of five sections of regulations into plain English. This amendment supports an Executive Memorandum that mandates plain language in written government communications.

DATES: Effective Date: August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Gregory Hosmer, Senior Insurance Specialist, Department of Veterans Affairs Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, Pennsylvania 19101, (215) 842–2000 ext. 4280.

SUPPLEMENTARY INFORMATION: The Insurance Service of the Veterans Benefits Administration (VBA) is rewriting regulatory provisions found in part 8 of title 38 of the Code of Federal Regulations in order to promote better communication with our readers.

Sections 8.0, 8.18, 8.25, and 8.33(a) provide explanations of the following subjects: The definition of and criteria for good health, total disability with regard to speech, the definition of disease or injury traceable to the extra hazards of the military or naval service, and a definition of a guardian for purposes of National Service Life Insurance. This final rule rewrites and consolidates these sections into one section, § 8.0. Language in existing § 8.0 that underwriting standards ''will be developed and published'' is dropped because we have established such standards. Section 8.1 provides information regarding the effective date for insurance issued under section 1922(a) of title 38 U.S.C. (Service-Disabled Veterans Insurance). Existing § 8.33(b) stipulates the actions that a guardian may undertake on behalf of either the insured or the beneficiary of an NSLI policy. The texts of §§ 8.1 and

8.33(b) have been revised for clarity and to promote better understanding.

This final rule consists of non-substantive changes and therefore it is not subject to the notice, comment and effective-date provisions of 5 U.S.C. 553.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private section of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This final rule will not affect any entity since it does not contain any substantive provisions. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program number for this regulation is 64.103.

List of Subjects in Part 8

Disability benefits, Life insurance, Loan programs—veterans, Military personnel, Veterans.

Approved: August 16, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 8 is amended as follows:

PART 8—NATIONAL SERVICE LIFE INSURANCE

1. The authority citation for part 8 continues to read as follows:

Authority: 38 U.S.C. 501, 1901–1929, 1981–1988, unless otherwise noted.

2. Section 8.0 is revised to read as follows:

§ 8.0 Definitions of terms used in connection with title 38 CFR, part 8, National Service Life Insurance.

(a) *What does the term ''good health'' mean?* The term *good health* means that the applicant is, from clinical or other evidence, free from any condition that would tend to:

(1) Weaken normal physical or mental functions; or

(2) Shorten life.

Note to Paragraph (a): Conditions that would affect ''good health'' are diseases or injuries or residuals of diseases or injuries. A ''residual'' is a disability that remains following the original disease or injury.

(b) *What does the term ''good health criteria'' mean?* The term *good health criteria* means the underwriting standards that determine whether a person is in good health. ''Good health criteria'' are based whenever possible, as far as practicable, on general insurance usage. ''Underwriting'' is the process that sets the terms, conditions, and prices for an insurance policy, by rating an applicant's mortality risk.

(c) *What does the term ''organic loss of speech'' mean?* The term *organic loss of speech* means the loss of the ability to express oneself, both by voice and whisper, through the normal organs of speech if the loss is caused by physical changes in such organs. The fact that some speech can be produced through the use of artificial appliance or other organs of the body will not impact this definition.

(d) *What does the term ''disease or injury traceable to the extra hazards of the military service'' mean?* The term *disease or injury traceable to the extra hazards of the military service* means a disease or injury that was either caused by or can be traced back to the performance of duty in the active military, naval, or air service.

(e) *What does the term ''guardian'' mean?* The term *guardian* means any representative certified by the appropriate Veterans Service Center Manager, under § 13.55 of this chapter, to receive benefits in a fiduciary capacity on behalf of the insured or the beneficiary, or to take the actions listed in § 8.32.

3. Section 8.1 is revised to read as follows:

§ 8.1 Effective date for an insurance policy issued under section 1922(a) of title 38 U.S.C. (Service-Disabled Veterans' Insurance).

(a) *What is the effective date of the policy?* The effective date is the date policy coverage begins. Benefits due under the policy are payable any time after the effective date.

(b) *How is the effective date established?* The effective date is the date you deliver both of the following to VA:

(1) A valid application.

(2) A premium payment.

Note 1 to Paragraph (b): If your valid application and premium are mailed to VA, the postmark date will be the date of delivery.

Note 2 to Paragraph (b): If a postmark date is not available, the date of delivery will be the date your valid application and premium are received by VA.

(c) *Can you have a different effective date?* Yes, if you would like an effective date other than the date of delivery as described in paragraph (b) of this section, you may choose one of the following three options as an effective date:

(1) The first day of the month in which you deliver your valid application and premium payment to VA. For example, if VA receives your application and premium payment on August 15, you may request an effective date of August 1.

(2) The first day of the month following the month in which you deliver your valid application and premium payment. For example, if VA receives your application and premium payment on August 15, you may request an effective date of September 1.

(3) The first day of any month up to six months prior to the month in which you deliver your valid application and premium payment. For example, if VA receives your application and premium payment on August 15, you may request an effective date of February 1 or the first day of any month following up to August 1. However, you must pay the following:

(i) The insurance reserve amount for the time period for each month starting with the requested effective date up to the first day of the month prior to the month in which you delivered your application to VA; and

(ii) The premium for the month in which you delivered your application to VA.

Note to Paragraph (c): For example, if your postmark date is August 15 and you request an effective date of February 1, you must pay the insurance reserve amount for February 1 through July 31, and also pay the August premium.

4. Section 8.18 is revised to read as follows:

§ 8.18 Total disability—speech.

The organic loss of speech shall be deemed to be total disability under National Service Life Insurance.

§ 8.25 [Removed]

5. Section 8.25 and the undesignated center heading immediately preceding the section are removed.

§§ 8.26 through 8.33 [Redesignated as §§ 8.25 through 8.32]

6. Sections 8.26 through 8.33 are redesignated as §§ 8.25 through 8.32, respectively.

7. Newly redesignated § 8.32 is revised to read as follows:

§ 8.32 Authority of the Guardian.

What actions does a guardian have the authority to take for insurance purposes? The guardian of an insured or beneficiary has the authority to take the following actions:

(a) Apply for insurance or for conversion of a policy or change of plan;

(b) Reinstate a policy;

(c) Withdraw dividends held on deposit or credit;

(d) Select or change a dividend option;

(e) Obtain a policy loan;

(f) Cash surrender a policy;

(g) Authorize a deduction from benefits or allotment from military retired pay to pay premiums;

(h) Apply for and receive payment of proceeds on a matured policy;

(i) Select or change the premium payment option;

(j) Apply for waiver of premiums and total disability income benefits;

(k) Select or change settlement options for beneficiaries; and

(l) Assign a beneficiary's interest as provided under section 1918 of title 38 U.S.C.

(Authority: 38 U.S.C. 1906)

§ 8.37 [Redesignated as § 8.33]

8. Section 8.37 is redesignated as new § 8.33.

[FR Doc. 02–21531 Filed 8–23–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 265–0363a; FRL–7266–5]

Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Santa Barbara County Air Pollution Control District (SBCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern negative declarations for volatile organic compound (VOC) source categories for the SBCAPCD. We are approving these negative declarations under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on October 25, 2002, without further notice, unless EPA receives adverse comments by September 25, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117–3027.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4126. E-mail: *Rose.julie@EPA.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal
A. What negative declarations did the State submit?
B. What is the purpose of the submitted negative declarations?
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I. The State's Submittal

A. What Negative Declarations Did the State Submit?

Table 1 lists the negative declarations we are approving with the dates that they were adopted by the Santa Barbara County Air Pollution Control District (SBCAPCD) and submitted by the California Air Resources Board.

TABLE 1.—SUBMITTED NEGATIVE DECLARATIONS

Local agency	Title	Adopted	Submitted
SBCAPCD	Synthetic Organic Chemical Manufacturing Industry (SOCMI) Batch Processing, Reactors, and Distillation.	02–21–02	04–09–02
	Wood Furniture Manufacturing Operations	02–21–02	04–09–02

On June 25, 2002, this submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. What Is the Purpose of the Submitted Negative Declarations?

The negative declarations were submitted to meet the requirements of CAA section 182(a)(2)(A). Nonattainment areas are required to adopt volatile organic compound (VOC) regulations for the published Control Technique Guideline (CTG) categories. If a nonattainment area does not have stationary sources for which EPA has published a CTG, then the area is required to submit a negative declaration. The negative declarations were submitted because there are no applicable sources within the SBCAPCD jurisdiction.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Negative Declarations?

The negative declarations are submitted as SIP revisions and must be consistent with Clean Air Act requirements for Reasonable Available Control Technology (RACT) (see section 182(a)(2)(A)) and SIP relaxations (see sections 110(l) and 193.) To do so, the

submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist or are planned for the SBCAPCD.

B. Do the Negative Declarations Meet the Evaluation Criteria?

We believe these negative declarations are consistent with the relevant policy and guidance regarding RACT and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted negative declarations as additional information to the SIP because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of these negative declarations. If we receive adverse comments by September 25, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 25, 2002.

III. Background Information

Why Were These Negative Declarations Submitted?

These negative declarations were submitted to fulfill the requirements of CAA section 182(a)(2)(A). Section 182 requires that ozone nonattainment areas adopt VOC regulations found in the Control Technique Guideline Series for all major sources in their geographic area. Santa Barbara County is a nonattainment area for ozone and thus is required to adopt regulations for all major sources of VOCs. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency negative declarations.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. 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 action responding to 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 October 25, 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 6, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

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 F—California

2. Section 52.222 is amended by adding paragraph (a)(3)(ii) to read as follows:

§ 52.222 Negative declarations.

(a) * * *

(3) * * *

(ii) Synthetic Organic Chemical Manufacturing Industry (SOCMI) Batch Processing, SOCMI Reactors, and SOCMI Distillation; and Wood Furniture Manufacturing Operations were submitted on April 9, 2002 and adopted on February 21, 2002.

* * * * *

[FR Doc. 02–21556 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 100–0056a; FRL–7266–3]

Revisions to the Arizona State Implementation Plan, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP). These revisions concern negative declarations for volatile organic compound (VOC) source categories regulated by the MCESD. We are approving these negative declarations under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on October 25, 2002 without further notice, unless EPA receives adverse comments by September 25, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012.

Maricopa County Environmental Services Department, 1001 North Central, No. 595, Phoenix, Arizona 85004.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4126. e-mail: *Rose.julie@EPA.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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A. What negative declarations did the State submit?
B. What is the purpose of the submitted negative declarations?
II. EPA's Evaluation and Action
A. How is EPA evaluating the negative declarations?
B. Do the negative declarations meet the evaluation criteria?
C. Public comment and final action.
III. Background Information
Why were these negative declarations submitted initially?
IV. Administrative Requirements

I. The State's Submittal

A. What Negative Declarations Did the State Submit?

Table 1 lists the negative declarations we are approving with the dates that they were adopted by the Maricopa County Environmental Services Department (MCESD) and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED NEGATIVE DECLARATIONS

Local agency	Title	Adopted	Submitted
MCESD	Refinery Sources	04–26–00	12–14–00
	Automobile and Light Duty Trucks.		
	Magnet Wire.		
	Flatwood Paneling.		
	Synthesized Pharmaceutical Products.		
	Rubber Tire Manufacturing.		
	Polymer Manufacturing.		
	SOCMI.		
	Batch Processes.		
	Industrial Wastewater.		
	Ship Building Repair.		
	SOCMI Reactor/Distillation.		

On September 3, 2000, this submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. What Is the Purpose of the Submitted Negative Declarations?

The negative declarations were submitted to meet the requirements of CAA section 182(a)(2)(A). Nonattainment areas are required to adopt volatile organic compound (VOC) regulations for the published Control Technique Guideline (CTG) categories. If a nonattainment area does not have stationary sources for which EPA has published a CTG, then the area is required to submit a negative declaration. The negative declarations were submitted because there are no applicable sources within the MCESD jurisdiction.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Negative Declarations?

The negative declarations are submitted as SIP revisions and must be consistent with Clean Air Act requirements for Reasonable Available Control Technology (RACT) (see section 182(a)(2)(A)) and SIP relaxations (see sections 110(1) and 193.) To do so, the submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist or are planned for the MCESD.

B. Do the Negative Declarations Meet the Evaluation Criteria?

We believe these negative declarations are consistent with the relevant policy and guidance regarding RACT and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted negative declarations as additional information to the SIP because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of these negative declarations. If we receive adverse comments by September 25, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 25, 2002.

III. Background Information

Why Were These Negative Declarations Submitted?

These negative declarations were submitted to fulfill the requirements of CAA section 182(a)(2)(A). Section 182 requires that ozone nonattainment areas adopt VOC regulations found in the Control Techniques Guideline Series for all major sources in their geographic area. Maricopa County is a nonattainment area for ozone and thus is required to adopt regulations for all major sources of VOCs. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency negative declarations.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101- 549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. 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 (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 action responding to a Federal requirement, 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 October 25, 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 6, 2002.

Keith A. Takata,

Acting Regional Administrator, Region IX.

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. Subpart D is amended by adding § 52.122 to read as follows:

§ 52.122 Negative declarations.

(a) The following air pollution control districts submitted negative declarations for volatile organic compound source categories to satisfy the requirements of section 182 of the Clean Air Act, as amended. The following negative declarations are approved as additional information to the State Implementation Plan.

(1) Maricopa County Environmental Services Department.

(i) Refinery Sources (Refinery Process Turnarounds), Automobile and Light Duty Trucks, Magnet Wire, Flatwood Paneling, Pharmaceuticals and Cosmetic Manufacturing Operations, Rubber Tire Manufacturing, Polymer Manufacturing, Industrial Wastewater, Ship Building and Repair, Synthetic Organic Chemical Manufacturing Industry (SOCMI) Batch Processing, SOCMI Reactors, and SOCMI Distillation were adopted on April 26, 2000 and submitted on December 14, 2000.

(b) [Reserved]

[FR Doc. 02–21558 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–7265–4]

RIN 2060–AJ71

Control of Air Pollution From New Motor Vehicles; Second Amendment to the Tier 2/Gasoline Sulfur Regulations; Partial Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: Due to receipt of adverse comments, EPA is withdrawing certain amendments that were included in the direct final rule published on June 12, 2002 (67 FR 40169), related to the Tier 2/Gasoline Sulfur program. The only provisions being withdrawn are the changes to the section concerning the generation of credits beginning in 2004. Because these provisions are being withdrawn, the existing provisions regarding this matter remain in effect. We will address the adverse comments in a subsequent final action based on the parallel proposal published on June 12, 2002 (67 FR 40256).

DATES: The following provisions of the direct final rule published at 67 FR 40169 (June 12, 2002) are withdrawn as of August 26, 2002:

1. The revision to 40 CFR 80.310(a),
2. The amendment of 40 CFR 80.310(b), and
3. The addition of 40 CFR 80.310(d).

ADDRESSES: All comments and materials relevant to today's action are contained in Public Docket No. A–97–10 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Dockets may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Mary Manners, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI 48105; telephone (734) 214–4873, fax (734) 214–4051, e-mail: *manners.mary@epa.gov*.

SUPPLEMENTARY INFORMATION: We stated in the direct final rule published at 67 FR 40169 (June 12, 2002) that if we received adverse comment on one or more distinct amendments, paragraphs, or sections of the rulemaking by July 12, 2002, we would publish a timely withdrawal in the **Federal Register** indicating which provisions would become effective on September 10, 2002, and which provisions would be withdrawn due to adverse comment. We received adverse comments on the amendments to 40 CFR 80.310.

The direct final rule eliminated the anti-backsliding provision under the Geographic Phase-in Area (GPA) program for GPA gasoline. Specifically, we replaced the variable average standard for GPA gasoline [1] with a flat average standard of 150 ppm sulfur for 2004 through 2006. In addition, to

[1] The anti-backsliding requirement defined the average standard for GPA gasoline as the least of (1) 150 ppm, (2), the refinery's or importer's 1997/1998 average gasoline sulfur level, calculated in accordance with § 80.295, plus 30 ppm, or (3) the lowest average sulfur content for any year in which the refinery generated allotments or credits under § 80.275(a) or § 80.305 plus 30 ppm, not to exceed 150 ppm.

prevent the generation of windfall credits by refineries that have existing gasoline sulfur baselines below 150 ppm sulfur (but now will have an average GPA standard of 150 ppm), we also amended § 80.310, ''How are credits generated beginning in 2004?''. As stated in the preamble to the direct final rule, we believed that the amendment to § 80.310 would allow for the generation of credits during the 2004 through 2006 period comparable to the number of credits that could have been generated under the Tier 2 rule (65 FR 6698, February 10, 2000), even though the standard for all GPA gasoline will be 150 ppm sulfur.

As a result of the adverse comments received, we are withdrawing all amendments to § 80.310. We intend to consider the issues raised by the comments in a final action based on the concurrent notice of proposed rulemaking (67 FR 40256). With the exception of the amendments to § 80.310, all other amendments will become effective on September 10, 2002 as provided in the June 12, 2002 direct final rule.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: August 16, 2002.

Robert Brenner,

Assistant Administrator for Office of Air and Radiation.

[FR Doc. 02–21662 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7266–1]

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

ACTION: Notice of deletion for the Facility Area portion of the A.O. Polymer Site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency, Region II announces the deletion of the Facility Area portion of the A.O. Polymer Site (Site) located in Sussex County, New Jersey, from the National Priorities List (NPL). The NPL constitutes appendix B to 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA and the State of New Jersey, through the Department of Environmental Protection, have determined that all appropriate response actions under CERCLA, as amended, have been implemented at the Facility Area portion of the Site and that no further response action by responsible parties is appropriate. This partial deletion pertains only to the Facility Area portion of the Site and does not include the other portions of the Site, which will remain on the NPL.

EFFECTIVE DATE: August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Jeff Catanzarita, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290, Broadway, 19th Floor, New York, NY 10007–1866, (212) 637–4409.

SUPPLEMENTARY INFORMATION: The Facility Area portion of the A.O. Polymer Site is located at 44 Station Road in the Township of Sparta, Sussex County, New Jersey. The Site has two portions: The Facility Area and the Disposal Area. The Disposal Area is located in the northeast corner of the Site and is separated from the Facility Area by a dirt road. The Disposal Area and groundwater contamination by the Site are undergoing cleanup and will remain on the NPL.

A Notice of Intent to Delete for the Facility Area portion was published in the **Federal Register** on June 20, 2002 (67 FR 41914). The closing date for comments on the Notice of Intent to Delete was July 20, 2002. EPA received no comments regarding this deletion. The Deletion Docket may be reviewed at the EPA Region II office in New York, New York, the Sparta Township Library, Sparta, New Jersey, and the New Jersey Department of Environmental Protection office in Trenton, New Jersey.

The NPL is a list maintained by EPA of sites that EPA has determined present a significant risk to human health, welfare, or the environment. Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action. Deletion of a portion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

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

Dated: August 12, 2002.

Jane M. Kenny,

Regional Administrator, Region II.

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

PART 300—[AMENDED]

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

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

2. Table 1 of appendix B to part 300 is amended under the State of New Jersey (NJ) by revising the entry for ''A.O. Polymer''.

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes(a)
*	*	*	*
NJ	A.O. Polymer	Sparta/Sussex	P
*	*	*	*

(a) * * *
P = Sites with partial deletion(s).

[FR Doc. 02–21439 Filed 8–23–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket OST–1999–6189]

RIN: 9991–AA28

Organization and Delegation of Powers and Duties; Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation is delegating to the Commandant, United States Coast Guard, his authority to accept volunteer services and to provide benefits to the dependents of military members who are separated for dependent abuse.

EFFECTIVE DATE: August 26, 2002.

ADDRESSES: Material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket OST–2002–6189 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact LT Rick Evans, telephone 202–267–2335, U.S. Coast Guard, 2100 Second Street SW., Washington DC 20593–0001. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation, as Secretary of the Department in which the Coast Guard is operating, is vested with the authority to accept voluntary services under 10 U.S.C. 1588. Section 1588 authorizes the Secretary to accept, from any person, certain voluntary services in support of Coast Guard activities. This is an exception to the general prohibition against accepting such services in 31 U.S.C. 1342. The Secretary's authority to accept voluntary services for museums and family support programs operated by the Coast Guard under section 1588 was delegated to the Commandant in 49 CFR 1.46(rr). Subsequent to the delegation of this authority to the Commandant, however, Congress significantly expanded the areas in which voluntary services could be accepted, to include natural resources programs and a variety of personnel support and recreation programs. The present change makes it clear that all of the Secretary's authorities and functions under section 1588 are delegated to the Commandant.

This rule also delegates to the Commandant the Secretary's authority under 10 U.S.C. 1059, which authorizes the Secretary to establish a program to pay monthly transitional compensation to dependents of Coast Guard members who were separated for dependent abuse offenses.

These delegations provide the Commandant of the Coast Guard with the ability to exercise all of the Secretary's authority under 10 U.S.C. 1588 and 1059. This rule does not substantially change the organization or authorities of the Department of Transportation or the Coast Guard.

The Department publishes this rule as a final rule, effective on the date of publication. Because these amendments relate to departmental management, organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, because this rule does not substantially change the authorities or functions of the Department or the Coast Guard, the Department finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

Regulatory Process Matters

Regulatory Assessment

This rulemaking is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that Order. This rule is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Small Business Impact

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The Act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. The Department certifies that this rule is not expected to have a significant economic impact on a substantial number of small entities. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

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 Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it is determined that this action does not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will not limit the policymaking discretion of the State nor preempt any State law or regulation.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

For the reasons discussed in the preamble, the Office of the Secretary amends 49 CFR Part 1 as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. No. 101–552, 104 Stat. 2736; Pub. L. No. 106–159, 113 Stat. 1748.

2. In section 1.46, revise paragraph (rr) and add new paragraph (vvv) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(rr) Carry out the functions and exercise the authority vested in the Secretary by 10 U.S.C. 1588 to accept voluntary services.

* * * * *

(vvv) Carry out the functions and exercise the authority vested in the Secretary by 10 U.S.C. 1059 to establish a program to pay monthly transitional compensation to dependents of Coast Guard members who were separated for dependent abuse offenses.

* * * * *

Issued on: July 6, 2002.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 02–21029 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 7

[Docket No OST–96–1430; Amdt. 2]

RIN 2105–AD15

Public Availability of Information

49 CFR Part 10

[Docket No OST–96–1437; Amdt. 2]

RIN 2105–AC57

Maintenance of and Access to Records Pertaining to Individuals

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: This amendment includes the Transportation Security Administration as an agency subject to DOT's regulations implementing the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a.

DATES: This rule is effective August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9156, FAX (202) 366–9170; e-mail *bob.ross@ost.dot.gov.*

SUPPLEMENTARY INFORMATION: In response to the attacks on the United States on 9.11, the Congress established a new agency within DOT, the Transportation Security Administration (TSA), headed by the Under Secretary of Transportation for Security. The statute that did this—The Aviation and Transportation Security Act, Public Law 107–71—took effect November 19, 2001, and TSA has been part of DOT, and subject to DOT's regulations implementing the Freedom of Information and Privacy Acts since then. This amendment makes the needed technical changes to those regulations.

Notice and a prior opportunity for comment are not necessary for this rule, since it is a rule of agency organization, procedure, or practice. There is good cause to make the rule effective immediately, as it will update the Department's FOIA and Privacy Act regulations so that they clearly reflect the addition of the TSA to the Department and will not affect the substantive rights of any outside party.

Analysis of regulatory impacts. This amendment is not a ''significant regulatory action'' within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this amendment will not have a significant economic impact on a substantial number of small entities.

This amendment does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the amendment does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act, as amended.

List of Subjects

49 CFR Part 7

Freedom of information.

49 CFR Part 10

Privacy.

In accordance with the above, DOT amends 49 CFR Parts 7 and 10 as follows:

PART 7—[AMENDED]

1. The authority citation for 49 CFR part 7 continues to read as follows:

Authority: 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322; EO 12,600, 3 CFR, 1987 Comp., p. 3.

2. In § 7.2, the introductory text is revised, the definition of ''Administrator'' is revised, the introductory text of the definition of ''Department'' is revised, and a paragraph (11) is added at the end of the definition of ''Department'' to read as follows:

§ 7.2 Definitions.

Unless the context requires otherwise, the following definitions apply in this part:

* * * * *

Administrator means the head of each component of DOT and includes the Under Secretary for Security, the Commandant of the Coast Guard, the Inspector General, and the Director of the Bureau of Transportation Statistics.

* * * * *

Department means the Department of Transportation, including the Office of the Secretary, the Office of Inspector General, and the following DOT components, all of which may be referred to as DOT components. Means of contacting each of these DOT components appear in § 7.15. This definition specifically excludes the Surface Transportation Board, which has its own FOIA regulations (49 CFR Part 1001):

* * * * *

(11) Transportation Security Administration.

* * * * *

3. In § 7.15, existing paragraphs (f), (g), and (h) are redesignated (g), (h), and (i), respectively, and a new paragraph (f) is inserted after existing paragraph (e), to read as follows:

§ 7.15 Contacts for records requested under the FOIA.

* * * * *

(f) Transportation Security Administration, 301 Seventh Street, SW. (General Services Administration Regional Office Building), Room 3624, Washington, DC (Mailing address: 400 Seventh Street, SW, Washington, DC 20590).

* * * * *

PART 10—[AMENDED]

4. The authority citation for 49 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 552a; 49 U.S.C. 322.

5. In § 10.5, the definition of ''Administrator'' is revised and a new paragraph (k) is added at the end of the definition of ''Department'' to read as follows:

§ 10.5 Definitions.

* * * * *

Administrator means the head of an operating administration and includes the Under Secretary for Security and the Commandant of the Coast Guard.

Department * * *

(k) Transportation Security Administration.

* * * * *

Kirk K. Van Tine,

General Counsel.

[FR Doc. 02–20912 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274–1301–02; I.D. 082002C]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Massachusetts

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

ACTION: Closure; commercial quota harvested for Massachusetts.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the Commonwealth of Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 2002, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the Commonwealth of Massachusetts that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Massachusetts.

DATES: Effective 0001 hours, August 28, 2002, through 2400 hours, December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, (978) 281-9279.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2002 calendar year was set equal to 14,578,288 lb (6,612,600 kg)(66 FR 66348, December 26, 2001). The percent allocated to vessels landing summer flounder in Massachusetts is 6.82046 percent, resulting in an initial commercial quota of 994,306 lb (451,010 kg). The 2002 allocation was adjusted downward due to an overage of the 2001 quota of 55,541 lb (25,193 kg), as of October 31, 2001. The resulting adjusted 2002 commercial quota for the Commonwealth of Massachusetts is 938,765 lb (425,817 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the Commonwealth of Massachusetts has attained its quota for 2002.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, August 28, 2002, further landings of summer flounder in Massachusetts by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2002 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, August 28, 2002, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: August 20, 2002.

Virginia M. Fay,

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

[FR Doc. 02–21653 Filed 8–21–02; 3:56 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 165
Monday, August 26, 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 COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 02–0725180–2180–01]

RIN 0691–AA43

International Services Surveys: BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Economic Analysis (BEA) publishes this propose rule to revise the reporting requirements for the BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons.

The BE–22 survey is conducted by BEA under the International Investment and Trade in Services Survey Act. The data are needed to compile the U.S. international transactions, national income and product, and input-output accounts; support U.S. trade policy initiatives; assess U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities. This document solicits comments on changes to the BE–22 survey and proposes changes to the regulation governing the BE–22. The survey incorporates new reporting categories for trade-related services, auxiliary insurance services, and waste treatment and depollution services; adds coverage of transcription services; and amends several other services categories. These changes mirror changes introduced in the 2001 BE–20 benchmark survey. Additionally, a new reporting category is proposed for medical services, receipts only. The proposed rule revises the list of items set forth in the ''covered services'' section of the existing rule, to reflect the addition of the new category in the survey. These changes to the survey and regulations will close some statistical gaps in the coverage of cross-border services transactions and bring the survey into better alignment with international standards for compilation of statistics on trade in services.

DATES: Comments on these proposed rules will receive consideration if submitted in writing on or before October 25, 2002.

ADDRESSES: Direct all written comments to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington DC 20230. Because of slow mail, and to assure that comments are received in a timely manner, please consider using one of the following delivery methods: (1) Fax to (202) 606–5318, (2) deliver by courier to U.S. Department of Commerce, Bureau of Economic Analysis (BE–50), Shipping and Receiving Section, room M–100, 1441 L Street, NW., Washington, DC 20005, or e-mail to *David.Belli@bea.gov.* Comments received will be available for public inspection in room 7005, 1441 L Street, NW., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: This proposed rule amends 15 CFR part 801 by revising § 801.9(b)(6)(ii) to set forth revised reporting requirements for the BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons. The survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended). Section 3103(a) of the Act provides that ''The President shall, to the extent he deems necessary and feasible— * * * (1) conduct a regular data collection program to secure current information * * * related to international investment and trade in services * * *'' In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated the authority under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The BE–22 is an annual survey of selected services transactions with unaffiliated foreign persons. The data are needed to compile the U.S. international transactions, national income and product, and input-output accounts; support U.S. trade policy initiatives; assess U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

This document solicits comments on changes to the BE–22 survey and proposes changes to the regulation governing the BE–22. The survey incorporates new reporting categories for trade-related services, auxiliary insurance services, and waste treatment and depollution services; adds coverage of transcription services; and amends several other services categories. These changes mirror changes introduced in the 2001 BE–20 benchmark survey. Additionally, a new reporting category is proposed for medical services, receipts only. The proposed rule revises the list of items set forth in the ''covered services'' section of the existing rule, to reflect this new category in the survey. These changes to the survey and regulations will close statistical gaps in the coverage of cross-border services transactions and bring the survey into better alignment with international standards for compilation of statistics on trade in services.

Executive Order 12866

This proposed rule is not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a new collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The new requirement will be submitted to OMB for approval as a revision to a collection currently approved under OMB control number 0608–0060. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply

with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

The survey, as proposed, is expected to result in the filing of reports from approximately 1,600 respondents. The respondent reporting burden for this collection of information is estimated to vary from less than four hours to 500 hours, with an overall average burden of 11.5 hours. This includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total respondent burden of the survey is estimated at about 18,400 hours (1,600 times 11.5 hours average burden).

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (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 the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0058, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. While the survey does not collect data on total sales or other measures of the overall size of businesses that respond to the survey, historically the respondent universe has been comprised mainly of major U.S. corporations. With the exemption level for the survey being $1 million in covered receipts or payments, few small businesses can be expected to be subject to reporting. Of those smaller businesses that must report, most will tend to have specialized operations and activities and thus will be likely to report only one type of service transaction, often limited to transactions with a single partner country; therefore, the burden on them can be expected to be small.

List of Subjects in 15 CFR Part 801

Economic statistics, International transactions, Foreign trade, Penalties, Reporting and Recordkeeping Requirements.

Dated: July 17, 2002.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 15 U.S.C. 4908, 22 U.S.C. 3101–3108, and E.O. 11961 (3 CFR, 1977 Comp., p. 860 as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 801.9(b)(6)(ii) is revised to read as follows:

§ 801.8 Reports required.

* * * * *

(b) * * *

(6) * * *

(ii) *Covered services.* With the exceptions given in this paragraph, the services covered by this survey are the same as those covered by the BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons—2001, as listed in § 801.10(c) of this part. The exceptions are the addition of coverage of medical services, receipts only, and the elimination of coverage of four small types of services—agricultural services; management of health care facilities; mailing, reproduction, and commercial art; and temporary help supply services.

* * * * *

[FR Doc. 02–21691 Filed 8–23–02; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–12–000]

Standardization of Small Generator Interconnection Agreements and Procedures; Advance Notice of Proposed Rulemaking

Issued: August 16, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) seeks comments on standard small generator interconnection agreements and procedures that would be applicable to all public utilities that own, operate, or control transmission facilities under the Federal Power Act. The small generator agreements and procedures also would apply to any non-public utility that seeks voluntary compliance with jurisdictional transmission tariff reciprocity conditions. The Commission expects that this rulemaking will enhance competition in the energy market and increase the number of new generation resources that will participate in the market, thereby furthering customer choice of technologies and fuels, allowing more customer options in response to high generator prices, and facilitating the development of non-polluting alternatives such as photovoltaics and small wind resources.

DATES: Written comments must be received by the Commission by November 4, 2002.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael G. Henry (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8532.

G. Patrick Rooney (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6205.

Bruce A. Poole (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE.,

Washington, DC 20426, (202) 502–8468.
James S. Ballard (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8729.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

1. The Federal Energy Regulatory Commission (Commission) proposes to adopt standard small generator interconnection agreements and procedures that would be applicable to all public utilities that own, operate, or control transmission facilities under the Federal Power Act, as discussed more fully below. The Commission requests comments on these contractual provisions and procedures. After considering these comments, the Commission will issue a notice of proposed rulemaking (NOPR).

2. The rulemaking is in the public interest because small generators will enhance competition in the energy market. The Commission expects that, as a result of this rulemaking, an increasing number of new generation resources will participate in the market, thereby furthering customer choice of technologies and fuels, allowing more customer options in response to high generator prices, and facilitating development of non-polluting alternatives such as photovoltaics and small wind resources.

I. Background

3. The Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) on October 25, 2001 in Docket No. RM02–1–000 [1] to develop standardized generator interconnection agreements and procedures for all sizes of generators. We also initiated a collaborative process in which interested members of the electric industry, government, and the public (collectively, stakeholders) had an opportunity to provide input into the drafting of an interconnection procedures (IP) document and a standard interconnection agreement (IA). Public meetings of these stakeholders culminated in the development of a consensus IA and IP, which were filed with the Commission on January 11, 2002.

4. On April 24, 2002, the Commission issued its Notice of Proposed Rulemaking (Interconnection NOPR),[2] which included a standard IA and IP, proposed to be incorporated into existing and future open access transmission tariffs. The proposed IA and IP generally track the consensus documents filed with the Commission, but also resolved several important issues that remained in dispute after the stakeholder process.

5. Section 14 of the IP contains expedited procedures for small generators (defined as generators of 20 megawatts (MW) or less). The Commission noted in the NOPR that it has jurisdiction over generator interconnections when a generator interconnects to a transmission provider's transmission system or makes wholesale sales in interstate commerce at either the transmission or distribution voltage level.[3]

6. The Commission's authority for these proposed rules is under sections 205 and 206 of the Federal Power Act.[4] Thus, the recent *Atlantic City Electric* appellate decision [5] is inapposite. In *Atlantic City Electric,* the court reasoned that the authority exercised by the Commission in Section 203 to require Commission approval prior to a utility's withdrawal from an ISO could not be reconciled with the voluntary nature of utilities' coordination and interconnection arrangements in section 202. The court also noted that the petitioners did not dispute Commission authority to take similar action under section 205. Because in this proceeding the Commission relies on sections 205 and 206 for the authority to require interconnection agreements and procedures, *Atlantic City Electric* has no bearing on the authority exercised here.

II. Discussion

7. In their comments on the interconnection NOPR, supporters of small generators [6] requested that the Commission adopt separate rules and procedures for interconnecting small generators. They argue that applying an IP and IA designed for larger generators to generators of 20 MW or less (*i.e.*, small generators) will hinder small generator development. Supporters seek streamlined procedures and requirements that allow small generators to avoid unnecessary delay caused by interconnection studies and queues established for larger generators and their greater impact on the grid. The Small Generator Commenters, in their comments on the Interconnection NOPR, recommend detailed, simplified procedures and agreements that allow for quick, inexpensive, and simple interconnection for small generators up to and including 2 MW and a different procedure and agreement for units over 2 MW up to and including 20 MW.[7]

8. Consistent with these requests, the Commission is persuaded that we should develop separate small generator standardized IAs and IPs (SGIAs and SGIPs) to provide the right incentives for both transmission providers and small generators. Accordingly, the Commission proposes to adopt SGIAs and SGIPs that would be applicable to all public utilities that own, operate, or control transmission facilities under the Federal Power Act. To that end, we now sever the interconnection of generators up to and including 20 MW from the proposed rulemaking in Docket No. RM02–1–000 and treat them separately here.[8]

9. The Commission is considering basing the SGIAs and SGIPs on those filed by the Small Generator Commenters. The Commission notes that while these SGIAs and SGIPs are not identical to the ERCOT and PJM models, certain of their features make them appropriate models for development of a separate rule.[9] First, these proposals are based on existing agreements and procedures accepted by several states and benefit from the work undertaken in those fora to craft procedures and agreements acceptable to all parties. Second, the documents offer a reasonable balancing of burdens. In particular, if certain conditions are

[1] Standardizing Generator Interconnection Agreements Procedures, Advance Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 35,540 (2001).

[2] Standardization of Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,560 (2002).

[3] Standardization of Generator Interconnection Agreements Procedures, FERC Stats. & Regs. ¶ 32,560 at 34,178 (2002).

[4] *New York* v. *FERC,* 122 S.Ct. 1212 (2002).

[5] *Atlantic City Electric Co.* v. *FERC,* No. 97–1097 (D.C. Cir. July 12, 2002).

[6] The Solar Energy Industries Association, the U.S. Fuel Cell Council, the American Solar Energy Society, the U.S. Combined Heat and Power Association, the International District Energy Association, and the American Wind Energy Association (collectively, the Small Generator Commenters).

[7] According to Small Generator Commenters, interconnection approval would be based on meeting national codes, standards and models for interconnected operations already used in Texas and the Pennsylvania-New Jersey-Maryland Interconnection (PJM) and which contain all the necessary reliability protections in simple, understandable, and effective terms. For generators meeting these criteria, very limited or no review would be required by the transmission provider.

[8] Comments involving small generator issues that have a bearing on the final rule to be issued in Docket No. RM02–1–000 will still be considered in that proceeding.

[9] The SGIP and SGIA for generators up to and including 2 MW is based on the documents adopted and approved by the Texas Public Utility Commission. The other SGIP and SGIA is based on the PJM model, which has been applied in the PJM member states, which include Delaware, Maryland, New Jersey, and Pennsylvania.

met that show ''no impact'' [10] on the transmission grid, the burden is placed on the transmission provider to justify any refusal to permit the interconnection or require specific system upgrades. Should the small generator not meet the ''no impact'' threshold test, simple studies can be completed by the transmission provider to determine required system upgrades. Third, these conditions have proven helpful in the Electric Reliability Council of Texas (ERCOT) and PJM. A similar threshold used in PJM's Small Resource Interconnection tariff provisions for generators up to and including 10MW is working well.[11] Given the features of these SGIAs and SGIPs and their track record, we conclude that they should be used in an advance NOPR process for small generator interconnections.

10. The Commission, therefore, offers these SGIAs and SGIPs as models, and concludes that the procedures and terms of these proposals balance interconnection procedures with reliability and grid impact. But we are open to any proposals that may better meet the goals of this rulemaking. We find these SGIAs and SGIPS a valuable and efficient starting point from which to initiate further discussion and build consensus between the parties. Accordingly, these SGIPs and SGIAs, which already represent the efforts of industry participants, will provide a solid foundation as a proposal that will be developed into a subsequent NOPR. The proposals are attached to this ANOPR as Attachment A (for units up to and including 2 MW) and Attachment B (for units over 2 MW up to and including 20 MW).

11. The Commission strongly encourages interested persons to pursue consensus on these SGIPs and SGIAs. To this end the Commission proposes to convene one or more conferences to enable the parties to discuss and reach agreement on the proposed SGIAs and SGIPs. The initial meeting will be open to all interested parties. The meeting will take place September 9 and 10, 2002, at 10 a.m., at the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC. The expectations for this meeting will be for the participants to form working groups for the purpose of developing consensus SGIAs and SGIPs for small generators up to and including 2MW and also for small generators over 2 MW up to and including 20 MW.[12] In addition, the Commission has established a dedicated web page to facilitate the consensus-building and collaborative process at *smallgen.intranets.com.* The Commission will issue a NOPR before the end of the year, with the expectation that a final rule will be issued in March 2003.

12. Commenters advocating standard small generator agreements and procedures other than the models in Attachments A and B must specify in detail how their proposals differ from the foregoing and are superior to the proposals herein. Any approaches suggested by commenters must serve the public interest by promoting competition and economic efficiency. We are particularly interested in efforts to incorporate into our proposed SGIAs and SGIPs the draft distributed generation interconnection procedures and agreement recently released by the National Association of Regulatory Utility Commissioners.

13. By November 4, 2002, the comment deadline, participants will file their SGIP and SGIA documents reflecting as much consensus as possible as well as specific language proposals and pros and cons for any unresolved issues. Parties disagreeing with particular provisions must offer alternative provisions and a full explanation of and justification for the change. Any consensus reached among all interested persons will be considered by the Commission as it prepares the subsequent NOPR, to the extent consistent with the Commission's statutory responsibilities.

III. Comment Procedures

14. The Commission invites interested persons to submit comments, data, views and other information concerning matters set out in this notice.

15. To facilitate the Commission's review of the comments, commenters are requested to provide an executive summary of their positions. Commenters are requested to identify each specific issue posed by the ANOPR that their discussion addresses and to use appropriate headings that clearly identify the relevant SGIA and SGIP sections. Additional issues the commenters wish to raise should be identified separately. The commenters should double-space their comments.

16. Comments may be filed on paper or electronically via the Internet and must be received by the Commission by November 4, 2002. Comments should include an executive summary. Those filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of initial and reply comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. RM02–12–000.

17. 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.

18. 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 either FERC's Homepage using the Federal Energy Regulatory Records Information System (FERRIS) link or the dedicated Small Generator web page.

IV. Document Availability

19. 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

[10] A presumption of ''no impact'' will normally be made if the following conditions are met: (1) The project's export of electricity (net of on-site load) would not exceed, cumulatively with all prior small resources on the system, (a) 15% of the peak load on a radial system feeder or (b) 25% of the minimum load on a network link, and (2) the project's capability does not exceed 25% of the maximum short circuit potential.

[11] Since this program was initiated in 1999, PJM has interconnected some 19 small generators. PJM engineers state that the program seems to work well and 99% of the time they can work the small generator out of queue order and expedite interconnection with no problems. Transmission providers have not filed major complaints and an informal survey of regulators (Maryland Public Service Commission, Pennsylvania Public Utility Commission, Delaware Public Service Commission, and New Jersey Board of Public Utilities) revealed only support for this process.

[12] We note that the procedures in Attachments A and B differ in the manner in which they are incorporated into the transmission provider's open access transmission tariff (OATT). The procedures in Attachment A would be appended to the interconnection procedures proposed in the rulemaking in Docket No. RM02–1–000, and the procedures in Attachment B would be added directly to the text of a transmission provider's OATT. We encourage parties to reach consensus on which method is preferred.

during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426. This document will be published in the **Federal Register**.

20. From FERC's Home Page on the Internet, this information is available in 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.

21. User assistance is available for FERRIS and the FERC's website 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.

Attachment A—Expedited Interconnection Procedures—Small Generators (Up to and Including 2 MW) (To be Included With Section 14.2.3 of the Interconnection Procedures Under Consideration in FERC Docket RM02–1–000)

1. Application and Definitions

a. This expedited interconnection procedure is available for small generators up to and including 2 MW in size that will participate in a FERC regulated market, sell power for resale in interstate commerce or are interconnected to a FERC regulated transmission line. These procedures apply only to generators that meet certain national standards addressing technical requirements for continuous interconnected operation of small generators. In addition the generator must meet certain criteria regarding the relationship between the size of the generator and the size of the circuit to which they will interconnect. Small generators meeting these standards are entitled to a presumption of approval of the interconnection without additional testing, fees, or other requirements imposed by the interconnecting Transmission Provider or any Affected System utility.

Although generators meeting all the standards herein are entitled to a presumption of approval, the presumption is rebuttable. Should the Transmission Provider or Affected System petition the FERC to require additional testing because of special circumstances and received Commission approval, the generator would then have to undergo additional testing and interconnection study at the generator's expense.

b. Definitions: Unless otherwise defined herein, terms shall have the meanings specified in Article 1 of the Standard Generator Interconnection Procedures issued in FERC Docket No. RM02–1–000.

2. National Codes and Standards

Small generators must comply with all national codes and standards applicable to the ongoing interconnected operation of a small generator with the electricity grid.

3. Technical Requirements

Under the national codes and standards applicable to small interconnected generators, a generator may not energize or re-energize a circuit unless grid voltage is present and within normal operating bounds. A small generator must immediately and automatically disconnect from the grid and cease interconnected operations any time the grid is de-energized or outside of normal operating bounds. The codes and standards also dictate acceptable operating conditions for the small generators including, but not limited to, voltage, frequency and harmonics.

4. Threshold for Determination of the Presumption of No Grid Impact

For interconnections on radial circuits the small generator (in aggregate with other generation on the circuit) may not exceed 15 percent of the total measured peak load or design capacity of the circuit (as most recently measured at the substation). For interconnections on networked circuits, the small generator (in aggregate with other generation on the circuit) may not exceed 25 percent of the minimum measured load on the circuit. A small generator may not contribute more than 25 percent of the maximum short circuit current at the point of interconnection.

5. Analysis of Interconnection—Limited Interconnection Studies—Costs

If a small generator meets all of the criteria in Sections 1–4, the impact and facilities studies are waived. A limited feasibility study may be conducted to determine compliance with the load and short circuit contributions in Section 4. This study must be completed in 15 days after acceptance of a valid interconnection request. Costs to the generator are waived if short circuit calculations have recently been performed in the area of the interconnection or if the short circuit and load thresholds are sufficiently greater than the generator capacity that no calculations are needed.

6. Disputes

If a dispute arises during the application of these procedures, either the generator or Transmission Provider may seek immediate resolution through FERC's alternative dispute resolution process. At the generator's option, dispute resolution will be binding. Alternative dispute resolution may include any dispute resolution services made available by the FERC including those that occur by telephone.

Should a Transmission Provider desire a waiver from these procedures that would otherwise apply to the small generator interconnection, the Transmission Provider must seek such wavier from FERC within 15 days of the receipt of a valid small generator interconnection request. The Transmission Provider shall have the burden to show, in a clear and convincing manner, why the application of these rules would result in an unsafe or unreliable interconnection or that the interconnection would interfere with the quality of electric service to other customers.

7. Capacity and Energy; Metering

Small generators are entitled to participate in any available energy and capacity markets and receive the appropriate compensation due to participants in those markets. Metering shall be installed as needed to participate in the various markets.

Standard Agreement for Interconnection and Parallel Operation of Small Generation Systems (Pre-Certified Systems up to and Including 2 MW)

This Interconnection Agreement (''Agreement'') is made and entered into this ____day of _____, 19__, by _____, (''Transmission Provider''), and_____(''Generator''), a [specify whether corporation, and if so name state, municipal corporation, cooperative corporation, or other], each hereinafter sometimes referred to individually as ''Party'' or both referred to collectively as the ''Parties''. In consideration of the mutual covenants set forth herein, the Parties agree as follows:

1. *Definitions*

Unless otherwise defined herein, terms in this Agreement shall have the meanings specified in Article 1 of the STANDARD GENERATOR INTERCONNECTION AND OPERATING AGREEMENT (IA) issued in FERC Docket No. RM02–1–000.

2. *Scope of Agreement*—This Agreement is applicable to conditions under which the Transmission Provider and the Generator agree that one or more generating facility or facilities up to and including two (2) MW to be interconnected to the Transmission Provider's system, as described in Exhibit A.

3. *Establishment of Point(s) of Interconnection*—Transmission Provider and Generator agree to interconnect the Facility at the locations specified in this Agreement and in accordance with Federal Energy Regulatory Commission Rules relating to Interconnection of Small Generation systems.

4. *Responsibilities of Transmission Provider and Generator*—Each Party will, at its own cost and expense, operate, maintain, repair, and inspect, and shall be fully responsible for, Facility or Facilities which it now or hereafter may own unless otherwise specified on Exhibit A. Generator shall conduct operations of its facility(s) in compliance with all aspects of the Rules, and Transmission Provider shall conduct operations on its utility system in compliance with all aspects of the Rules, or as further described and mutually agreed to in the applicable Facility Schedule. Maintenance of Generator and associated interconnection equipment shall be performed in accordance with the applicable manufacturer's recommended maintenance schedule. The Parties agree to cause their Facilities or systems to be constructed in accordance with applicable specifications equal to or greater than those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE and Underwriter's Laboratory in effect at the time of construction. Each Party covenants and agrees to design, install, maintain, and operate, or cause the design, installation, maintenance, and operation of its transmission and distribution system and related Facilities and Units so as to reasonably minimize the likelihood of a disturbance, originating in the system of one Party, affecting or impairing the system of the other Party, or other systems with which a Party is interconnected.

Transmission Provider will notify Generator if there is evidence that the operation of Generator's equipment causes disruption or deterioration of service to other customers served from the same grid or if the generator operation causes damage to Transmission Provider's or Affected Systems. Generator will notify Transmission Provider of any emergency or hazardous condition or occurrence with the Generator's Unit(s) which could affect safe operation of the system.

5. *Limitation of Liability and Indemnification*

The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance of obligations under this Agreement on behalf of the indemnifying Party, except in cases of negligence or intentional wrongdoing by the indemnifying Party.

6. *Right of Access, Equipment Installation, Removal & Inspection*—Upon reasonable notice, the Transmission Provider may send a qualified person to the premises of the Generator at or immediately before the time the Facility first produces energy to inspect the interconnection, and observe the Facility's commissioning (including any testing), startup, and operation for a period of up to no more than three days after initial startup of the unit.

Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, Transmission Provider shall have access to Generator's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.

7. *Disconnection of Unit*—Generator retains the option to disconnect from Transmission Provider's utility system. Generator will notify the Transmission Provider of its intent to disconnect by giving the Transmission Provider at least thirty days' prior written notice. Such disconnection shall not be a termination of the agreement unless Generator exercises rights under Section 7.

Generator shall disconnect Facility from Transmission Provider's system upon the effective date of any termination under Section 7.

Subject to Commission Rule, for routine maintenance and repairs on Transmission Provider's utility system, Transmission Provider shall provide Generator with seven business days' notice of service interruption. Transmission Provider shall have the right to suspend service in cases where continuance of service to Generator will endanger persons or property. During the forced outage of the Transmission Provider's utility system serving Generator, Transmission Provider shall have the right to suspend service to effect immediate repairs on Transmission Provider's utility system, but the Transmission Provider shall use its best efforts to provide the Generator with reasonable prior notice.

8. *Effective Term and Termination Rights*—This Agreement becomes effective when executed by both parties and shall continue in effect until terminated. The agreement may be terminated for the following reasons:

(a) Generator may terminate this Agreement at any time, by giving the Transmission Provider sixty days' written notice;

(b) Transmission Provider may terminate upon failure by the Generator to generate energy from the Facility in parallel with the Transmission Provider's system within twelve months after completion of the interconnection;

(c) Either party may terminate by giving the other party at least sixty days prior written notice that the other Party is in default of any of the material terms and conditions of the Agreement, so long as the notice specifies the basis for termination and there is reasonable opportunity to cure the default; or

(d) Transmission Provider may terminate by giving Generator at least sixty days notice in the event that there is a material change in an applicable rule or statute.

9. *Governing Law and Regulatory Authority*—The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the State where the Point of Interconnection is located, without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

10. *Amendment*—This Agreement may be amended only upon mutual agreement of the Parties, which amendment will not be effective until reduced to writing and executed by the Parties.

11. *Entirety of Agreement and Prior Agreements Superseded*—This Agreement, including all attached Exhibits and Facility Schedules, which are expressly made a part hereof for all purposes, constitutes the entire agreement and understanding between the Parties with regard to the interconnection of the facilities of the Parties at the Points of Interconnection expressly provided for in this Agreement. The Parties are not bound by or liable for any statement, representation, promise, inducement, understanding, or undertaking of any kind or nature (whether written or oral) with regard to the subject matter hereof not set forth or provided for herein. This Agreement replaces all prior agreements and undertakings, oral or written, between the Parties with regard to the subject matter hereof, including without limitation [specify any prior agreements being superseded], and all such agreements and undertakings are agreed by the Parties to no longer be of any force or effect. It is expressly acknowledged that the Parties may have other agreements covering other services not expressly provided for herein, which agreements are unaffected by this Agreement.

12. *Notices*—Notices given under this Agreement are deemed to have been duly delivered if hand delivered or sent by United States certified mail, return receipt requested, postage prepaid, to:

(a) If to Transmission Provider:

_____

_____

_____

_____

(b) If to Generator:

_____

_____

_____

The above-listed names, titles, and addresses of either Party may be changed by written notification to the other, notwithstanding Section 10.

13. *Invoicing and Payment*—Invoicing and payment terms for services associated with this agreement shall be consistent with applicable Rules of the Commission.

14. *No Third-Party Beneficiaries*—This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

15. *No Waiver*—The failure of a Party to this Agreement to insist, on any occasion,

upon strict performance of any provision of this Agreement will not be considered to waive the obligations, rights, or duties imposed upon the Parties.

16. *Headings*—The descriptive headings of the various articles and sections of this Agreement have been inserted for convenience of reference only and are to be afforded no significance in the interpretation or construction of this Agreement.

17. *Multiple Counterparts*—This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

In witness whereof, the Parties have caused this Agreement to be signed by their respective duly authorized representatives.

[Transmission Provider NAME]

BY: _____

TITLE: _____

DATE: _____

BY: _____

[Transmission owner NAME (if different from Transmission Provider)]

BY: _____

TITLE: _____

DATE: _____

[Generator NAME]

BY: _____

TITLE: _____

DATE: _____

Exhibit A to the Agreement

FACILITY SCHEDULE NO._____

[The following information is to be specified for each Point of Interconnection, if applicable.]

1. Name:
2. Facility location:
3. Delivery voltage:
4. Metering (voltage, location, losses adjustment due to metering location, and other):
5. Normal Operation of Interconnection:
6. One line diagram attached (check one):_____ Yes /_____ No
7. Facilities to be furnished by Transmission Provider (usually none):
8. Facilities to be furnished by Generator (usually contained with pre-certified generator):
9. Cost Responsibility (if any):
10. Control area interchange_____
11. Supplemental terms and conditions attached (check one):_____ Yes /_____ No

Exhibit B to the Agreement—Small Generator Interconnection Application (For Use With Generators up to and Including 2 MW)

An applicant (Generator Owner) makes application to_____ (Transmission Provider) to install and operate a generating facility up to and including 2 MW interconnected with the _____ utility system. This application, unless otherwise established at the scoping meeting between Generator Owner and Transmission Provider, will be considered as application for a feasibility study for generators under Federal Energy Regulatory Commission rules for expedited treatment of generators up to and including 2 MW in capacity.

Section 1, Applicant Information

Name: _____

Mailing Address: _____

City: _____

State: _____

Zip Code: _____

Facility Location (if different from above):

_____

Telephone (Daytime):

Area Code _____

Number _____

(Evening) Area Code _____

Number _____

Account No. (if applicable): _____

Pole Number: _____

Energy Service Provider Name: _____

Section 2, Generator Qualifications

(Informational only) Is the generator a Qualifying Facility as defined under Subpart B, Section 201 of the Federal Energy Regulatory Commission's regulations per the Public Utility Regulatory Policies Act of 1978?

_____ Yes

_____ No

Is Generator powered from a Renewable Qualifying Energy Source:

_____ Yes

_____ No

Type Qualifying Energy Source (if applicable):

_____ Solar

_____ Wind

_____ Hydro

_____ Other

Other generator energy source:

_____ Diesel, Natural Gas

_____ Diesel, Fuel Oil

Other: _____

(State type)

Will excess power be exported?

_____ Yes

_____ No

Site Load: _____ kW (Typical)

Maximum Export: _____ kW.

Section 3, Generator Technical Information

Type of Generator:

_____ Synchronous

_____ Induction

_____ DC Generator or Solar with Inverter

Generator (or solar collector) Manufacturer, Model Name & Number: _____

(A copy of Generator Nameplate and Manufacturer's Specification Sheet may be substituted)

Output Power Rating in kW:

_____

_____ Single phase

_____ Three phase

Inverter Manufacturer, Model Name & Number (if used): _____

Adjustable Setpoints _____

(A copy of Inverter Manufacturer's Specification Sheet may be substituted)

Generator Characteristic Data (For Rotating Machines)

(Not needed if Generator Nameplate and Manufacture's Specification Sheet is provided)

Direct Axis Synchronous Reactance, X_d:

_____ P.U.

Direct Axis Transient Reactance, X'_d:

_____ P.U.

Direct Axis Subtransient Reactance, X'_d:

_____ P.U.

Negative Sequence Reactance: _____ P.U.

Zero Sequence Reactance: _____ P.U.

KVA Base: _____

Section 4, Interconnecting Equipment Technical Data

Will an interposing transformer be used between the generator and the point of interconnection?

_____ Yes

_____ No

Transformer Data (if Applicable, for Customer Owned Transformer)

(A copy of transformer Nameplate and Manufacturer's Test Report may be substituted)

Size: _____ KVA.

Transformer Primary:

_____ Volts

_____ Delta

_____ Wye _____ Wye Grounded

Transformer Secondary:

_____ Volts

_____ Delta

_____ Wye

_____ Wye Grounded

Transformer Impedance: _____ % on _____ KVA Base

Transformer Fuse Data (if Applicable, for Customer Owned Fuse)

(Attach copy of fuse manufacturer's Minimum Melt & Total Clearing Time-Current Curves)

Manufacturer:

_____ Type:

_____ Size:

_____ Speed:

_____

Interconnecting Circuit Breaker (if Applicable)

(A copy of breaker's Nameplate and Specification Sheet may be substituted)

Manufacturer:

_____ Type:

_____ Load Rating: (Amps)

_____ Interrupting Rating: (Amps)

_____ Trip Speed: (Cycles) _____

Circuit Breaker Protective Relays (if Applicable)

(Enclose copy of any proposed Time-Overcurrent Coordination Curves)

Manufacturer: _____ Type: _____ Style/ Catalog No.: _____ Proposed Setting: _____

Manufacturer: _____ Type: _____ Style/ Catalog No.: _____ Proposed Setting: _____

Manufacturer: _____ Type: _____ Style/ Catalog No.: _____ Proposed Setting: _____

Manufacturer: _____ Type: _____ Style/ Catalog No.: _____ Proposed Setting: _____

Manufacturer: _____ Type: _____ Style/ Catalog No.: _____ Proposed Setting: _____

Current Transformer Data (if Applicable)

(Enclose copy of Manufacturer's Excitation & Ratio Correction Curves)

Manufacturer: _____ Type: _____ Accuracy Class: _____ Proposed Ratio Connection: _____ /5

Manufacturer: _____ Type: _____ Accuracy Class: _____ Proposed Ratio Connection: _____/5

Section 5, General Technical Information

Enclose copy of site One-Line Diagram showing configuration and interconnection of all equipment, current and potential circuits and protection and control schemes. Is One-Line Diagram Enclosed?: _____ Yes

Enclose copy of any site documentation that describes and details the operation of the protection and control schemes. Is Any Available Documentation Enclosed?: _____ Yes

Enclose copies of schematic drawings for all protection and control circuits, relay current circuits, relay potential circuits, and alarm/monitoring circuits (if applicable). Are Schematic Drawings Enclosed? _____Yes

Section 6, Installation Details

Installing Electrician: _____
Firm: _____
License No.: _____
Mailing Address: _____
City: _____
State: _____
Zip Code: _____
Telephone: Area Code:_____Number: _____
Installation Date: _____
Interconnection Date: _____

Supply certification that the generating system has been installed and inspected in compliance with the local Building/ Electrical code of the municipality of _____

Signed (Inspector): _____
Date: _____

(In lieu of signature of Inspector, a copy of the final inspection certificate may be attached)

Section 7, Generator/Equipment Certification

Generating systems must be compliant with *IEEE, NEC, ANSI, and UL standards.* By signing below, the Applicant certifies that the installed generating equipment meets the appropriate preceding requirement(s) and can supply documentation that confirms compliance.

Signed (Applicant): _____
Date: _____

Section 8, Applicant Signature

I hereby certify that, to the best of my knowledge, all the information provided in the Interconnection Application is true and correct. I also agree to install a Warning Label provided by (utility) on or near my service meter location.

Signature of Applicant: _____
Date: _____
Send the completed application to: _____ (Utility Address)

This section for use by _____(utility) Only

Section 9, Approval or Non-Approval

(Utility):

_____Has Approved
_____Has Not Approved this Interconnection Application.

Name: _____
Date: _____
Signature: _____
Reason for Not Approving:
_____
_____

Approval to connect to the Company system indicates only that the minimum requirements for a safe proper interconnection have been satisfied. Such approval does not imply that the Generator Owner's facility meets all federal, state and local standards or regulations.

Section 10, Internal Notifications

Send Applicant Warning Label for installing on/ near service meter:
_____Yes

Notify Billing Dept. of Interconnected Generation:
_____Yes

Notify District Engineering of Interconnected Generation:
_____Yes

Notify System Protection of Interconnected Generation:
_____Yes

Attachment B.—Small Resource Interconnection Procedures; Draft Open Access Transmission Tariff Provisions

Original Sheet No._____

[TRANSMISSION OWNER]

FERC Open Access Transmission Tariff

Small Resource Interconnection Procedures

Requests for the interconnection of new generation resources over 2 MW up to and including 20 MegaWatts (MW)(''small resource'') shall be processed, pursuant to this Section _____ of the Tariff, through expedited procedures. These provisions describe procedures for such ''small resource'' additions.

Such small resources may participate in [TRANSMISSION OWNER's] energy and capacity markets and may, therefore, be used by load serving entities to meet capacity obligations imposed under all applicable Agreements. These procedures apply to generation resources which, when connected to the system, are expected to remain connected to the system for the normal life span of such a generation resource. These procedures do not apply to small resources that are specifically being connected to the system temporarily, with the expectation that they will later be removed.

Section 1.01—Application and Information Availability

The Interconnection Customer desiring the interconnection of a new capacity resource over 2 MW up to and including 20 MW must submit a completed Feasibility Study Request. No deposit or other advance payment is required from small resources, but all information required by the Feasibility Study Request related to the generating project site, point of interconnection, and generating unit size and configuration must be provided. To assist Interconnection Customers in avoiding Feasibility Study Requests where there is no likely feasibility, [TRANSMISSION OWNER] will designate an employee or office from which basic information concerning system capacities and usage can be obtained through informal requests. [TRANSMISSION OWNER] will further post on its web-site a list of prior system studies, interconnection studies, and other relevant materials useful to an understanding of the feasibility of an interconnection at particular points in its system. Interconnection Customers may request access to or copies of studies or analyses that may be useful to assess in advance the feasibility of an interconnection at particular points of [TRANSMISSION OWNER's] system to the extent necessary to supplement information available from the designated employee or office. [TRANSMISSION OWNER] shall comply with reasonable requests for access to or copies of such studies. Interconnection Customer shall comply with reasonable restrictions on its use of such studies, including preserving their confidentiality and limiting their use to the purpose for which they were requested.

Section 1.02—Site Control

Documentation of site control must be submitted for small resource additions with the completed Feasibility Study Request. Site control may be demonstrated through an exclusive option to purchase the property on which the generation project is to be developed, a property deed, or a range of tax or corporate documents that identify property ownership. Site control must either be in the name of the party submitting the generation interconnection request or documentation must be provided establishing a sufficient business relationship between the project developer and the party having site control.

Section 1.03—Scoping Meeting

Once it has been established that the requirements related to the submission of the Feasibility Study Request have been met, an initial Scoping Meeting will be held within ten days of the receipt of the completed Feasibility Study Request. [TRANSMISSION OWNER] will be represented at such Scoping Meeting by system engineers of sufficient rank and experience to provide a judgment within three working days after the scoping meeting of whether a Feasibility Study is required or not. This judgement will be based on the size of the proposed resource in MW, the intended mode of operation of the proposed small resource (in parallel with the system or not), and the load and short-circuit conditions on the line to which interconnection is proposed. If it is obvious that the project is feasible as proposed, no feasibility study will be conducted. In that event, the small resource generation interconnection request will be entered into the then current generation interconnection queue for connection priority only. The analysis process will not be subject to any queue required of Interconnection Customer applicants larger than 20 MW.

Section 1.04—Feasibility Study

Where required, Feasibility Study analyses for small resources can generally be expedited by examining a limited contingency set that focuses on the impact of the small capacity addition on contingency limits in the vicinity of the capacity resource.

Generally, small capacity additions will have very limited and isolated impacts on system facilities. If criteria violations are observed, further AC testing is required. Short circuit calculations are performed for small resource additions to ensure that circuit breaker capabilities are not exceeded. Barring unusual circumstances, a Feasibility Study must be completed within fifteen working days of the Scoping Meeting.

Section 1.05—Feasibility Study Cost and Report

It is presumed that a Feasibility Study can be completed utilizing prior existing interconnection and system studies, design documents, and standard utility operating assumptions, listed on the web-site per Section 1.01 above, and at no cost to the Interconnection Customer. In the event that a Feasibility Study requires analysis or system study that is not available, [TRANSMISSION OWNER] must so indicate, must perform the study, and must pay half of the costs of such study, with Interconnection Customer paying the other half of such costs. In the event an existing study or analysis critical to a Feasibility Study was nonetheless omitted from the list on the web-site of [TRANSMISSION OWNER], the Interconnection Customer shall not be required to pay any portion of the Feasibility Study. Once the Feasibility Study is completed, a Feasibility Study report will be prepared and transmitted to the Interconnection Customer along with an Impact Study Agreement within five additional working days. If no Criteria Violations are identified by the Feasibility Study no Impact Study will be required. Any study costs that Interconnection Customers are expected to pay will be invoiced to the Interconnection Customer after the study is completed and delivered, and will include itemization of professional time (at specified reasonable hourly rates) and materials required. Disputes over study costs will be submitted to binding arbitration. Interconnection Customers must pay Study Costs within 30 days of receipt of the invoice or resolution of any dispute.

Section 1.06—Impact Study

If Criteria Violations are identified in the Feasibility Study, an Impact Study will be required. In order to remain in the interconnection queue, the Interconnection Customer must return an executed Impact Study Agreement within 30 days, along with documents demonstrating that an initial air permit application has been filed, if required. The requirement for a deposit associated with the Impact Study Agreement is waived; however, the Interconnection Customer is responsible for all costs associated with the performance of the Impact Study related to the request. Any Impact Study required should be completed within fifteen working days of the receipt of the Impact Study Agreement. In cases where no network impacts are identified and there are no other projects in the vicinity of the small resource addition, the Impact Study shall not be required and the project will proceed directly to the Facilities Study.

Section 1.07—Criteria for Impact Study

As with the Feasibility Study, expedited analysis procedures will be utilized, where appropriate, in the course of the Impact Study. Load deliverability will only be evaluated for sub-areas where margins are known to be limited. In most cases, the addition of small capacity resources will improve local deliverability margins. However, if sub-area margins are known to be limited, the impact of the new resource will be evaluated based on its impact on the contingencies limiting emergency imports to the sub-area. In most cases, small capacity additions will have no impact on generator deliverability in an area. As a general rule, if the proposed small resource interconnection, considered cumulatively with all prior small resource interconnections, will not lead to exported power in excess of 15% of the peak day load on a radial feeder line or in excess of 25% of the minimum expected load on a network line, net of minimum on-site load supplied by the small resource, and if the small resource will not exceed 25% of the maximum short circuit potential at the point of interconnection, then there is a presumption of no impact. In that instance, [TRANSMISSION OWNER] must bear the burden and cost of demonstrating any impact requiring mitigation by additional network facilities. If violations are observed, more detailed testing using AC tools is required to determine levels of impact at the cost of the Interconnection Customer. Stability analysis is generally not performed for small capacity additions. New capacity resources over 2 MW up to and including 20 MW will only be evaluated if they are connected at a location where stability margins associated with existing resources are small. Short circuit calculations are performed during the Impact Study for small resource additions, taking into consideration all elements of the regional plan, to ensure that circuit breaker capabilities are not exceeded.

Section 1.08—Facilities Study Agreement

Once the Impact Study is completed, or if the Impact Study is not necessary, an Impact Study report or notice of the fact that no report is unnecessary will be prepared and transmitted to the Interconnection Customer along with a Facilities Study Agreement within five working days. In order to remain in the interconnection queue, the Interconnection Customer must return the executed Facilities Study Agreement within 30 days. If no transmission system facilities are required, the Facilities Study will not be required and the project will proceed directly to the execution of an Small Resource Interconnection Agreement. If a Facilities Study is required, the cost will be borne by the Interconnection Customer.

Section 1.09—Facilities Study Preparation

Transmission facilities design for any required Attachment Facilities and/or Network Upgrades will be performed through the execution of a Facilities Study Agreement between the Interconnection Customer and [TRANSMISSION OWNER]. The [TRANSMISSION OWNER] may contract with consultants, including the transmission owners, or contractors acting on their behalf, to perform the bulk of the activities required under the Facilities Study Agreement. In some cases, the Interconnection Customer and the [TRANSMISSION OWNER] may reach agreement allowing the Interconnection Customer to separately arrange for the design of some of the required transmission facilities. In such cases, facilities design will be reviewed, under the Facilities Study Agreement, by the transmission owner. Facilities design for small capacity additions will be expedited to the extent possible. In most cases, few or no network upgrades will be required for small capacity additions. Attachment facilities for some small capacity additions may, in part, be elements of a ''turn key'' installation. In such instances, the design of ''turn key'' attachments will be reviewed by the transmission owners or their contractors. In cases where system or network upgrades are required for small resource additions, the Facilities Study must be completed within ninety days of the receipt of the Facilities Study Agreement. In cases where no system or network upgrades are necessary, the Facilities Study must be completed in fifteen working days.

Section 1.10—Costs of Facilities

Where additional facilities are required to permit the interconnection of a small resource, and offer no benefit to the system capacity, the small resource interconnection applicant will bear the entire cost of such facilities.

Section 1.11—Small Resource Interconnection Agreement

A Small Resource Interconnection Agreement must be executed and filed with the FERC prior to undertaking the actual interconnection. The Small Resource Interconnection Agreement identifies the Interconnection Customer's obligations to pay for transmission facilities required to facilitate the interconnection and the Capacity Interconnection Rights which are awarded to the capacity resource. If a new capacity resource over 2 MW up to and including 20 MW can be quickly connected to the system, and put in service immediately, a modified Small Resource Interconnection Agreement will be executed. If such a connection is expedited through the Impact Study phase ahead of larger projects already in the interconnection queue, an Small Resource Interconnection Agreement will be executed granting interim Capacity Interconnection Rights. These interim rights will allow the connection to be implemented and the resource to participate in the capacity market until studies have been completed for earlier queued resources and all related obligations have been defined. At such time, the interim rights awarded the smaller capacity addition will become dependent on the construction of any required transmission facilities and the satisfaction of any financial obligations for those facilities. If, once those obligations are defined, the smaller capacity addition desires to retain the interim Capacity Interconnection Rights, a new Small Resource Interconnection Agreement will be executed.

Small Resource Interconnection Agreement Between [TRANSMISSION OWNER] and

_____

[Small Generator]

Interconnection Service Agreement Between [Transmission Owner] and

_____

[Interconnection Customer]

1.0 This Small Resource Interconnection Agreement (''SRIA''), dated as of [DATE], including the Specifications attached hereto and incorporated herein, is entered into by and between. _____ L.C. (''Transmission Owner'') and [_____] (''Interconnection Customer''), who proposes to interconnect a generating unit over 2 MW up to and including 20 Megawatts to Transmission Owner's system.

2.0 Attached are Specifications for each generating unit that Interconnection Customer proposes to interconnect to Transmission Owner's Transmission System. Interconnection Customer represents and warrants that, upon completion of the construction of its facilities, it will own or control the generating facilities identified in section 1.0 of the Specifications attached hereto and made a part hereof. In the event that Interconnection Customer will not own the generating facilities, Interconnection Customer represents and warrants that it is authorized by the owners of such generating facilities to enter into this SRIA and to represent such control.

3.0 Interconnection Customer has requested an Small Resource Interconnection Agreement under the Transmission Owner's Open Access Transmission Tariff (''Tariff''), and Transmission Owner has determined that Interconnection Customer is eligible under the Tariff to obtain this SRIA.

4.0 In accord with Section _____ of the Tariff, Interconnection Customer, on or before the effective date of this SRIA, shall provide Transmission Owner with a letter of credit from an agreed provider or other form of security reasonably acceptable to Transmission Owner in the amount of $[_____] naming Transmission Owner [and Regional Transmission Organization, if applicable] (''the RTO'') as beneficiaries. Should Interconnection Customer fail to provide security in the amount or form required in the first sentence of this section within thirty days of the date of this agreement, this SRIA shall be terminated. Interconnection Customer acknowledges that it will be responsible for the actual costs of the facilities described in the Specifications, whether greater or lesser than the amount of the payment security provided under this section.

5.0 This SRIA shall be effective on [DATE], and shall terminate on such date as mutually agreed upon by the parties, unless earlier terminated in accordance with the Tariff.

6.0 In addition to the milestones stated in Section _____ of the Tariff, during the term of this SRIA, Interconnection Customer shall ensure that its generation project meets each of the following development milestones:

a.

b.

c.

d.

Interconnection Customer shall demonstrate the occurrence of each of the foregoing milestones to Transmission Owner's reasonable satisfaction. Transmission Owner may reasonably extend any such milestone dates, in the event of delays that Interconnection Customer (I) did not cause and (ii) could not have remedied through the exercise of due diligence.

7.0 Transmission Owner agrees to provide for the interconnection to the Transmission System in the Transmission Owner Control Area of Interconnection Customer's generation facilities identified in the Specifications in accordance with Part____of the Tariff, and this SRIA, as they may be amended from time to time. Subject to Transmission Owner obtaining regulatory approval of appropriate provisions of the Tariff, interconnection of Interconnection Customer's generation facilities to the Transmission System under this SRIA may be subject to subsequent execution by the Interconnection Customer of an agreement or agreements with affected RTO(s) or Transmission Owner to establish terms governing matters, such as (but not limited to) construction of facilities, maintenance standards, parallel operation of generating facilities, insurance requirements, indemnification and liabilities, that, in accordance with state laws and good utility practice [as such term is defined in the [Operating Agreement or Tariff]], are ordinarily included in agreements between parties that are physically interconnecting their electric facilities.

8.0 Interconnection Customer agrees to abide by all rules and procedures pertaining to generation in the Transmission Owner Control Area, including but not limited to the rules and procedures concerning the dispatch of generation set forth in the Operating Agreement and the Tariff.

9.0 In analyzing and preparing the Facilities Study, and in designing and constructing the Attachment Facilities, Local Upgrades and/or Transmission Upgrades described in the Specifications attached to this SRIA, Transmission Owner, the RTO(s), and any other subcontractors employed by Transmission Owner have had to, and shall have to, rely on information provided by Interconnection Customer and possibly by third parties and may not have control over the accuracy of such information. Accordingly, neither Transmission Owner, the RTO(s), nor any other subcontractors employed by Transmission Owner makes any warranties, express or implied, whether arising by operation of law, course of performance or dealing, custom, usage in the trade or profession, or otherwise, including without limitation implied warranties of merchantability and fitness for a particular purpose, with regard to the accuracy, content, or conclusions of the Facilities Study or of the attachment facilities, the local upgrades and/or the transmission upgrades; provided, however, that Transmission Owner warrants that the transmission facilities described in the Specifications will be designed, constructed and operated in accordance with good utility practice. Interconnection Customer acknowledges that it has not relied on any representations or warranties not specifically set forth herein and that no such representations or warranties have formed the basis of its bargain hereunder.

10.0 a. Interconnection Customer shall be responsible for and shall pay upon demand all actual and reasonable costs associated with the interconnection of the generation facilities as specified in the Tariff. These costs may include, but are not limited to, an Attachment Facilities Charge, a Local Upgrades Charge, a Network Upgrades Charge and an Other Supporting Facilities Charge, as documented to be necessary and appropriate by a Facilities Study conducted in accordance with the Tariff. A description of the facilities required and an estimate of the cost of these facilities are included in Section 3.0 the Specifications to this SRIA.

b. The RTO shall provide Transmission Owner a monthly statement of the RTO's prior month's expenditures for the design, engineering and construction of, and/or for other charges related to, the facilities contemplated by this SRIA. Transmission Owner shall bill Interconnection Customer, on behalf of the RTO, for the RTO's expenditures each month. Interconnection Customer shall pay each bill within 15 days after receipt thereof. Upon receipt of each of Interconnection Customer's payments of such bills, Transmission Owner shall reimburse the RTO.

c. Within 45 days after the RTO completes construction and installation of the transmission facilities described in the Specifications, Transmission Owner shall provide Interconnection Customer with an accounting of, and the appropriate party shall make any payment to the other that is necessary to resolve, any difference between (1) Interconnection Customer's responsibility under this SRIA and the Tariff for the actual cost of such facilities, and (2) Interconnection Customer's previous aggregate payments to Transmission Owner and the RTO for such facilities. Notwithstanding the foregoing, however, Transmission Owner shall not be obligated to make any payment that the preceding sentence requires it to make unless and until the RTO has returned to it the portion of Interconnection Customer's previous payments that Transmission Owner owes under that sentence.

11.0 No third party beneficiary rights are created under this SRIA; provided, however, that payment obligations imposed on Interconnection Customer hereunder are agreed and acknowledged to be for the benefit of the RTO actually performing the services associated with the interconnection of the generating facilities and any associated upgrades of other facilities. Interconnection Customer expressly agrees that the company(ies) responsible for such upgrades shall be entitled to take such legal recourse as that entity deems appropriate against Interconnection Customer for the payment of any charges for the upgrades authorized under this SRIA or the Tariff for which Interconnection Customer fails, in whole or in part, to pay as provided in this SRIA, the Tariff and/or the Operating Agreement.

12.0 No waiver by either party of one or more defaults by the other in performance of

any of the provisions of this SRIA shall operate or be construed as a waiver of any other or further default or defaults, whether of a like or different character.

13.0 This SRIA or any part thereof, may not be amended, modified, assigned, or waived other than by a writing signed by all parties hereto.

14.0 This SRIA shall be binding upon the parties hereto, their heirs, executors, administrators, successors, and assigns.

1.15 This SRIA shall not be construed as an application for service under any part of the Tariff.

16.0 In the event of a dispute arising between the parties under this SRIA, the dispute shall be submitted for informal resolution assistance to the RTO or ISO, if applicable, and other wise to the Federal Energy Regulatory Commission under the Alternative Dispute Resolution procedures conducted by the staff. If the dispute cannot be settled by such informal means, it shall be submitted for binding arbitration under the rules of the American Arbitration Association.

17.0 Any notice or request made to or by either party regarding this SRIA shall be made to the representative of the other party as indicated below.

Transmission Owner

TRANSMISSION OWNER

[CONTACT NAME/ADDRESS]

Interconnection Customer

SMALL GENERATOR

[CONTACT NAME/ADDRESS]

18.0 All portions of the Tariff and the Operating Agreement pertinent to the subject of this SRIA are incorporated herein and made a part hereof.

19.0 This SRIA is entered into pursuant to Part____of the Tariff.

20.0 Neither party shall be liable for consequential, incidental, special, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or contract, under any indemnity provision or otherwise with respect to any claim, controversy or dispute arising under this SRIA.

In witness whereof, Transmission Owner and Interconnection Customer have caused this SRIA to be executed by their respective authorized officials.

Transmission Owner

By:_____Name
Title _____
Date _____

Interconnection Customer

By:_____Name
Title _____
Date _____

Specifications for Interconnection Service Agreement Between TRANSMISSION OWNER and_____

1.0 Description of generating units to be interconnected with the Transmission System in the TRANSMISSION OWNER Control Area:

a. Name of generating units.
b. Location of generating unit site.
c. Size in megawatts of generating units.
d. Description of the equipment configuration.

2.0 Capacity Interconnection Rights:

Pursuant to Section____of____of the Operating Agreement, Interconnection Customer shall have Capacity Interconnection Rights at the location specified in Section 1.0a above in the amount___of megawatts.

3.0 Facilities to be constructed by the RTO:_____

4.0 Interconnection Customer shall be subject to the charges detailed below:_____

4.1 Attachment Facilities Charge:_____
4.2 Local Upgrades Charge:_____
4.3 Network Upgrades Charge:_____
4.4 Guaranty amount required:_____
4.5 Guaranty Reduction Schedule:_____

[FR Doc. 02–21613 Filed 8–23–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 265–0363b; FRL–7266–6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) for the Santa Barbara County Air Pollution Control District (SBCAPCD). The revisions consist of negative declarations for four volatile organic compound source categories. The intended effect of this action is to bring the SBCAPCD portion of the California SIP up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is proposing the approval of these negative declarations for the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas. EPA is approving these revisions in accordance with the requirements of the CAA.

DATES: Any comments on this proposal must arrive by September 25, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117–3027.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 947–4126. E-mail: *Rose.julie@EPA.gov.*

SUPPLEMENTARY INFORMATION: The negative declarations being approved for the Santa Barbara County Air Pollution Control District (SBCAPCD) portion of the California SIP are listed in the following Table:

SUBMITTED NEGATIVE DECLARATIONS

Local agency	Title	Adopted	Submitted
SBCAPCD	Synthetic Organic Chemical Manufacturing Industry (SOCMI) Batch Processing, Reactors, and Distillation.	02–21–02	04–09–02
	Wood Furniture Manufacturing Operations	02–21–02	04–09–02

In the final rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments.

A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA

receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

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

Dated: August 6, 2002.

Wayne Nastri,

Regional Administrator, , Region IX.

[FR Doc. 02–21557 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 100–0056b; FRL–7266–4]

Approval and Promulgation of State Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Arizona State Implementation Plan (SIP) for the Maricopa County Environmental Services Department (MCESD). The revisions consist of negative declarations for twelve volatile organic compound source categories for the MCESD. The intended effect of this action is to bring the MCESD portion of the Arizona SIP up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is proposing the approval of these negative declarations for the MCESD portion of the Arizona SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas. EPA is approving these revisions in accordance with the requirements of the CAA.

DATES: Comments must arrive by September 25, 2002.

ADDRESSES: Mail comments to: Andy Steckel, Chief, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations: Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012. Maricopa County Environmental Services Department, 1001 North Central, No. 595, Phoenix, Arizona 85004.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 947–4126. e-mail: *Rose.julie@EPA.gov.*

SUPPLEMENTARY INFORMATION: The negative declarations being approved for the Maricopa County Environmental Services Department (MCESD) portion of the Arizona SIP are listed in the following Table:

SUBMITTED NEGATIVE DECLARATIONS

Local agency	Title	Adopted	Submitted
MCESD	Refinery Sources	04–26–00	12–14–00
	Automobile and Light Duty Trucks		
	Magnet Wire		
	Flatwood Paneling		
	Synthesized Pharmaceutical Products		
	Rubber Tire Manufacturing		
	Polymer Manufacturing		
	SOCMI		
	Batch Processes		
	Industrial Wastewater		
	Ship Building Repair		
	SOCMI Reactor/Distillation		

In the final rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments.

A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

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

Dated: August 6, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–21559 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Ch. I

[USCG–1998–3473]

RIN 2115–AF61

Emergency Response Plans for Passenger Vessels

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing and terminating its advance notice of proposed rulemaking concerning emergency response plans (ERPs) for U.S.-flag inspected passenger

vessels operating in domestic service. It is doing this to concentrate its resources on homeland security. It expects that there will be no public disagreement with its position since there was no significant public support for this rulemaking during the comment period.

DATES: The advance notice of proposed rulemaking is withdrawn and terminated on August 26, 2002.

FOR FURTHER INFORMATION CONTACT: CDR Linda Fagan, Office of Compliance (G–MOC), U.S. Coast Guard Headquarters, telephone 202–267–2978.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 1998, we published an advance notice of proposed rulemaking entitled ''Emergency Response Plans for Passenger Vessels'' in the **Federal Register** (63 FR 9916). The rulemaking concerned the development of plans for passenger vessels to respond to emergencies, such as collisions, allisions, groundings, and fires.

Withdrawal and Termination

After the terrorist attacks on the United States in September, 2001, the Coast Guard has re-evaluated all of its active rulemakings to concentrate its resources on homeland security.

The Coast Guard would like to graciously acknowledge and extend a thank you with regards to the comments received from the public during the ANPRM phase of the rulemaking. All comments are available for public review at the Web site of the Document Management System (DMS) *http://dms.dot.gov/* by referring to the docket number [USCG–1998–3473]. There were a total of fifteen comments received, two of which obliquely supported the rulemaking. The supporting comments claimed that existing regulations and guidance from the Coast Guard adequately address ERPs. They go on to say that any rules or regulations must be extremely flexible and contain as few mandates as possible so all ERPs are specific to routes and vessels and allow for the development and implementation of safe and cost-effective plans. The Coast Guard's response to these recommendations is that there will almost certainly be a significant amount of new security mandates contained in the rules just now being proposed. These mandates would govern certain elements of emergency-response planning so as to entail new equipment or measures that would result in enhanced vessel security. Therefore, the withdrawal and termination of this rulemaking is justified—all the more, given the two supporting comments. These, summarized below, clearly indicate how marginal the support is for this rulemaking.

First Supporting Comment: ''[E]xisting regulations and guidance from the Coast Guard adequately address emergency response plans.'' If there is a rulemaking, it ''should be flexible based on the type and size of vessel, passenger capacity, shore-based management structure, availability of resources and facilities * * * for search and rescue, routes, traffic[,] and operating conditions. * * * [A]ny rules or regulations must be extremely flexible and contain as few mandates as possible so all emergency response plans are route and vessel specific and allow for the development and implementation of safe and cost effective plans.'' Mandated full-scale emergency exercises for moored vessels would obstruct operations, causing significant loss of revenues. Classroom training and simulated drills provide excellent tools at minimal costs.

Second Supporting Comment: ''The proposed requirements, particularly for vessels not subject to OPA 90 or the ISM Code, do make sense. Compliance should be mandatory for all vessels certified to carry 100 or fewer passengers, dependent on geographical operational area, and even for moored, '''nostalgic' '' casino-boats. One big problem is lack of training for non-maritime ''crew'': wait staff (waitresses and waiters, bartenders, and the like), cooks, and others in the steward's department. These ''crew'' members have the most contact with the public and will be depended on in an emergency, yet they have the least knowledge and training.

The thirteen negative comments received from the public are likely to be similar in nature and tone to what can be reasonably projected for the new security regulations, but the ratio of positive comments to negative should be higher given the National impetus to focus on security. The negative comments generally stated that the target population, high-consequence—low-probability vessels, does not need added regulation and that the very term ''low probability'' argues against further regulatory action. The comments mentioned that if there is no problem, or is no projection of a future problem, then no regulatory action is required. The likely rulemakings on the security of vessels should address practices respecting high-consequence—low-probability vessels, the precise population that ERP proposed to address.

Dated: August 18, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–21688 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. MARAD–2002–12842]

General Approval of Time Charters

AGENCY: Maritime Administration (MARAD), DOT.

ACTION: Policy review with request for comments; extension of comment period.

SUMMARY: On August 2, 2002, MARAD (we, us, or our) published a Policy Review with Request for Comments soliciting public comment on whether the policy of granting general approval of time charters should be changed (67 FR 50406). We are extending the public comment period from Setpember 3, 2002, to October 3, 2002.

DATES: Interested parties are requested to submit comments on or before October 3, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12842. Written comments may be submitted by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Edmund T. Sommer, Jr., Chief, Division of General and International Law, Office of the Chief Counsel, Maritime Administration, Department of Transportation, Room 7228, 400 7th Street SW, Washington, DC 20590, telephone (202) 366–5181.

Dated: August 20, 2002.

By Order of the Maritime Administrator.

Christine S. Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 02–21632 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67; DA 02–1826]

Request for Comment on Clarification of Procedures for Emergency Calls at Telecommunications Relay Services (TRS) Centers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for comments.

SUMMARY: This document seeks public comment on the proposed clarification of the Commission's rules in part 64 regarding procedures for routing emergency calls by telecommunications relay services (TRS) centers. In March 2000, the Commission discussed routing emergency TRS calls to the most appropriate Public Safety Answering Point (PSAP). However, the minimum mandatory standards provide for the routing of emergency TRS calls to the nearest PSAP. The Commission seeks comments regarding a proposal that TRS providers use a system for emergency calls that would automatically and immediately transfer a caller to the most appropriate PSAP.

DATES: Interested parties may file comments in this proceeding no later than August 29, 2002. Reply comments may be filed no later than September 13, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica Myers, Federal Communications Commission, Consumer & Governmental Affairs Bureau, Disability Rights Office (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *emyers@fcc.gov.*

SUPPLEMENTARY INFORMATION: When filing comments, please reference CC Docket 98–67. Interested parties may file comments in this proceeding no later than August 29, 2002. Reply comments may be filed no later than September 13, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–A325 Washington, DC 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Erica Myers, Federal Communications Commission, 445 12th Street, SW, Room 5–C212, Washington DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b). Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or e-mail at *bmillin@fcc.gov.* This *document* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro.*

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 02–21301 Filed 8–23–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI61

Endangered and Threatened Wildlife and Plants; Listing the Sonoma County Distinct Population Segment of the California Tiger Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period and notice of public hearing.

SUMMARY: We, the Fish and Wildlife Service (Service), provide notice that we are holding a public hearing for the proposed rule to list the Sonoma County Distinct Population Segment of the California tiger salamander (*Ambystoma californiense*) as endangered under the authority of the Endangered Species Act of 1973, as amended. We are also giving notice that the comment period for the proposed rule for this species is being extended to hold the public hearing and to allow all interested parties to submit written comments on the proposal. Comments previously submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: We will hold a public hearing from 1 to 3 p.m. and from 6 to 8 p.m. in Santa Rosa, CA, on October 1, 2002. The comment period, which originally closed on September 20, 2002, will now close on October 21, 2002, at 5 p.m.

ADDRESSES: The public hearing will be held at the Courtyard by Marriott, 175 Railroad Street, Santa Rosa, CA. Comments and materials concerning this proposal should be sent to Wayne S. White, Field Supervisor, ATTN: CTS, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way Room W–2605, Sacramento, CA 95825. Written comments may also be sent by facsimile to 916/414–6713 or through the internet to *fw1sccaliforniatiger@r1.fws.gov.* You may also hand-deliver written comments to our Sacramento Fish and Wildlife Office, at the above address. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours, at the above address. You may obtain copies of the proposed rule from the above address, by calling 916/414–6600, or from our Web site at *http://sacramento.fws.gov.*

FOR FURTHER INFORMATION CONTACT: David Wooten, Amy LaVoie, or Chris Nagano, Sacramento Fish and Wildlife Office, 2800 Cottage Way Room W–2605, Sacramento, CA 95825 (telephone 916/414–6600, facsimile 916/414–6713 or visit our Web site at *http://sacramento.fws.gov/).* Information regarding this proposal is available in alternative formats upon request.

SUPPLEMENTARY INFORMATION:

Background

This Distinct Population Segment of the California tiger salamander is restricted to a portion of the Santa Rosa Plain in Sonoma County, CA, extending from approximately Santa Rosa south to the Cotati area. The factors imperiling this animal in Sonoma County include habitat destruction, degradation, and fragmentation, collection, invasive exotic species, and inadequate regulatory mechanisms. This Distinct Population Segment also is vulnerable to chance environmental or demographic events, to which small populations are particularly vulnerable.

Pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), we published an emergency rule to list the Sonoma County Distinct Population Segment of the California tiger salamander as endangered on July 22, 2002 (67 FR 47726). The emergency rule provides immediate Federal protection to this Distinct Population Segment for a period of 240 days. This immediate Federal protection expires on March 19, 2003. We also published a proposed rule on July 22, 2002, to list the Sonoma County Distinct Population Segment of the California tiger salamander as endangered under our normal listing procedures (67 FR 47758).

For further information regarding background biological information, previous Federal actions, factors affecting the subspecies, and conservation measures available to the Sonoma County Distinct Population Segment of the California tiger salamander, please refer to our emergency and proposed rules published in the **Federal Register** on July 22, 2002.

The original comment period was due to close on September 20, 2002. In order to accommodate the hearing, we are extending the comment period. Written comments may now be submitted until October 21, 2002, at 5 p.m.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to us. Legal notices announcing the date, time, and location of the public hearing will be published in newspapers concurrently with this **Federal Register** notice.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date.

Public Comments Solicited

We solicit additional information and comments that may assist us in making a final decision on the proposed rule to list the Sonoma County Distinct Population Segment of the California tiger salamander as endangered. We intend that any final listing action resulting from our proposal will be as accurate and effective as possible. Therefore, we request comments and additional information from the general public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Sonoma County Distinct Population Segment of the California tiger salamander;

(2) The location of any additional breeding sites of this Distinct Population Segment, and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, biology, ecology, or population size of this Distinct Population Segment, and

(4) Current or planned activities or land use practices in the subject area and their possible impacts on this species in Sonoma County.

Previously submitted written comments on this proposal need not be resubmitted. If you submit comments by e-mail, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: CTS'' and your name and return address in your e-mail message. If you do not receive a confirmation from our system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number 916/414–6600. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary author of this notice is Chris Nagano, Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

Dated: August 13, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–21628 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH94

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Blackburn's Sphinx Moth

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period, and public hearing announcement.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice of a public hearing on the proposed critical habitat designation for Blackburn's sphinx moth. In addition, the comment period which originally closed on August 12, 2002, has been extended. The new comment period and hearing will allow all interested parties to submit oral or written comments on the proposal. We are seeking comments or suggestions from the public, other concerned agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: The comment period for this proposal now closes on December 30, 2002. Any comments received by the closing date will be considered in the final decision on this proposal. The public hearing will be held from 5:30 p.m. to 8:30 p.m. on Thursday, September 12, 2002, on the island of Maui, Hawaii. Prior to the public hearing, the Service will be available from 3:30 to 4:30 p.m. to provide information and to answer questions. The Service will also be available for questions after the hearing.

ADDRESSES: The public hearing will be held at the Maui Arts and Cultural Center Meeting Room, One Cameron Way, Kahului, Maui, Hawaii. Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, P.O. Box 50088, Honolulu, HI 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, at the above address, (telephone 808/541–3441, facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION: The public hearing for the proposed rule to designate critical habitat for Blackburn's sphinx moth announced in this **Federal Register** notice and the public hearing for the proposed designation of critical habitat for 61 plants from the islands of Maui and Kahoolawe announced in a separate **Federal Register** notice are scheduled for the same date, time, and location on Maui as a matter of convenience to the public. We will accept comments at this public hearing on the proposed designation of critical habitat for Blackburn's sphinx moth, as well as the proposed designation of critical habitat for 61 plants from the islands of Maui and Kahoolawe.

Background

On June 13, 2002, we published a proposed critical habitat rule for the Blackburn's sphinx moth listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et. seq.*), known historically from the islands of Hawaii, Kauai, Maui, Molokai, and Oahu, and known currently from the islands of Hawaii, Kahoolawe, and Maui (67 FR 40633). The original comment period closed on August 12, 2002. The comment period now closes on December 30, 2002. Written comments should be submitted to us (*see* **ADDRESSES** section).

A final listing rule, listing the Blackburn's sphinx moth as endangered, was published in the **Federal Register** on February 1, 2000 (65 FR 4770). In that final rule, we determined that critical habitat designation for the moth would be prudent, and we also indicated that we were not able to develop a proposed critical habitat designation for the species at that time due to budgetary and workload constraints.

On June 2, 2000, we were ordered by the U.S. District Court for the District of Hawaii (in *Center for Biological Diversity* v. *Babbitt and Clark,* Civ. No. 99–00603 (D. Haw.)) to publish the final critical habitat designation for Blackburn's sphinx moth by February 1, 2002. This was extended on October 2, 2001 to August 10, 2002. The plaintiffs and the Service have agreed on an extension. On August 21, 2002, the parties to the litigation anticipate filing a joint stipulation that, if approved would extend the final critical habitat deadline for this species to May 30, 2003. It would also extend another deadline and require other actions. This notice is being issued in anticipation of the court's approval. Should the court disapprove the stipulation, we may have to issue a further notice modifying the schedule and process for completing the final critical habitat determinations for these species. This proposed rule is in response to these requirements. Within eight separate units, a total of approximately 40,240 hectares (99,433 acres) on the Hawaiian Islands of Maui, Hawaii, Molokai, and Kahoolawe are proposed for designation as critical habitat for Blackburn's sphinx moth. For locations of these proposed units, please consult the proposed rule (67 FR 40633).

Section 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to requests from various parties, we will hold a public hearing on the date and at the address described in the **DATES** and **ADDRESSES** sections above. An additional **Federal Register** notice will be published when a public hearing can be scheduled for the Island of Hawaii.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to us. Legal notices announcing the date, time, and location of the public hearing will be published in newspapers concurrently with the **Federal Register** notice.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date.

Information regarding this proposal is available in alternative formats upon request.

Comments from the public regarding this proposed rule are sought, especially regarding:

(1) The reasons why any particular area should or should not be designated as critical habitat for the Blackburn's

sphinx moth, as critical habitat is defined by section 3 of the Act;

(2) Specific information on the amount, distribution, and quality of habitat for the species, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas, and their possible impacts on proposed critical habitat;

(4) Any economic or other impacts resulting from the proposed designation of critical habitat, including any impacts on small entities, energy development, low-income households, and local governments;

(5) Economic and other potential values associated with designating critical habitat for the Blackburn's sphinx moth such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, ''existence values''); and

(6) Information for use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

Extension of the comment period will enable us to respond to the request for a public hearing on the proposed action. The comment period on this proposal now closes on December 30, 2002. Written comments should be submitted to the Service office listed in the **ADDRESSES** section.

Author

The primary author of this notice is Mike Richardson (*see* **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 16, 2002.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–21702 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH70

Endangered and Threatened Wildlife and Plants; Designations of Critical Habitat for Plant Species From the Islands of Maui and Kahoolawe, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, and public hearing announcement.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice of a public hearing on the proposed critical habitat designations for 61 plants from the islands of Maui and Kahoolawe, Hawaii. In addition, the comment period which originally closed on June 3, 2002, will be reopened. The new comment period and hearing will allow all interested parties to submit oral or written comments on the proposal. We are seeking comments or suggestions from the public, other concerned agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: The comment period for this proposal now closes on September 30, 2002. Any comments received by the closing date will be considered in the final decision on this proposal. The public hearing will be held from 5:30 p.m. to 8:30 p.m. on Thursday September 12, 2002, on the island of Maui, Hawaii. Prior to the public hearing, the Service will be available from 3:30 to 4:30 p.m. to provide information and to answer questions. The Service will also be available for questions after the hearing.

ADDRESSES: The public hearing will be held at the Maui Arts and Cultural Center Meeting Room, One Cameron Way, Kahului, Maui, Hawaii. Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, PO Box 50088, Honolulu, HI 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, at the above address, (telephone 808/541–3441, facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION: The public hearing for the proposed critical habitat designations for 61 plants from the islands of Maui and Kahoolawe announced in this **Federal Register** notice and the public hearing for the proposal to designate critical habitat for Blackburn's sphinx moth announced in a separate **Federal Register** notice are scheduled for the same date, time, and location on Maui as a matter of convenience to the public. We will accept comments at this public hearing on the proposed critical habitat designations for 61 plants from the islands of Maui and Kahoolawe, as well as the proposal to designate critical habitat for Blackburn's sphinx moth.

Background

On April 3, 2002, we published a revised proposed critical habitat rule for 61 of the 70 plant species listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), known historically from the islands of Maui and Kahoolawe (67 FR 15856). The original comment period closed on June 3, 2002. The comment period now closes on September 30, 2002. Written comments should be submitted to us (see **ADDRESSES** section).

A total of 70 species historically found on Maui and Kahoolawe were listed as endangered or threatened species under the Act between 1991 and 1999. Some of these species may also occur on other Hawaiian islands. Previously, we proposed that designation of critical habitat was prudent for 57 (*Adenophorus periens, Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Colubrina oppositifolia, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Delissea undulata, Diellia erecta, Diplazium molokaiense, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Schiedea nuttallii, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) of the 70 species reported from the islands of Maui and Kahoolawe. No change is made to the 57 proposed prudency determinations in the April 3, 2002, revised proposed

critical habitat rule for plants from Maui and Kahoolawe. We previously proposed that designation of critical habitat was not prudent for *Acaena exigua* because it had not been seen recently in the wild, and no viable genetic material of this species is known to exist (65 FR 79192). No change is made to this proposed prudency determination in the April 3, 2002, revised proposed critical habitat rule (67 FR 15856). In the April 3, 2002, revised proposed critical habitat rule, we proposed that designation of critical habitat is prudent for six other species (*Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium*) for which prudency determinations have not been made previously. We determined that designation of critical habitat was prudent for *Clermontia samuelii, Cyanea copelandii* ssp. *halekalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis,* and *Kanaloa kahoolawensis* at the time of their listing in 1999.

We also propose designation of critical habitat for 61 (*Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Delissea undulata, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Schiedea nuttallii, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) plant species. Critical habitat is not proposed for 9 (*Aceana exigua, Adenophorus periens, Clermontia peleana, Delissea undulata, Phyllostegia parviflora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum,* and *Tetramolopium arenarium*) of the 70 species which no longer occur on the islands of Maui and Kahoolawe, and for which we are unable to identify any habitat that is essential to their conservation on the islands of Maui or Kahoolawe. Thirteen critical habitat units, totaling approximately 51,208 hectares (126,531 acres), are proposed for designation on the islands of Maui and Kahoolawe. For locations of these proposed units, please consult the proposed rule (67 FR 15856) (April 3, 2002).

Section 4(b)(5)(E) of the Act, requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to a request from a government agency of the State of Hawaii, we will hold a public hearing on the date and at the address described in the **DATES** and **ADDRESSES** sections above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to us. Legal notices announcing the date, time, and location of the public hearing will be published in newspapers concurrently with the **Federal Register** notice.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date.

Information regarding this proposal is available in alternative formats upon request.

Comments from the public regarding this proposed rule are sought, especially regarding:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1);

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act;

(3) Specific information on the amount, distribution, and quality of habitat for the 61 species, and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas, and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities, energy development, low income households, and local governments;

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, ''existence values'', and reductions in administrative costs); and

(7) Information for use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

Reopening of the comment period will enable us to respond to the request for a public hearing on the proposed action. The comment period on this proposal now closes on September 30, 2002. Written comments should be submitted to the Service office listed in the **ADDRESSES** section.

Author

The primary author of this notice is Michelle Mansker (*see* **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 14, 2002.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–21703 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG71, 1018–AH70, 1018–AH08, 1018–AH09, 1018–AH02, and 1018–AI24

Endangered and Threatened Wildlife and Plants; Designations and Non-designations of Critical Habitat for Plant Species From the Islands of Kauai, Niihau, Maui, Kahoolawe, Molokai, Northwestern Hawaiian Islands, HI, and Oahu, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rules; reopening of comment periods, extension of comment period, availability of draft economic analyses.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice of the reopening of the comment periods for the proposed designations and non-designations of critical habitat for plant species on the islands of Kauai, Niihau, Molokai, Maui, Kahoolawe, Northwestern Hawaiian Islands, Hawaii, and Oahu. The new comment periods will allow all interested parties to submit written comments on these proposals simultaneously. We are seeking comments or suggestions from the public, other concerned agencies, the scientific community, industry, or any other interested parties concerning the proposed critical habitat designations. Comments already submitted on the proposed critical habitat designations and associated draft economic analyses need not be resubmitted as they will be fully considered in the final determinations.

DATES: The comment periods for the proposed designations and non-designations of critical habitat for plant species on the islands of Kauai, Niihau, Molokai, Maui, Kahoolawe, Northwestern Hawaiian Islands, Hawaii, and Oahu now close on September 30, 2002. Any comments received by the closing date will be considered in the final decisions on these proposals.

ADDRESSES: Comments and materials concerning these proposals should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, P.O. Box 50088, Honolulu, HI 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, at the above address, phone 808/541–3441, facsimile 808/541–3470.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 2002, April 3, 2002, April 5, 2002, and May 14, 2002, the Service published revised proposed critical habitat designations and non-designations for plant species listed under the Endangered Species Act of 1973, as amended (Act), known historically from the islands of Kauai and Niihau, Maui and Kahoolawe, Molokai, and the Northwestern Hawaiian Islands respectively (67 FR 3940, 67 FR 15856, 67 FR 16492, and 67 FR 34522). The original comment periods closed on March 29, 2002, June 3, 2002, June 4, 2002, and July 15, 2002, respectively. The comment periods for the proposed critical habitat designations and non-designations for plant species known historically from Kauai and Niihau, Maui and Kahoolawe, Molokai, and the Northwestern Hawaiian Islands now close on September 30, 2002.

On July 15, 2002 (67 FR 46450), the Service reopened the comment period and announced the public hearing on the proposed critical habitat designation and non-designation for plant species known historically from Lanai. The public hearing was held on August 1, 2002, at the Lanai Public Library Meeting Room, Fraser Avenue, Lanai City, Lanai. The comment period for the proposed critical habitat designation and non-designation for plant species known historically from Lanai closes on August 30, 2002.

The Service published proposed critical habitat designations and non-designations for plant species listed under the Act, known historically from the islands of Hawaii and Oahu on May 28, 2002 (67 FR 36968 and 67 FR 37108). The original comment periods closed on July 29, 2002. The comment periods on these two proposals now close on September 30, 2002.

The proposed rules propose designation of critical habitat for 83 plant species from Kauai and Niihau; 61 plant species from Maui and Kahoolawe; 46 plant species from Molokai; 5 plant species from the Northwestern Hawaiian Islands; 47 plant species from the island of Hawaii; and, 99 species from Oahu. Some of these species are historically known from more than one island. Critical habitat was not proposed for seven species of loulu palm (*Pritchardia affinis, P. aylmer-robinsonii, P. kaalae, P. napaliensis, P. munroi, P. schattaueri,* and *P. viscosa*) because the designation of critical habitat would likely increase the threats from vandalism or collection of these species on the islands on which they occur. Critical habitat was not proposed for six species (*Acaena exigua, Cenchrus agrimonioides* var. *laysanensis, Cyanea copelandii* ssp. *copelandii, Cyrtandra crenata, Melicope quadrangularis,* and *Ochrosia kilaueaensis*) which had not been seen recently in the wild and for which no viable genetic material of these species was known to exist.

Comments from the public regarding these proposed rules are sought, especially regarding:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1);

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532 (5));

(3) Specific information on the amount, distribution, and quality of habitat for the species, and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities, energy development, low income households, and local governments;

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, ''existence values'', and reductions in administrative costs);

(7) The appropriate methodology for determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat under section 4(b)(2) of the Act;

(8) The effects of critical habitat designation on Department of Defense lands, and how it would affect military activities; whether there will be a significant impact on military readiness or national security if we designate critical habitat on Department of Defense lands; and whether these lands should be excluded from the designation under section 4(b)(2) of the Act;

(9) Whether Department of Defense lands should be excluded from critical habitat based on an approved Integrated

Natural Resource Management Plan (INRMP);

(10) Whether areas which are managed for the conservation of the species should not be included in critical habitat because such areas do not meet the definition of critical habitat contained in section 3(5)(A)(i) of the Act;

(11) Whether areas covered by an approved conservation plan (*e.g.*, Habitat Conservation Plans, Conservation Agreements, Safe Harbor Agreements) should be excluded from critical habitat and if so, by what mechanism; and

(12) Whether areas should be excluded under section 4(b)(2) of the Act because critical habitat designation will impact other types of existing or future conservation partnerships that are beneficial to the species.

In addition, we are seeking comments or suggestions on the associated draft economic analyses of the proposed critical habitat designations and non-designations for plant species from Kauai, Niihau, and Molokai. The draft economic analyses can be obtained from the Pacific Islands Office (see **ADDRESSES** section). We will solicit public review and comment on the associated draft economic analyses of the proposed critical habitat designations and non-designations for plant species from Maui and Kahoolawe, Northwestern Hawaiian Islands, Oahu, and the island of Hawaii in subsequent **Federal Register** notices.

Reopening of the comment periods simultaneously will provide the public an opportunity to evaluate and comment on all of the areas proposed as critical habitat for each species, particularly the species located on more than one island. The comment periods for the proposed critical habitat designations for plant species known historically from Kauai and Niihau, Maui and Kahoolawe, Molokai, Northwestern Hawaiian Islands, island of Hawaii, and Oahu now close on September 30, 2002. The comment period for the proposed critical habitat designation for plant species known historically from Lanai closes on August 30, 2002 (67 FR 46450). Written comments should be submitted to the Service office listed in the **ADDRESSES** section.

Author

The primary author of this notice is Christa Russell (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 15, 2002.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–21627 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600 and 679

[Docket No. 020801186–2186–01; I.D. 053102D]

RIN 0648–AQ09

Pacific Halibut Fisheries; Subsistence Fishing

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to authorize a subsistence fishery for Pacific halibut in waters off Alaska. These regulations are necessary to allow qualified persons to practice the long-term customary and traditional harvest of Pacific halibut for food in a non-commercial manner. This action is intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 (Halibut Act) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received at the following address not later than September 25, 2002.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel-Durall. Hand or courier deliveries of comments may be sent to NMFS, Alaska Region, 709 West 9th Street, Room 453, Juneau, AK 99801. Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attn: NOAA Desk Officer). Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the environmental assessment/regulatory impact review (EA/RIR) prepared for this action are available from NMFS at the above address or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7172 or jay.ginter@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

Management of the Pacific halibut (hereafter halibut) fishery in and off Alaska is based on an international agreement between Canada and the United States. This agreement, titled the ''Convention between United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea'' (Convention), was signed at Ottawa, Canada, on March 2, 1953, and amended by the ''Protocol Amending the Convention,'' signed at Washington, D.C., March 29, 1979. This Convention, administered by the International Pacific Halibut Commission (IPHC), is given effect in the United States by the Halibut Act. Generally, fishery management regulations governing the halibut fisheries are developed by the IPHC and recommended to the U.S. Secretary of State. When approved, these regulations are published by NMFS in the **Federal Register** as annual management measures. For 2002, the annual management measures were published March 20, 2002 (67 FR 12885).

The Halibut Act also provides for the North Pacific Fishery Management Council (Council) to develop halibut fishery regulations, including limited access regulations, in its geographic area of concern that would apply to nationals or vessels of the U.S. (Halibut Act, section 773(c)). Such an action by the Council is limited only to those regulations that are in addition to and not in conflict with IPHC regulations, and they must be approved and implemented by the U.S. Secretary of Commerce (Secretary). Any allocation of halibut fishing privileges must be fair and equitable and consistent with other applicable Federal law. This is the authority under which the Council acted in October 2000, to adopt a subsistence halibut policy.

The Council does not have a ''fishery management plan'' (FMP) for the halibut fishery. Hence, halibut fishery management regulations developed by the Council do not follow the FMP or FMP amendment procedures set out in the Magnuson-Stevens Act. Instead, a regulatory amendment process is followed. This process requires submission of the Council recommendation to the Secretary as a

proposed rule for publication in the **Federal Register** along with supporting analyses as required by other applicable law.

Subsistence fishing and hunting are well known in Alaska as customary and traditional practices of Alaska Natives and non-Natives, especially in rural areas with limited alternative food resources. As a means of survival long before the present time, subsistence harvesting is inextricably woven into the cultural fabric of Alaska Natives and the rural lifestyle. Current regulations that govern fishing for halibut in Convention waters off Alaska, however, do not recognize subsistence harvesting of halibut. The purpose of this action is to provide regulations that would authorize a subsistence fishery for halibut in Convention waters off Alaska. These regulations are designed to allow persons who have customarily and traditionally used halibut for food in the past to continue that practice. Formal recognition of the halibut subsistence fishery also is expected to improve information for stock assessment purposes through the collection of better data than are now available to estimate the subsistence harvest of halibut.

Beginning in 1996, the Council began to receive requests from various Alaska Native tribal organizations to recognize in regulations the established customary and traditional practices associated with the subsistence take of halibut. These organizations included the Central Council of Tlingit and Haida Indian Tribes of Alaska, the Coastal Villages Fishing Cooperative, and the Aleutian Pribilof Islands Association. These organizations requested formal subsistence regulations to resolve enforcement problems related to fishing practices for subsistence purposes.

In December 1996, the Council formed the Halibut Subsistence Committee (Committee), made up of seven members representing various Alaska Native tribes and chaired by a Council member. The Committee was tasked with developing recommendations for recognizing subsistence halibut fishing. The Committee met in January 1997 and provided its recommendations to the Council in February 1997. Based on those recommendations, the Council initiated development of an EA/RIR for a subsistence halibut fishery.

In April 1997, the Council approved a draft EA/RIR and in June 1997 took final action on one aspect of the subsistence halibut program. The provision recommended by the Council allowed persons participating in the Community Development Quota (CDQ) Program in IPHC Regulatory Area (Area) 4E to retain undersized halibut (less than 32 inches or 81.2 cm) for subsistence purposes. This recommendation was approved by the Secretary and implemented in 1998. The Council deferred action on all other aspects of the subsistence halibut program until the Alaska State Legislature considered changes to the Alaska State Constitution to make it consistent with U.S. Federal law relating to management of fish and game on Federal public lands in Alaska.

NMFS requested that the Council reschedule final action on a subsistence halibut management program after the Alaska State Legislature decided not to act by October 1999, as requested by Alaska's Congressional Delegation. In February 2000, the Council revised alternatives in the draft EA/RIR and scheduled initial review of the action in April 2000 and final action in June 2000.

The Council changed some of the alternatives at its April 2000 meeting. The Council decided to submit the revised alternatives to the Committee for review and delayed final action until October 2000. The Committee reviewed the revised alternatives in September 2000 and informed the Council that it believed that the alternatives considered in the EA/RIR were adequate. In October 2000, the Council took final action on its preferred alternative for the subsistence halibut program. Further information on alternatives considered and rejected can be found in the EA/RIR for this action (see **ADDRESSES**).

Specific Elements of the Halibut Subsistence Fishery

Definition Of Subsistence

As stated earlier, the main purpose of this action is to authorize a subsistence fishery for halibut in Convention waters off Alaska. Generally, subsistence means the act of maintaining life. Therefore, subsistence could refer to the collection or use of edible and non-edible items for basic food, shelter, or clothing. In the context of this action, however, subsistence refers to the act of collecting wild foods, i.e., halibut, for sustenance and cultural tradition by rural residents of Alaska or by members of Alaska Native tribes (defined in Definition Of Eligibility, below). Therefore, as used throughout this action, ''subsistence halibut'' is proposed to mean ''halibut caught by a rural resident of Alaska or by a member of an Alaska Native tribe for direct personal or family consumption as food, sharing for personal or family consumption as food, or customary trade'' (see proposed definitions at § 300.61).

More specifically, the Council determined that subsistence halibut regulations were needed to authorize the long-term customary and traditional practices of fishing for halibut for food in a non-commercial manner for non-economic consumption by families. The Council then defined ''subsistence'' as ''non-commercial, long-term, customary and traditional use of halibut.'' This definition is broad enough to capture the concepts of sustenance and cultural tradition while it limits behavior through the use of the term ''non-commercial.'' Non-commercial fishing means that halibut caught in the subsistence fishery cannot be sold or otherwise marketed for commercial purposes. However, the Council recommended including a provision that authorizes the customary trade of subsistence halibut for non-commercial monetary (maximum annual limit of $400 per person) and non-monetary exchange. The specific details of customary trade of subsistence halibut are discussed below.

Definition Of Eligibility

The Council reviewed several options for eligibility. The Council considered various concerns, including the cultural, traditional, and material needs of Alaska Natives and non-Natives. Developing eligibility criteria for a subsistence halibut fishery was a difficult determination for the Council, and the Council reviewed several different methods to determine eligibility before recommending its preferred alternative. Among these methods were criteria established by the Federal Subsistence Board (FSB), the Alaska Board of Fisheries (ABF), and the Alaska National Interest Lands Conservation Act (ANILCA).

Eventually, the Council crafted its own criteria for eligibility to fit the specific needs of the halibut subsistence program using the State of Alaska criteria for determining rural areas in which a subsistence lifestyle may be practiced (see Alaska Statute 16.05.258(c)) and FSB criteria derived from ANILCA. Persons eligible to conduct subsistence halibut fishing under the Council's recommended criteria are: (1) residents of rural places with customary and traditional uses of halibut and (2) all identified members of federally recognized Alaska Native tribes with a finding of customary and traditional uses of halibut. Tables provided in § 300.65(f) of the proposed rule list rural places with customary and traditional uses of halibut and list federally recognized Alaska Native tribes with a finding of customary and traditional uses of halibut. A person

must be a resident of a rural place listed in the table at 50 CFR 300.65(f)(1) or an identified member of a federally recognized Alaska Native tribe in the table at 50 CFR 300.65(f)(2) to be eligible to harvest subsistence halibut. The Council developed these lists based on findings of customary and traditional uses of halibut by the ABF or the FSB. Residents or identified members who believe that their rural place or federally recognized Alaska Native tribe was inadvertently left out of the tables or who are seeking eligibility for the first time, are encouraged to petition the appropriate body for a customary and traditional uses designation before petitioning the Council for inclusion in the tables.

Authorized Areas For Subsistence Halibut Harvest

The Council also provided recommendations about where eligible persons would be able to harvest subsistence halibut. Generally, eligible persons could harvest subsistence halibut in all Convention waters in and off Alaska except for areas designated as non-subsistence areas. Four non-subsistence areas would be defined in regulations at 50 CFR 300.65(g)(3). These are: (1) the Ketchikan non-subsistence area, (2) the Juneau non-subsistence area, (3) the Valdez non-subsistence area, and (4) the Anchorage/Matsu/Kenai non-subsistence area.

However, an exception to that general rule would apply to an eligible person who is an Alaska Native tribal member, who resides in an urban area, and whose tribal headquarters is located in a rural area with a customary and traditional uses designation. Such a person could only harvest subsistence halibut in the IPHC regulatory area where his or her tribal headquarters is located. The appropriate IPHC regulatory area for each tribal headquarters is given in the table at 50 CFR 300.65(f)(2).

Legal Gear For Harvesting Subsistence Halibut

The Council recommended that legal gear for harvesting subsistence halibut be limited to set and hand-held gear of not more than 30 hooks, including longline, handline, rod and reel, spear, jig and hand-troll gear.

The Council's use of the term set gear refers to ''setline gear,'' which is defined at 50 CFR 300.61. ''Setline gear'' means one or more stationary, buoyed, and anchored lines with hooks attached. ''Longline gear,'' ''Handline gear,'' ''Jig gear,'' and ''Hand troll gear'' are defined at 50 CFR 679.2. ''Longline gear'' means hook-and-line, jig, troll, and handline or the taking of fish by means of such a device. ''Handline gear'' means a hand-held line, with one or more hooks attached, that may only be operated manually. ''Jig gear'' means a single, non-buoyed, non-anchored line with hooks attached, or the taking of fish by means of such a device. Hand troll gear means one or more lines, with lures or hooks attached, drawn through the water behind a moving vessel, and retrieved by hand or hand-cranked reels or gurdies and not by any electrically, hydraulically, or mechanically powered device or attachment.

''Rod and reel'' and ''spear'' are defined at 50 CFR 600.10. ''Rod and reel'' means a hand-held (including rod holder) fishing rod with a manually or electrically operated reel attached. ''Spear'' means a sharp, pointed, or barbed instrument on a shaft. Spears can be operated manually or shot from a gun or sling.

Current regulations at 50 CFR 600.725(v) allow only hook and line gear for harvesting Pacific halibut. This action proposes to revise 50 CFR 600.725(v) to allow the use of setline gear, longline gear, rod and reels, and spears to harvest subsistence halibut.

The Council recommended the use of setline gear, longline gear, rod and reels, and spears based on public testimony and recommendations from its Halibut Subsistence Working Group that such gears have been and are used to harvest subsistence halibut. The Council recommended a limit ''of not more than 30 hooks,'' after deliberations on sufficient gear to accommodate persons who subsistence fish as a proxy for others who depend on subsistence resources. The EA/RIR analyzed four possible limits: 2 hooks, 10 hooks, 30 hooks, and 60 hooks. The Council recommended a 30–hook limit because it determined that a 2–hook limit and a 10–hook limit would not provide proxy fishermen with sufficient gear to harvest subsistence halibut for an extended group or family, and 60 hooks would be too much gear for subsistence purposes and could lead to waste. The hook limit was considered together with daily bag limits, which the Council recommended should be 20 halibut per day (see Daily Bag Limit below). Allowing more than 30 hooks increases the chance that more halibut could be caught than allowed under the daily bag limit. For example, under a 30–hook limit, the ratio of halibut to hooks would have to exceed 67 percent to exceed the daily bag limit; however, under a 60–hook limit, the ratio of halibut to hooks would only have to be 33 percent.

Setline gear that is buoyed and used for subsistence fishing would be required to be marked with the name and address of the subsistence fisher(s) using the gear. This requirement is consistent with other state and Federal subsistence regulations and is designed to facilitate enforcement of hook limits and return lost gear to the person(s) whose name and address are marked on the buoy.

Customary Trade Of Subsistence Halibut

The Council recommended to allow limited customary trade of subsistence halibut. Customary trade means the non-commercial exchange of subsistence halibut for money or anything other than items of significant value. Customary trade for money would be limited to $400 annually. The Council was silent on whether the $400 annual limit should apply to each person who harvests subsistence halibut or some other unit, e.g., household. However, the relatively nominal level of this monetary limit indicates that the possibility that someone would choose to fish for subsistence halibut for profit is extremely remote. Therefore, this proposed rule would apply the $400 annual limit to each person who harvests subsistence halibut, which is the least restrictive interpretation of the Council's recommendation. The secondary sale of subsistence halibut by anyone other than the person who caught it would be prohibited.

During its deliberations on this issue, the Council suggested that subsistence halibut should be prohibited from the premises of commercial fish buying operations. Although the Council was very clear in its intent that customary trade of subsistence halibut should be allowed, the Council was also mindful of how easily subsistence halibut could be moved into the commercial sector. The Council intended to prevent the movement of subsistence halibut into the commercial sector by recommending that subsistence halibut be prohibited from the premises of commercial fish buying operations. The Council also recognized, however, that two existing practices should be allowed as exceptions to the general rule of no subsistence halibut on the premises of commercial fish buying operations. First, the existing practice of landing small halibut less than 32 inches (in) (81.2 centimeters (cm)) in length caught with CDQ halibut in Area 4E will be allowed to continue and expanded to Area 4D. In these areas, a person may retain halibut less than 32 in (81.2 cm) as subsistence halibut with commercial CDQ halibut provided that the total annual halibut catch of that person is landed at a port within Area 4E or Area

4D. This provision was implemented in 2002 by the IPHC in section 7 of its regulations published as the annual management measures for the Pacific halibut fishery on March 20, 2002 (67 FR 12885).

Second, a commercial fish buyer who is eligible to harvest subsistence halibut would be allowed to participate in the customary trade of subsistence halibut. NMFS recognizes that implementation of this prohibition may affect current practices, such as use of commercial premises to process subsistence products. Therefore, NMFS especially requests comments on how best to give effect to the Council's intent to prevent movement of subsistence halibut into the commercial sector without preventing current practices or the ability of eligible persons to freely participate in the subsistence halibut program.

Daily Bag Limit

The daily harvest limit for subsistence halibut outside of Areas 4C, 4D, and 4E, is up to 20 halibut per eligible subsistence fisherman. Although harvesting for subsistence purposes generally is self-limiting (i.e., limited by the amount that could be consumed or shared as food), the Council determined that a daily harvest limit should be established for equity among subsistence users and among all halibut user groups (i.e., commercial, recreational, and subsistence). No limit would be established, however, for Areas 4C, 4D, and 4E for two safety reasons. First, the annual time period available for subsistence halibut fishing in Areas 4C, 4D, and 4E is reduced because of sea ice coverage. Second, once the sea ice has melted, the potential to fish for subsistence halibut is further reduced because of frequent rough seas and inclement weather.

Registration

A system of registering eligible subsistence fishermen is proposed primarily to focus the collection of subsistence harvest information on those persons who are actually participating in the subsistence fishery. The exact number of persons who would be eligible to conduct fishing for subsistence halibut under this action is unknown but is estimated in the EA/RIR to be roughly 89,000. Previous subsistence harvest surveys suggest, however, that only about 10 percent of the eligible population actually would fish for subsistence halibut. A survey of a representative number of the entire population of eligible subsistence fishermen would therefore result in ''no harvest'' for 9 out of 10 persons sampled. Hence, a more efficient and more accurate estimate of the total annual subsistence halibut harvest would result from surveying most (at least 80 percent) of those eligible persons who actually harvest subsistence halibut. By registering to conduct fishing for subsistence halibut, subsistence fishermen would provide NMFS with the basic information necessary to conduct a harvest survey.

NMFS considered alternative methods for estimating total annual subsistence halibut harvests in light of existing commercial, sport, and subsistence harvest assessment programs conducted by the State of Alaska and Federal governments. Also taken into account were the need for precision in estimating the subsistence harvest, predicted to be roughly 1 percent or less of the total fishing mortality of halibut, and the relative cost of collecting subsistence harvest information from a widely dispersed population. Finally, in selecting a registration and survey system for assessing subsistence harvests, NMFS considered the relative likelihood of cooperation by subsistence halibut fishermen in providing accurate information about their harvests under a variety of mandatory log book or other reporting schemes before selecting the proposed registration and survey approach.

A secondary purpose of the registration system is to distinguish between those persons who would be eligible to fish for subsistence halibut and those who would not be eligible. As explained above, a person could be eligible by being either a resident of a rural community or place listed in § 300.65(f)(1) of the proposed rule or a member of a federally recognized Alaska Native tribe listed in § 300.65(f)(2) of the proposed rule. All other persons, regardless of Native tribal affiliation, would not be eligible.

The registration system would be managed by the Restricted Access Management (RAM) Program Office of the Alaska Region, NMFS. The RAM Program manager would confirm the eligibility of registration applicants based on the information provided on an application form. If eligible, an applicant would receive from RAM a subsistence halibut registration certificate (SHARC). Depending on the basis of a person's eligibility, the SHARC he or she receives would expire either in 2 years, for a rural resident registration, or in 4 years, for an Alaska Native tribal registration. Maintaining a valid registration for more than one year would reduce the burden on eligible persons compared to applying for an annual SHARC.

NMFS recognizes that the risk of not having an annual SHARC application is that a non-Native rural resident could move to an urban area of Alaska or out of the State and yet retain an ability to fish for subsistence halibut until his or her SHARC expired. A member of an Alaska Native tribe, however, would retain subsistence halibut fishing eligibility regardless of his or her residency in a rural place. Nevertheless, for the information collection purposes of the registration system, NMFS would remove such an eligible person from the registration list if he or she ceased being actually engaged in subsistence halibut fishing by evidence of no registration renewal. Hence, the expiration or renewal period for a SHARC issued to a member of an Alaska Native tribe could be longer than that issued to a rural resident.

Complying with this proposed registration system by obtaining a SHARC before conducting subsistence fishing for halibut would be mandatory. The objective of NMFS in making this a mandatory requirement, however, is not to prevent otherwise eligible persons from harvesting subsistence halibut. Instead, the purpose is, as explained above, to collect information on participation and harvests in the subsistence halibut fishery and to distinguish between eligible and non-eligible persons during the fishing season.

The information collected on an application for a SHARC would be minimized to include basic identity and address information. Applications for a rural resident registration would differ from that for an Alaska Native tribal registration, however, in that the former would require the applicant to certify that he or she is a ''rural resident,'' as that term is defined in the proposed rule text. The latter would require the applicant to certify that he or she is a member of an ''Alaska Native tribe,'' as that term is defined in the proposed rule text (see § 300.61). The Alaska Region, NMFS, would seek to arrange cooperative agreements with state and local governments, Alaska Native tribal governments, or other entities to assist eligible subsistence halibut fishermen with registration procedures.

Further, NMFS would be conducting the harvest assessment survey, for which the registration system is designed, primarily through cooperative agreement with the State of Alaska Department of Fish and Game, Alaska Native tribes, or other experienced research institution. The proposed survey instrument would be designed to minimize the reporting burden on subsistence halibut fishermen while

retrieving essential information. The survey would collect information on the number and amount (in pounds) of halibut harvested as subsistence halibut, where the subsistence halibut was harvested (the IPHC regulatory area), the type of fishing gear used, and the catch of lingcod or rockfish while fishing for subsistence halibut, and would distinguish halibut harvested for subsistence from halibut harvested while sport fishing. Participation in this survey would be voluntary. A mandatory reporting system was considered and rejected by NMFS because it would lead to penalties for not reporting or misreporting harvest information, which ultimately would undermine the monitoring system. A voluntary system, however, can be designed to estimate the harvests of persons who choose not to participate in the survey as is done by the State of Alaska in its state-wide harvest survey of recreational fishing harvests.

NMFS is particularly interested in public comment on the proposed registration system and harvest assessment survey, especially because implementation of the subsistence halibut management program was not fully addressed by the Council at the time it adopted its recommended subsistence halibut policy.

Restructuring of Regulations

Most of the Council-developed regulations implemented under the Halibut Act authority discussed above are codified at 50 CFR 300 Subpart E. For example, the catch sharing plans for IPHC regulatory Areas 2A and 4, and other management programs off Alaska are described at § 300.63. Fishing by U.S. treaty Indian tribes in IPHC regulatory Area 2A is described at § 330.64 and prohibitions are given at § 300.65. Regulations implementing the Individual Fishing Quota and CDQ programs in and off Alaska, however, are codified at 50 CFR part 679.

NMFS proposes to better distinguish the provisions affecting IPHC regulatory Area 2A from those affecting the other IPHC areas in and off Alaska by codifying them in separate sections. This action would leave all the provisions affecting IPHC regulatory Area 2A where they are now in §§ 300.63 and 300.64. The introductory paragraph in § 300.63 would be revised, however, to clarify this structural change. To complete this proposed change, the ''Alaska'' provisions currently in § 300.63 would be moved to a revised § 300.65 and a new prohibitions section would be added at § 300.66. Specifically, the proposed changes to the structure of § 300.63 are as follows:

Current section and paragraph	Proposed new location	Would there be a change in the text?
Section 300.63(a) Catch Sharing Plan for Area 2A.	Section 300.63(b).	No, but a new introductory paragraph (a) would be added.
Section 300.63(b) Catch Sharing Plan for Area 4.	Section 300.65(b).	No, but a new introductory paragraph (a) would be added.
Section 300.63(c) ''Short'' halibut retention provision in Area 4E.	Section 300.65(c).	Yes, to reflect an allowance for ''short'' halibut to be retained as subsistence fish with CDQ halibut in areas 4D and 4E.
Section 300.63(d) The LAMP for Sitka Sound.	Section 300.65(d).	No.
Section 300.63(e) Sitka Pinnacles Marine Reserve.	Section 300.65(e).	No, but the heading would be simplified.

To avoid confusion in the amendatory language of each instruction, the full text of each paragraph that would be moved along with proposed revisions is repeated in this proposed rule. No substantive changes are proposed, however, in paragraphs (a), (b), (d), or (e) in existing § 300.63. The proposed change for these paragraphs is primarily a structural relocation of them within the CFR. The only substantive change related to the proposed subsistence halibut action would occur in existing § 300.63(c). The remaining proposed subsistence halibut rules would begin at new § 300.65(f) and § 300.66.

Classification

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 10 minutes per response for each registration, 30 minutes per response for each survey, and 15 minutes to mark each gear buoy, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS, Alaska Region and to the Office of Information and Regulatory Affairs (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows: The proposed rule would provide regulations that would

authorize a subsistence fishery for halibut in waters off Alaska that are managed under an international agreement between Canada and the United States--≥Convention between United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea.'' These regulations are designed to allow persons who have customarily and traditionally used halibut for food in the past to continue that practice. Formal recognition of the halibut subsistence fishery also is expected to improve information for stock assessment purposes through the collection of better data than are now available to estimate the subsistence harvest of halibut.

This proposed rule would not have a significant economic impact on a substantial number of small entities because it would only regulate individuals. It does not regulate or directly impact small entities as defined in the Regulatory Flexibility Act. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects

50 CFR Part 300

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 600

Fisheries, Fishing.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 14, 2002.

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR parts 300, 600, and 679 are proposed to be amended as follows:

PART 300— INTERNATIONAL FISHERIES REGULATIONS, SUBPART E— PACIFIC HALIBUT FISHERIES

1. The authority citation for 50 CFR part 300, subpart E continues to read as follows:

Authority: 16 U.S.C. 773–773k.

2. In § 300.61, new definitions for ''Alaska Native tribe,'' ''Commission,'' ''Commission regulatory area,'' ''Customary trade,'' ''Rural,'' ''Rural resident,'' ''Subsistence,'' and ''Subsistence halibut'' would be added in alphabetical order and existing definitions for ''Commercial fishing,'' ''IFQ halibut,'' and ''Sport fishing'' would be revised to read as follows:

§ 300.61 Definitions.

* * * * *

Alaska Native tribe means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a federally recognized Alaska Native tribe that has customary and traditional use of halibut and that is listed in § 300.65(f)(2) of this part.

Commercial fishing means fishing, the resulting catch of which either is, or is intended to be, sold or bartered but does not include subsistence fishing.

Commission means the International Pacific Halibut Commission.

Commission regulatory area means an area defined by the Commission for purposes of the Convention identified in 50 CFR 300.60 and prescribed in the annual management measures published pursuant to 50 CFR 300.62.

* * * * *

Customary trade means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, the non-commercial exchange of subsistence halibut for money or anything other than items of significant value.

* * * * *

IFQ halibut means any halibut that is harvested with setline or other hook and line gear while commercial fishing in any IFQ regulatory area defined at § 679.2 of this title.

Rural means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a community or area of Alaska in which the non-commercial, customary and traditional use of fish and game for personal or family consumption is a principal characteristic of the economy or area and in which there is a long-term, customary and traditional use of halibut, and that is listed in § 300.65(f)(1) of this part.

* * * * *

Rural resident means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a person domiciled in a rural community listed in the table in section 300.65(f)(1) of this part and who has maintained a domicile in a rural community listed in the table in § 300.65(f)(1) of this part for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another state, territory, or country.

Sport fishing means:

(a) in regulatory Area 2A, all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing; and

(b) in regulatory Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, all fishing other than commercial fishing and subsistence fishing.

* * * * *

Subsistence means, with respect to Commission regulatory areas in and off Alaska, the non-commercial, long-term, customary and traditional use of halibut.

Subsistence halibut means halibut caught by a rural resident or a member of an Alaska Native tribe for direct personal or family consumption as food, sharing for personal or family consumption as food, or customary trade.

* * * * *

3. Section 300.63 is revised to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

(a) A catch sharing plan (CSP) may be developed by the Pacific Fishery Management Council and approved by NMFS for portions of the fishery. Any approved CSP may be obtained from the Administrator, Northwest Region, NMFS.

(b) The catch sharing plan for Area 2A provides a framework that shall be applied to the annual Area 2A total allowable catch (TAC) adopted by the Commission, and shall be implemented through domestic and Commission regulations, which will be published in the **Federal Register** each year before March 15. The Area 2A CSP allocates halibut among the treaty Indian fishery, segments of the non-Indian commercial fishery, and segments of the recreational fishery.

(1) Before January 1 each year, NMFS will publish a proposal to govern the recreational fishery under the CSP for the following year and will seek public comment. The comment period will extend until after the Commission's annual meeting, so the public will have the opportunity to consider the final Area 2A total allowable catch (TAC) before submitting comments. After the Commission's annual meeting and review of public comments, NMFS will publish in the **Federal Register** the final rule governing sport fishing in Area 2A. Annual management measures may be adjusted inseason by NMFS.

(2) A portion of the commercial TAC is allocated as incidental catch in the salmon troll fishery in Area 2A. Each year the landing restrictions necessary to keep the fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the **Federal Register** along with the annual salmon management measures.

(3) The commercial longline fishery in Area 2A is governed by the annual management measures published pursuant to §§ 300.62 and 300.63.

(4) The treaty Indian fishery is governed by § 300.64 and tribal regulations. The annual quota for the fishery will be announced with the Commission regulations under § 300.62.

4. Section 300.65 is redesignated as § 300.66 and a new § 300.65 is added to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in Commission regulatory areas in and off Alaska.

(a) A catch sharing plan (CSP) may be developed by the North Pacific Fishery Management Council and approved by NMFS for portions of the fishery. Any approved CSP may be obtained from the Administrator, Alaska Region, NMFS.

(b) The catch sharing plan for Commission regulatory Area 4 allocates the annual TAC among Area 4 subareas, and will be implemented by the Commission in annual management measures published pursuant to 50 CFR 300.62.

(c) A person authorized to conduct subsistence fishing under paragraph (f) of this section may retain subsistence halibut that are taken with setline gear in Commission regulatory Areas 4D or 4E and that are smaller than the size limit specified in the annual management measures published pursuant to 50 CFR 300.62, provided that:

(1) The total annual halibut harvest of that person is landed in regulatory Areas 4D or 4E; and

(2) No person may sell such halibut outside of the limits prescribed for customary and traditional exchange of subsistence halibut prescribed at 50 CFR 300.66.

(d) The Local Area Management Plan (LAMP) for Sitka Sound provides guidelines for participation in the halibut fishery in Sitka Sound.

(1) For purposes of this section, Sitka Sound means (see Figure 1):

(i) With respect to paragraph (d)(2) of this section, that part of the Commission regulatory Area 2C that is enclosed on the north and east:

(A) By a line from Kruzof Island at 57°20'30'' N. lat., 135°45'10'' W. long. to Chichagof Island at 57°22'03'' N. lat., 135°43'00'' W. long., and

(B) By a line from Chichagof Island at 57°22'35'' N. lat., 135°41'18'' W. long. to Baranof Island at 57°22'17'' N. lat., 135°40'57'' W. long.; and

(C) That is enclosed on the south and west by a line from Cape Edgecumbe at 57°59'54'' N. lat., 135°51'27'' W. long. to Vasilief Rock at 56°48'56'' N. lat., 135°32'30'' W. long., and

(D) To the green day marker in Dorothy Narrows at 56°49'17'' N. lat., 135°22'45'' W. long. to Baranof Island at 56°49'17'' N. lat., 135°22'36'' W. long.

(ii) With respect to paragraphs (d)(3) and (4) of this section, that part of the Commission regulatory Area 2C that is enclosed on the north and east:

(A) By a line from Kruzof Island at 57°20'30'' N. lat., 135°45'10'' W. long. to Chichagof Island at 57°22'03'' N. lat., 135°43'00'' W. long., and

(B) A line from Chichagof Island at 57°22'35'' N. lat., 135°41'18'' W. long. to Baranof Island at 57°22'17'' N. lat., 135°40'57'' W. lat.; and

(C) That is enclosed on the south and west by a line from Sitka Point at 56°59'23'' N. lat., 135°49'34'' W. long., to Hanus Point at 56°51'55'' N. lat., 135°30'30'' W. long.,

(D) To the green day marker in Dorothy Narrows at 56°49'17'' N. lat., 135°22'45'' W. long. to Baranof Island at 56°49'17'' N. lat., 135°22'36'' W. long.

(2) A person using a vessel greater than 35 ft (10.7 m) LOA, as defined at 50 CFR 300.61, is prohibited from fishing for IFQ halibut with setline gear, as defined at 50 CFR 300.61, within Sitka Sound as defined in paragraph (d)(1)(i) of this section.

(3) A person using a vessel less than or equal to 35 ft (10.7 m) LOA, as defined at 50 CFR 300.61:

(i) Is prohibited from fishing for IFQ halibut with setline gear within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31; and

(ii) Is prohibited, during the remainder of the designated IFQ season, from retaining more than 2,000 lb. (0.91 mt) of IFQ halibut within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, per IFQ fishing trip, as defined in 50 CFR 300.61.

(4) No charter vessel, as defined at 50 CFR 300.61, shall engage in sport fishing, as defined at 50 CFR 300.61(b), for halibut within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(i) No charter vessel shall retain halibut caught while engaged in sport fishing, as defined at 50 CFR 300.61(b), for other species, within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(ii) Notwithstanding paragraphs (d)(4) and (d)(4)(i) of this section, halibut harvested outside Sitka Sound, as defined in (d)(1)(ii) of this section, may be retained onboard a charter vessel engaged in sport fishing, as defined in 50 CFR 300.61(b), for other species within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(e) Sitka Pinnacles Marine Reserve.

(1) For purposes of this paragraph (e), the Sitka Pinnacles Marine Reserve means an area totaling 2.5 square nm off Cape Edgecumbe, defined by straight lines connecting the following points in a counterclockwise manner:

56°55.5' N lat., 135°54.0' W long;
56°57.0' N lat., 135°54.0' W long;
56°57.0' N lat., 135°57.0' W long;
56°55.5' N lat., 135°57.0' W long.

(2) No person shall engage in commercial, sport or subsistence fishing, as defined at § 300.61 of this part, for halibut within the Sitka Pinnacles Marine Reserve.

(3) No person shall anchor a vessel within the Sitka Pinnacles Marine Reserve if halibut is on board.

(f) Subsistence fishing in and off Alaska. No person shall engage in subsistence fishing for halibut unless that person meets the requirements in paragraphs (f)(1) or (f)(2) of this section.

(1) A person is eligible to harvest subsistence halibut if he or she is a rural resident of a community with customary and traditional uses of halibut listed in the following table:

HALIBUT REGULATORY AREA 2C

Rural Community	Organized Entity
Angoon	Municipality
Coffman Cove	Municipality
Craig	Municipality
Edna Bay	Census Designated Place
Elfin Cove	Census Designated Place
Gustavus	Census Designated Place
Haines	Municipality
Hollis	Census Designated Place
Hoonah	Municipality
Hydaburg	Municipality
Hyder	Census Designated Place
Kake	Municipality
Kasaan	Municipality
Klawock	Municipality
Klukwan	Census Designated Place
Metlakatla	Census Designated Place
Meyers Chuck	Census Designated Place
Pelican	Municipality
Petersburg	Municipality
Point Baker	Census Designated Place
Port Alexander	Municipality
Port Protection	Census Designated Place
Saxman	Municipality
Sitka	Municipality
Skagway	Municipality
Tenakee Springs	Municipality
Thorne Bay	Municipality
Whale Pass	Census Designated Place

HALIBUT REGULATORY AREA 2C—Continued

Rural Community	Organized Entity
Wrangell	Municipality

HALIBUT REGULATORY AREA 3A

Rural Community	Organized Entity
Akhiok	Municipality
Chenega Bay	Census Designated Place
Cordova	Municipality
Karluk	Census Designated Place
Kodiak City	Municipality
Larsen Bay	Municipality
Nanwalek	Census Designated Place
Old Harbor	Municipality
Ouzinkie	Municipality
Port Graham	Census Designated Place
Port Lions	Municipality
Seldovia	Municipality
Tatitlek	Census Designated Place
Yakutat	Municipality

HALIBUT REGULATORY AREA 3B

Rural Community	Organized Entity
Chignik Bay	Municipality
Chignik Lagoon	Census Designated Place
Chignik Lake	Census Designated Place
Cold Bay	Municipality
False Pass	Municipality
Ivanof Bay	Census Designated Place
King Cove	Municipality
Nelson Lagoon	Census Designated Place
Perryville	Census Designated Place
Sand Point	Municipality

HALIBUT REGULATORY AREA 4A

Rural Community	Organized Entity
Akutan	Municipality
Nikolski	Census Designated Place
Unalaska	Municipality

HALIBUT REGULATORY AREA 4B

Rural Community	Organized Entity
Adak	Census Designated Place
Atka	Municipality

HALIBUT REGULATORY AREA 4C

Rural Community	Organized Entity
St. George	Municipality
St. Paul	Municipality

HALIBUT REGULATORY AREA 4D

Rural Community	Organized Entity
Gambell	Municipality
Savoonga	Municipality
Diomede (Inalik)	Municipality

HALIBUT REGULATORY AREA 4E

Rural Community	Organized Entity
Alakanuk	Municipality
Aleknegik	Municipality
Bethel	Municipality
Brevig Mission	Municipality
Chefornak	Municipality
Chevak	Municipality
Clark's Point	Municipality
Council	Census Designated Place
Dillingham	Municipality
Eek	Municipality
Egegik	Municipality
Elim	Municipality
Emmonak	Municipality
Golovin	Municipality
Goodnews Bay	Municipality
Hooper Bay	Municipality
King Salmon	Census Designated Place
Kipnuk	Census Designated Place
Kongiganak	Census Designated Place
Kotlik	Municipality
Koyuk	Municipality
Kwigillingok	Census Designated Place
Levelock	Census Designated Place
Manokotak	Municipality
Mekoryak	Municipality
Naknek	Census Designated Place
Napakiak	Municipality
Napaskiak	Municipality
Newtok	Census Designated Place
Nightmute	Municipality
Nome	Municipality
Oscarville	Census Designated Place
Pilot Point	Municipality
Platinum	Municipality
Port Heiden	Municipality
Quinhagak	Municipality
Scammon Bay	Municipality
Shaktoolik	Municipality
Sheldon Point (Nunam Iqua).	Municipality
Shishmaref	Municipality
Solomon	Census Designated Place
South Naknek	Census Designated Place
St. Michael	Municipality

HALIBUT REGULATORY AREA 4E—Continued

Rural Community	Organized Entity
Stebbins	Municipality
Teller	Municipality
Togiak	Municipality
Toksook Bay	Municipality
Tuntutuliak	Census Designated Place
Tununak	Census Designated Place
Twin Hills	Census Designated Place
Ugashik	Census Designated Place
Unalakleet	Municipality
Wales	Municipality
White Mountain	Municipality

(2) A person is eligible to harvest subsistence halibut if he or she is a member of an Alaska Native tribe with customary and traditional uses of halibut listed in the following table:

HALIBUT REGULATORY AREA 2C

Place with Tribal Headquarters	Organized Tribal Entity
Angoon	Angoon Community Association
Craig	Craig Community Association
Haines	Chilkoot Indian Association
Hoonah	Hoonah Indian Association
Hydaburg	Hydaburg Cooperative Association
Juneau	Aukquan Traditional Council
	Central Council Tlingit and Haida Indian Tribes
	Douglas Indian Association
Kake	Organized Village of Kake
Kasaan	Organized Village of Kasaan
Ketchikan	Ketchikan Indian Corporation
Klawock	Klawock Cooperative Association
Klukwan	Chilkat Indian Village
Metlakatla	Metlakatla Indian Community, Annette Island Reserve
Petersburg	Petersburg Indian Association
Saxman	Organized Village of Saxman
Sitka	Sitka Tribe of Alaska
Skagway	Skagway Village
Wrangell	Wrangell Cooperative Association

HALIBUT REGULATORY AREA 3A

Place with Tribal Headquarters	Organized Tribal Entity
Akhiok	Native Village of Akhiok
Chenega Bay	Native Village of Chanega
Cordova	Native Village of Eyak
Karluk	Native Village of Karluk
Kenai-Soldotna	Kenaitze Indian Tribe
	Village of Salamatoff
Kodiak City	Lesnoi Village (Woody Island)
	Native Village of Afognak
	Shoonaq' Tribe of Kodiak
Larsen Bay	Native Village of Larsen Bay
Nanwalek	Native Village of Nanwalek
Ninilchik	Ninilchik Village
Old Harbor	Village of Old Harbor
Ouzinkie	Native Village of Ouzinkie
Port Graham	Native Village of Port Graham
Port Lions	Native Village of Port Lions
Seldovia	Seldovia Village Tribe
Tatitlek	Native Village of Tatitlek
Yakutat	Yakutat Tlingit Tribe

HALIBUT REGULATORY AREA 3B

Place with Tribal Headquarters	Organized Tribal Entity
Chignik Bay	Native Village of Chignik
Chignik Lagoon	Native Village of Chignik Lagoon
Chignik Lake	Chignik Lake Village
False Pass	Native Village of False Pass
Ivanof Bay	Ivanoff Bay Village
King Cove	Agdaagux Tribe of King Cove
	Native Village of Belkofski
Nelson Lagoon	Native Village of Nelson Lagoon
Perryville	Native Village of Perryville
Sand Point	Pauloff Harbor Village
	Native Village of Unga
	Qagan Toyagungin Tribe of Sand Point Village

HALIBUT REGULATORY AREA 4A

Place with Tribal Headquarters	Organized Tribal Entity
Akutan	Native Village of Akutan
Nikolski	Native Village of Nikolski
Unalaska	Qawalingin Tribe of Unalaska

HALIBUT REGULATORY AREA 4B

Place with Tribal Headquarters	Organized Tribal Entity
Atka	Native Village of Atka

HALIBUT REGULATORY AREA 4C

Place with Tribal Headquarters	Organized Tribal Entity
.	
St. George	Pribilof Islands Aleut Communities of St. Paul Island and St. George Island
St. Paul	

HALIBUT REGULATORY AREA 4D

Place with Tribal Headquarters	Organized Tribal Entity
Gambell	Native Village of Gambell
Savoonga	Native Village of Savoonga
Diomede (Inalik)	Native Village of Diomede (Inalik)

HALIBUT REGULATORY AREA 4E

Place with Tribal Headquarters	Organized Tribal Entity
Alakanuk	Village of Alakanuk
Aleknagik	Native Village of Aleknagik
Bethel	Orutsararmuit Native Village
Brevig Mission	Native Village of Brevig Mission
Chefornak	Village of Chefornak
Chevak	Chevak Native Village
Clark's Point	Village of Clark's Point
Council	Native Village of Council
Dillingham	Native Village of Dillingham
	Native Village of Ekuk
	Native Village of Kanakanak
Eek	Native Village of Eek
Egegik	Egegik Village
	Village of Kanatak
Elim	Native Village of Elim
Emmonak	Chuloonawick Native Village
	Emmonak Village
Golovin	Chinik Eskimo Community
Goodnews Bay	Native Village of Goodnews Bay
Hooper Bay	Native Village of Hooper Bay
	Native Village of Paimiut
King Salmon	King Salmon Tribal Council
Kipnuk	Native Village of Kipnuk
Kongiganak	Native Village of Kongiganak

HALIBUT REGULATORY AREA 4E—Continued

Place with Tribal Headquarters	Organized Tribal Entity
Kotlik	Native Village of Hamilton
	Village of Bill Moore's Slough
	Village of Kotlik
Koyuk	Native Village of Koyuk
Kwigillingok	Native Village of Kwigillingok
Levelock	Levelock Village
Manokotak	Manokotak Village
Mekoryak	Native Village of Mekoryak
Naknek	Naknek Native Village
Napakiak	Native Village of Napakiak
Napaskiak	Native Village of Napaskiak
Newtok	Newtok Village
Nightmute	Native Village of Nightmute
	Umkumiute Native Village
Nome	King Island Native Community
	Nome Eskimo Community
Oscarville	Oscarville Traditional Village
Pilot Point	Native Village of Pilot Point
Platinum	Platinum Traditional Village
Port Heiden	Native Village of Port Heiden
Quinhagak	Native Village of Kwinhagak
Scammon Bay	Native Village of Scammon Bay
Shaktoolik	Native Village of Shaktoolik
Sheldon Point (Nuna Iqua).	Native Village of Sheldon's Point
Shishmaref	Native Village of Shishmaref
Solomon	Village of Solomon
South Naknek	South Naknek Village
St. Michael	Native Village of Saint Michael
Stebbins	Stebbins Community Association
Teller	Native Village of Mary's Igloo
	Native Village of Teller
Togiak	Traditional Village of Togiak
Toksook Bay	Native Village of Toksook Bay
Tuntutuliak	Native Village of Tuntutuliak
Tununak	Native Village of Tununak
Twin Hills	Twin Hills Village
Ugashik	Ugashik Village
Unalakleet	Native Village of Unalakleet
Wales	Native Village of Wales
White Mountain	Native Village of White Mountain

(g) Limitations on subsistence fishing. Subsistence fishing for halibut may be conducted only by persons who qualify for such fishing pursuant to paragraph (f) of this section and who hold a valid subsistence halibut registration certificate in that person's name issued by NMFS pursuant to paragraph (h) of this section, provided that such fishing is consistent with the following limitations.

(1) Subsistence fishing is limited to setline gear and hand-held gear:

(i) Of not more than 30 hooks, including longline, handline, rod and reel, spear, jigging, and hand-troll gear.

(ii) All setline gear marker buoys carried on board or used by any vessel regulated under this part shall be marked with the following: First initial, last name, and address (street, city, and state).

(iii) Markings on setline marker buoys shall be in characters at least 4 in (10.16 cm) in height and 0.5 in (1.27 cm) in width in a contrasting color visible above the water line and shall be maintained so the markings are clearly visible.

(2) The daily retention of subsistence halibut in rural areas is limited to no more than 20 fish per person eligible to conduct subsistence fishing for halibut under paragraph (g) of this section, except that no daily retention limit applies in Areas 4C, 4D, and 4E.

(3) Subsistence fishing may be conducted in any Commission regulatory area that is in and off Alaska except for the following four non-rural areas defined as follows:

(i) *Ketchikan non-subsistence marine waters area in Commission regulatory Area 2C (see Figure 2)* is defined as those waters between a line from Caamano Point at 55°29.90' N. lat., 131°58.25' W. long. to Point Higgins at 55°27.42' N. lat., 131°50.00' W. long. and a point at 55°11.78' N. lat., 131°05.13' W. long., located on Point Sykes to a point at 55°12.22' N. lat., 131°05.70' W. long., located one-half mile northwest of Point Sykes to Point Alava at 55°11.54' N. lat., 131°11.00' W. long. and within one mile of the mainland and the Gravina and Revillagigedo Island shorelines, including within one mile of the Cleveland Peninsula shoreline and east of the longitude of Niblack Point at 132°07.23' W. long., and north of the latitude of the southernmost tip of Mary Island at 55°02.66' N. lat.;

(ii) *Juneau non-subsistence marine waters area in Commission regulatory Area 2C (see Figure 3)* is defined as those waters of Stephens Passage and contiguous waters north of the latitude of Midway Island Light (57°50.21' N. lat.), including the waters of Taku Inlet, Port Snettisham, Saginaw Channel, and Favorite Channel, and those waters of Lynn Canal and contiguous waters south of the latitude of the northernmost entrance of Berners Bay (58°43.07' N. lat.), including the waters of Berners Bay and Echo Cove, and those waters of Chatham Strait and contiguous waters north of the latitude of Point Marsden (58°03.42' N. lat.), and east of a line from Point Couverden at 58°11.38' N. lat., 135°03.40' W. long., to Point Augusta at 58°02.38' N. lat., 134°57.11' W. long.;

(iii) *Anchorage/Matsu/Kenai non-subsistence marine waters area in Commission regulatory Area 3A (see Figure 4)* is defined as all waters of Alaska enclosed by a line extending east from Cape Douglas (58°51.10' N. lat.), and a line extending south from Cape Fairfield (148°50.25' W. long.), except those waters north of Point Bede which are west of a line from the easternmost point of Jakolof Bay (151°32.00' W. long.) north to the westernmost point of Hesketh Island (59°30.04' N. lat., 151°31.09' W. long.), including Jakolof Bay and south of a line west from Hesketh Island (59°30.04' N. lat. extending to the boundary of the territorial sea); the waters south of Point Bede which are west of the easternmost point of Rocky Bay (from the mainland along 151°18.41' W. long. to the intersection with the territorial sea); and includes those waters within mean lower low tide from a point 1 mile south of the southern edge of the Chuitna River (61°05.00' N. lat., 151° 01.00' W. long.) south to the easternmost tip of Granite Point (61°01.00' N. lat., 151°23.00' W. long.); and

(iv) *Valdez non-subsistence marine waters area Commission regulatory Area 3A (see Figure 5)* is defined as the waters of Port Valdez and Valdez Arm located north of 61°02.24' N. lat., and east of 146°43.80' W. long.

(4) Commission regulatory areas in and off Alaska that are not specifically identified as non-rural in paragraph (g)(3) of this section are rural for purposes of subsistence fishing for halibut. Subsistence fishing may be conducted in any rural area by any person with a valid subsistence halibut registration certificate in his or her name issued by NMFS under paragraph (h) of this section, except that:

(i) A person who is not a rural resident but who is a member of an Alaska Native tribe that is located in a rural area and that is listed in the table in paragraph (f)(2) of this section, is limited to conducting subsistence fishing for halibut only in his or her area of tribal membership.

(ii) A person who is a resident outside of the State of Alaska but who is a member of an Alaska Native tribe that is located in a rural area and that is listed in the table in paragraph (f)(2) of this section, is limited to conducting subsistence fishing for halibut only in his or her area of tribal membership.

(iii) For purposes of this paragraph, ''area of tribal membership'' means rural areas of the Commission regulatory area in which the Alaska Native tribal headquarters is located.

(h) *Subsistence registration.* A person must register as a subsistence halibut fisherman and possess a valid subsistence halibut registration certificate in his or her name issued by NMFS before he or she begins subsistence fishing for halibut in any Commission regulatory area in and off Alaska.

(1) A subsistence halibut registration certificate will be issued to any person who is qualified to conduct subsistence fishing for halibut according to paragraph (f) of this section. The Alaska Region, NMFS, may enter into cooperative agreements with Alaska Native tribal governments or their representative organizations for purposes of identifying persons qualified to conduct subsistence fishing for halibut according to paragraph (f) of this section.

(2) A person may register as a subsistence halibut fisherman with a cooperating Alaska Native tribal government or other entity designated by NMFS, or directly with the Alaska Region, NMFS, by submitting the following information to the:

Restricted Access Management (RAM) Program
NMFS, Alaska Region
P.O. Box 21668
Juneau, AK 99802–1668

(i) For a Rural Resident Registration, the person must submit his or her full name, date of birth, mailing address (number and street, city and state, zip code), community of residence (the rural community or residence from 50 CFR 300.65(f)(1) that qualifies the fisher as eligible to fish for subsistence halibut), daytime telephone number, certification that he or she is a ''rural resident'' as that term is defined at § 300.61 of this part, and signature and date of signature.

(ii) For an Alaska Native Tribal Registration, the person must submit his or her full name, date of birth, mailing address (number and street, city and state, zip code), Alaska Native tribe (the name of the Alaska Native Tribe from 50 CFR 300.65(f)(2) that qualifies the fisher as eligible to fish for subsistence halibut), daytime telephone number,

certification that he or she is a member of an ''Alaska Native tribe'' as that term is defined at § 300.61 of this part, and signature and date of signature.

(3) The Administrator, Alaska Region, NMFS, or an authorized representative, may conduct periodic surveys of persons who hold valid subsistence halibut registration certificates to estimate the annual harvest of subsistence halibut and related catch and effort information. For purposes of this paragraph, an authorized representative of NMFS may include employees of, or contract workers for, the State of Alaska or a Federal agency or an Alaska Native tribal government representative as may be prescribed by cooperative agreement with NMFS. Responding to a subsistence halibut harvest survey will be voluntary, and may include providing information on:

(i) The subsistence fisher's identity including his or her full name, date of birth, mailing address (number and street, city and state, zip code), community of residence, daytime phone number, and tribal identity (if appropriate);

(ii) The subsistence halibut harvest including whether the participant fished for subsistence halibut during the year, and if so, the number and weight (in pounds) of halibut harvested, the type of gear and number of hooks usually used, the Commission regulatory area from which the halibut were harvested, and the number of ling cod and rockfish caught while subsistence fishing for halibut; and

(iii) Any sport halibut harvest including whether the participant sport fished for halibut during the year and the number and weight (in pounds) of halibut harvested while sport fishing.

5. Newly redesignated § 300.66 is revised to read as follows:

§ 300.66 Prohibitions.

In addition to the general prohibitions specified in 50 CFR 300.4, it is unlawful for any person to do any of the following:

(a) Fish for halibut except in accordance with the annual management measures published pursuant to 50 CFR 300.62.

(b) Fish for halibut except in accordance with the catch sharing plans and domestic management measures implemented under 50 CFR 300.63 and 50 CFR 300.65.

(c) Fish for halibut in Sitka Sound in violation of the Sitka Sound LAMP implemented under 50 CFR 300.65(d).

(d) Fish for halibut or anchor a vessel with halibut on board within the Sitka Pinnacles Marine Reserve defined at 50 CFR 300.65(e).

(e) Fish for subsistence halibut in and off Alaska unless the person is qualified to do so under 50 CFR 300.65(f), and possess a valid subsistence halibut registration certificate pursuant to 50 CFR 300.65(h).

(f) Fish for subsistence halibut in and off Alaska with gear other than that described at 50 CFR 300.65(g)(1) and retain more halibut than specified at 50 CFR 300.65(g)(2).

(g) Fish for subsistence halibut in and off Alaska in a non-rural area specified at 50 CFR 300.65(g)(3).

(h) Retain on board the harvesting vessel halibut harvested from subsistence fishing with halibut harvested from commercial fishing or from sport fishing, as defined at 50 CFR 300.61(b), except that persons who land their total annual harvest of halibut in Commission regulatory Area 4D or 4E may retain, with harvests of CDQ halibut, halibut harvested in Commission regulatory Areas 4D or 4E that are smaller than the size limit specified in the annual management measures published pursuant to 50 CFR 300.62.

(i) Retain subsistence halibut that were harvested using a charter vessel.

(j) Retain or possess subsistence halibut for commercial purposes, cause subsistence halibut to be sold, bartered or otherwise enter commerce or solicit exchange of subsistence halibut for commercial purposes, except that a person qualified to conduct subsistence fishing for halibut under 50 CFR 300.65(f), and who holds a subsistence halibut registration certificate in the person's name under 50 CFR 300.65(h), may engage in the customary trade of subsistence halibut through monetary exchange of no more than $400 per year.

BILLING CODE 3510–22–S

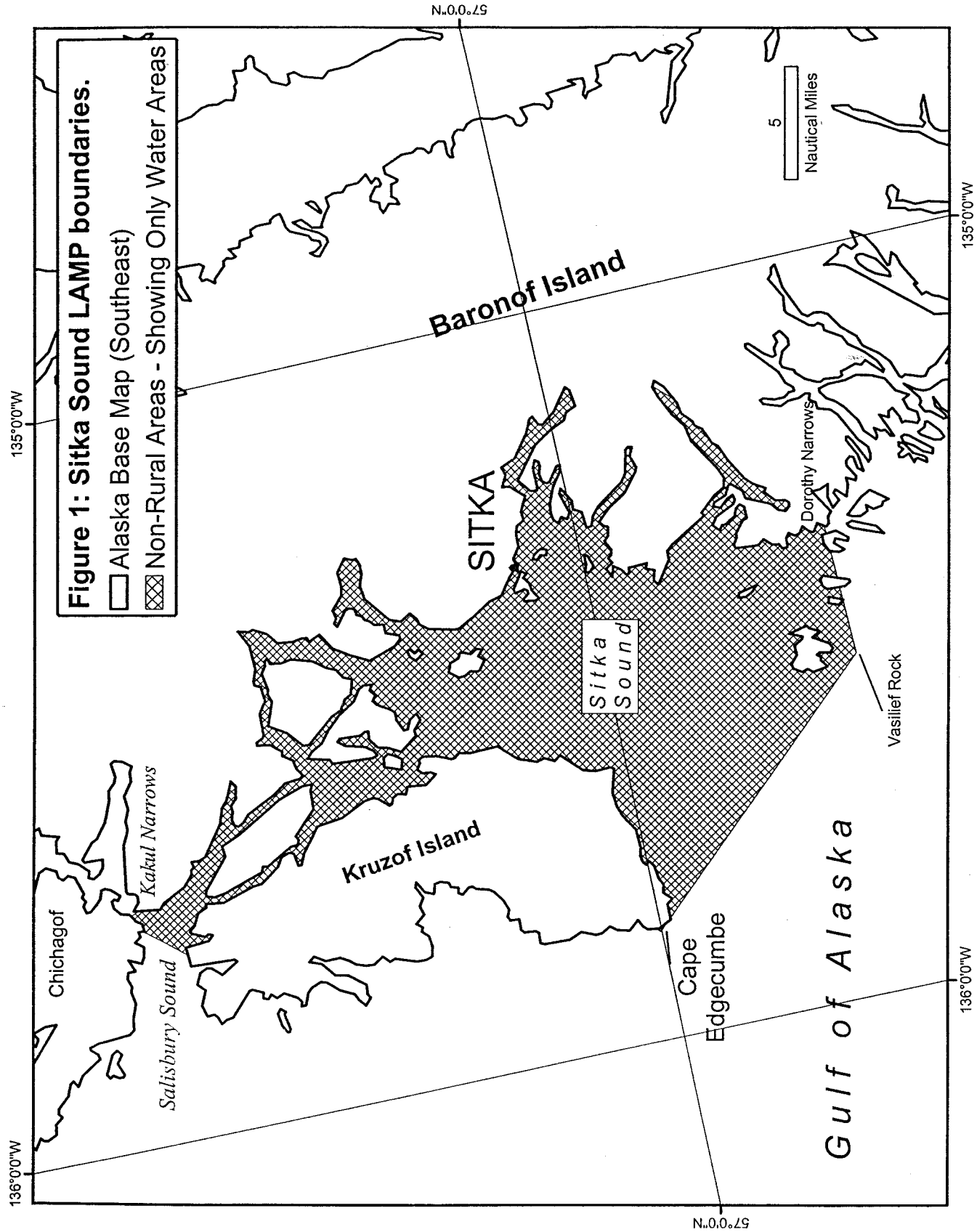


Figure 1: Sitka Sound LAMP boundaries.
Alaska Base Map (Southeast)
Non-Rural Areas - Showing Only Water Areas
57°0'0"N
135°0'0"W
136°0'0"W
Baronof Island
SITKA
Sitka Sound
Dorothy Narrows
Vasilief Rock
Kruzof Island
Kakul Narrows
Chichagof
Salisbury Sound
Cape Edgecumbe
Gulf of Alaska
5
Nautical Miles

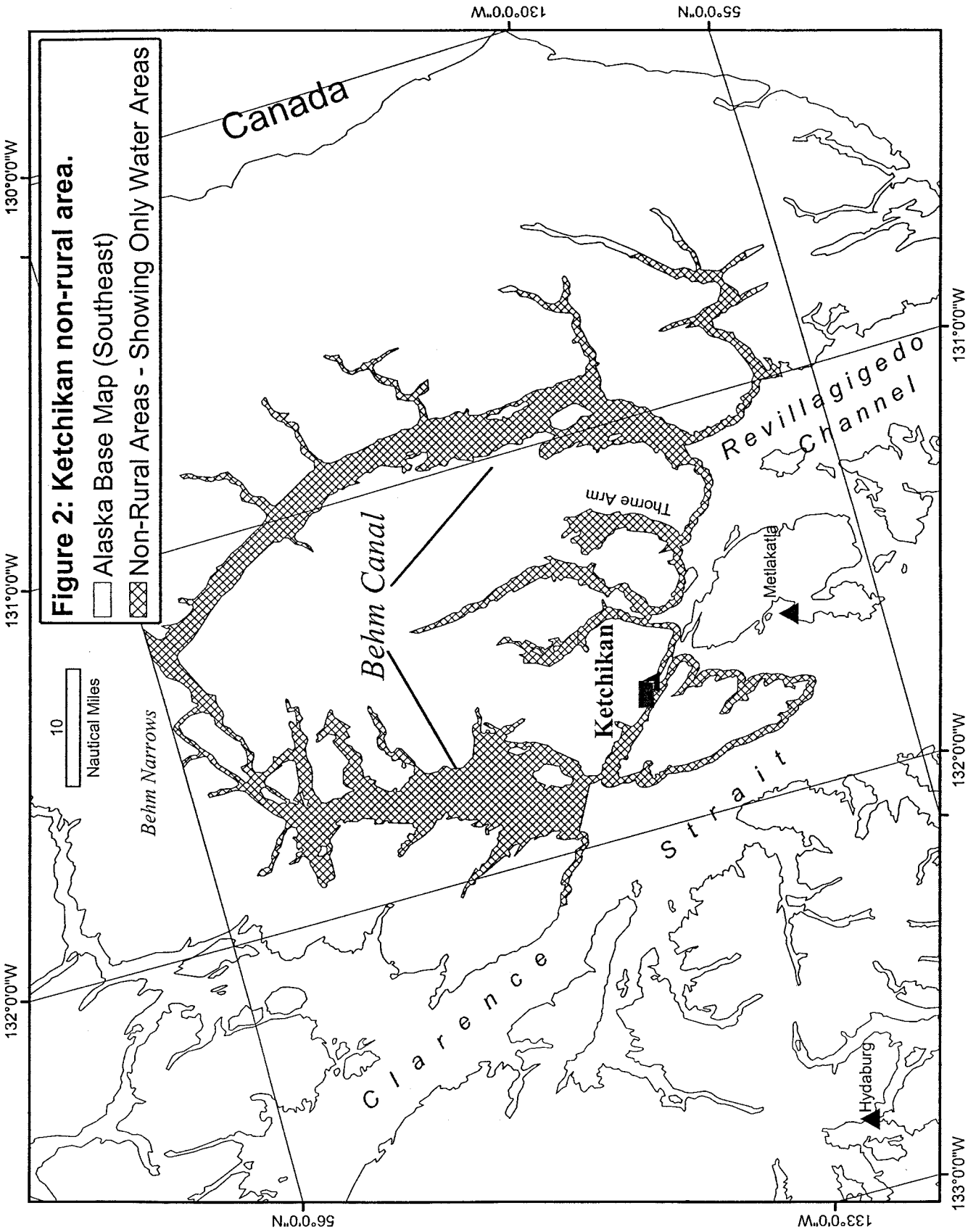


Figure 2: Ketchikan non-rural area.
Alaska Base Map (Southeast)
Non-Rural Areas - Showing Only Water Areas
Canada
Behm Canal
Behm Narrows
Thorne Arm
Ketchikan
Metlakatla
Revillagigedo Channel
Clarence Strait
Hydaburg
10
Nautical Miles
130°0'0"W
131°0'0"W
132°0'0"W
133°0'0"W
55°0'0"N
56°0'0"N

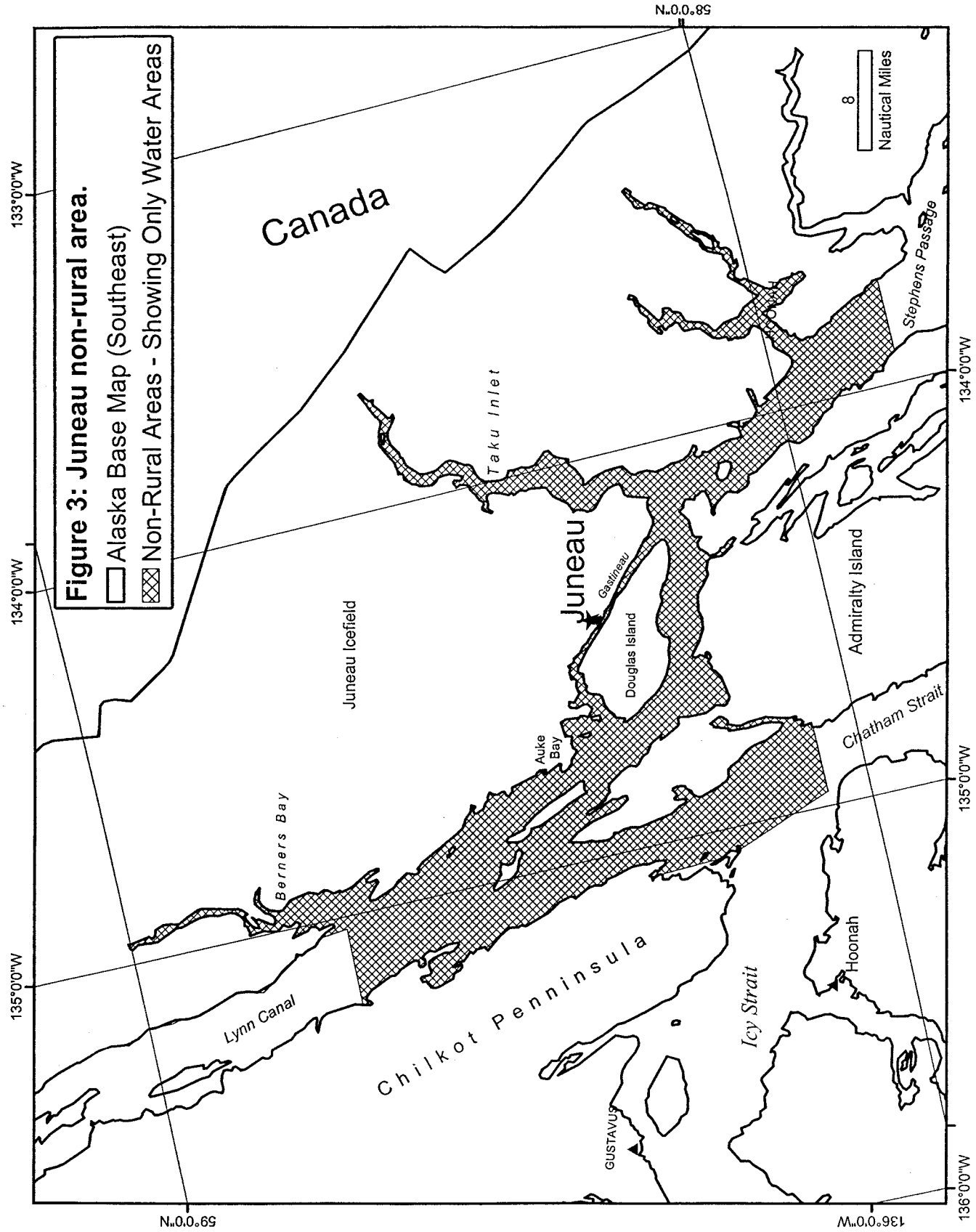


Figure 3: Juneau non-rural area.
Alaska Base Map (Southeast)
Non-Rural Areas - Showing Only Water Areas
Canada
Taku Inlet
Juneau
Gastineau
Douglas Island
Juneau Icefield
Auke Bay
Berners Bay
Lynn Canal
Chilkot Penninsula
GUSTAVUS
Icy Strait
Hoonah
Chatham Strait
Admiralty Island
Stephens Passage
8
Nautical Miles
133°0'0"W
134°0'0"W
135°0'0"W
136°0'0"W
59°0'0"N
58°0'0"N

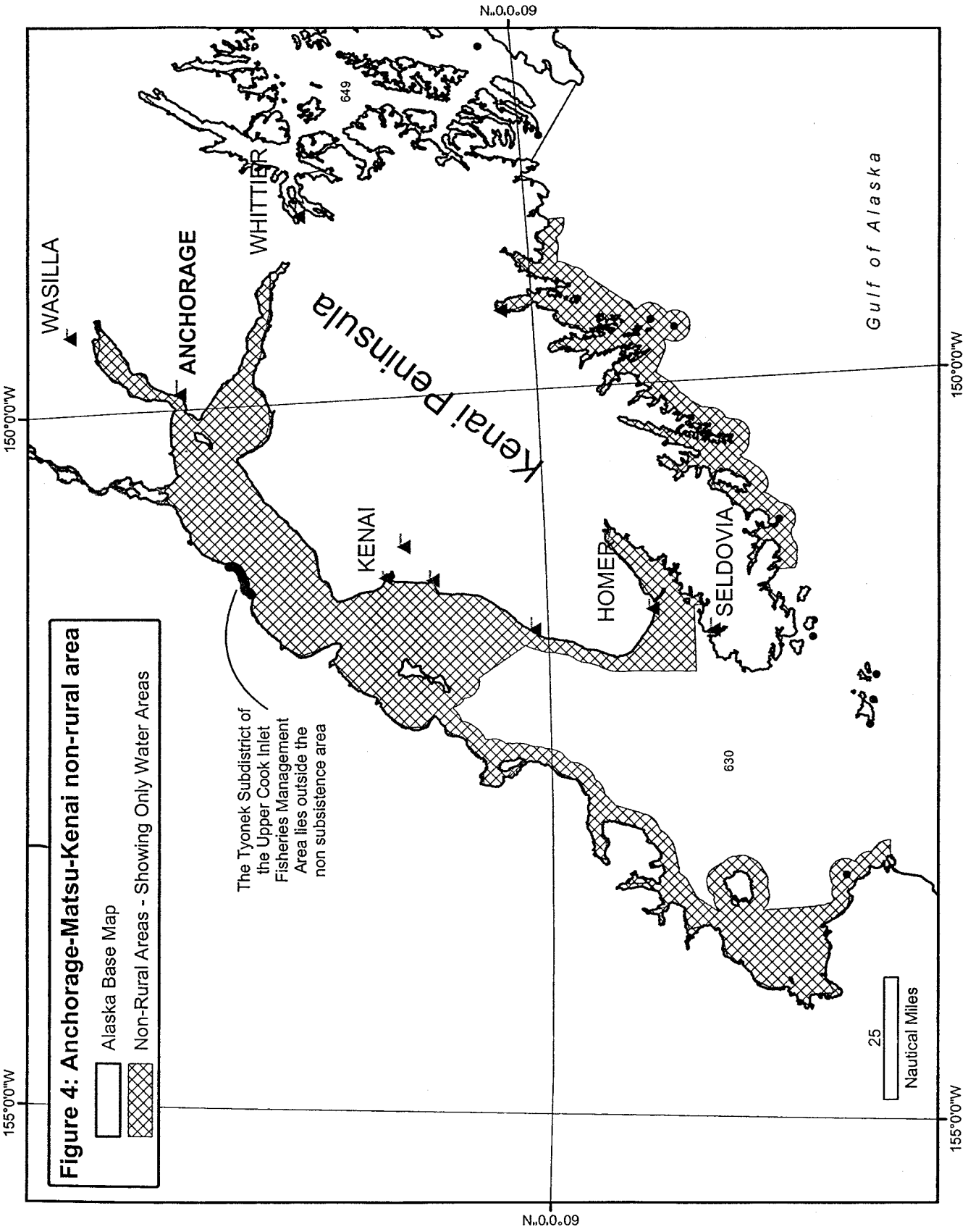
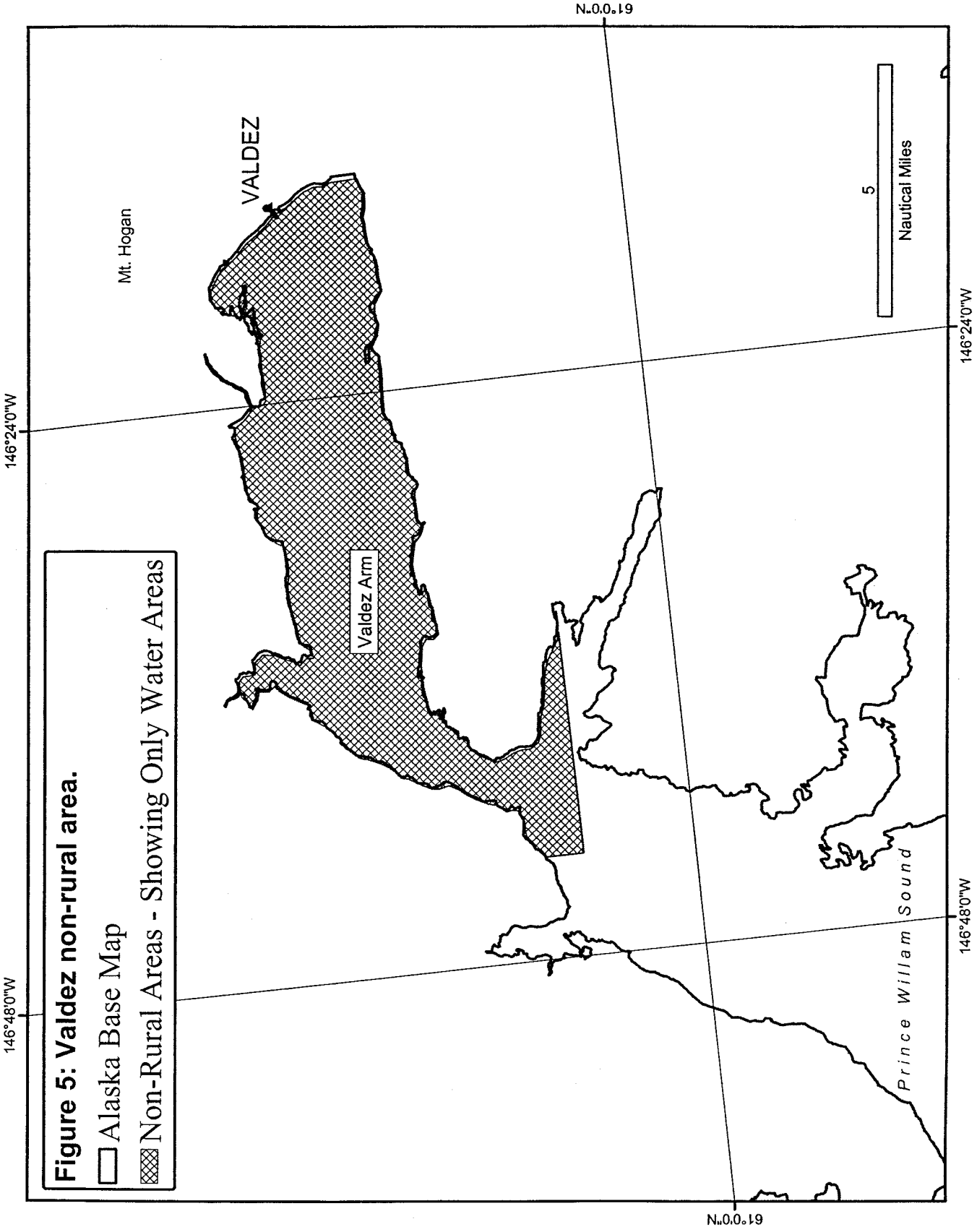


Figure 4: Anchorage-Matsu-Kenai non-rural area
Alaska Base Map
Non-Rural Areas - Showing Only Water Areas
155°0'0"W
150°0'0"W
N.0.0.09
WASILLA
ANCHORAGE
WHITTIER
649
Kenai Peninsula
KENAI
HOMER
SELDOVIA
630
Gulf of Alaska
The Tyonek Subdistrict of the Upper Cook Inlet Fisheries Management Area lies outside the non subsistence area
25
Nautical Miles



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PART 600–MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.725, table VII in paragraph (v) is revised to read as follows:

VII NORTH PACIFIC MANAGEMENT COUNCIL

Fishery	Authorized gear types
* * *	* * *
7. Pacific Halibut Fishery (Non-FMP)	
A. Commercial (IFQ and CDQ).	A. Hook and line
B. Recreational	B. Single line with no more than 2 hooks attached or spear

VII NORTH PACIFIC MANAGEMENT COUNCIL—Continued

Fishery	Authorized gear types
C. Subsistence	C. Setline gear and hand held gear of not more than 30 hooks, including longline, handline, rod and reel, spear, jigging and hand-troll gear.
* * * * *	* * * * *

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.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209 Pub. L. 106–554.

2. In § 679.2, the definitions for ''Commercial fishing,'' and ''IFQ halibut'' are revised as follows:

§ 679.2 Definitions.

* * * * *

Commercial fishing means:

(1) For purposes of the High Seas Salmon Fishery, fishing for fish for sale or barter; and

(2) For purposes of the Pacific halibut fishery, fishing, the resulting catch of which either is, or is intended to be, sold or bartered but does not include subsistence fishing for halibut, as defined at 50 CFR 300.61.

* * * * *

IFQ halibut means any halibut that is harvested with setline or other hook and line gear while commercial fishing in any IFQ regulatory area defined in this section.

* * * * *

[FR Doc. 02–21456 Filed 8–23–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 165

Monday, August 26, 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

Agriculture Marketing Service

[TM–02–07]

Notice of Organic Certification Cost Share Program

AGENCY: Agricultural Marketing Services, USDA.

ACTION: Notice.

SUMMARY: This Notice invites eligible States to submit a Standard Form 424, Application for Federal Assistance, and to enter into a Cooperative Agreement with the Agricultural Marketing Service for the Allocation of Organic Certification Cost-Share Funds. The Agricultural Marketing Service (AMS) has allocated $1.0 million for this organic certification cost-share program in Fiscal Year 2002. Funds will be available under this program to 15 designated States to assist organic crop and livestock producers certified to the National Organic Program. Eligible States interested in obtaining cost-share funds for their organic producers will have to submit an Application for Federal Assistance, and will have to enter into a cooperative agreement with AMS for the allocation of such funds.

DATES: Completed applications for federal assistance along with signed cooperative agreements must be received by October 10, 2002 in order to participate in this program.

ADDRESSES: Applications for federal assistance and cooperative agreements shall be requested from and submitted to: Robert Pooler, Marketing Specialist, National Organic Program, USDA/AMS/TMP/NOP, Room 4008-South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0264; Telephone: (202) 720–3252; Fax: (202) 205–7808; E-mail: *bob.pooler@usda.gov.* Additional information may be found through the National Organic Program's homepage at *http://www.ams.usda.gov/nop.*

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Marketing Specialist, National Organic Program, USDA/AMS/TM/NOP, Room 4008-South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0264; Telephone: (202) 720–3252; Fax: (202) 205–7808; E-mail: *bob.pooler@usda.gov.*

SUPPLEMENTARY INFORMATION: This Organic Certification Cost-Share Program is part of the Agricultural Management Assistance Program authorized under Section 1524 of the Federal Crop Insurance Act (FCIA), as amended, (7 U.S.C. 1501–1524). Under the applicable FCIA provisions, the Department is authorized to provide cost share assistance to producers in the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. These 15 States have historically low participation rates in Federal crop insurance programs. This organic certification cost share program provides financial assistance to organic producers certified to the National Organic Program authorized under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*).

To participate in the program, eligible States must complete a Standard Form 424, Application for Federal Assistance, and enter into a written cooperative agreement with AMS. The program will provide cost-share assistance, through participating States, to organic crop and livestock producers who have been certified by a USDA accredited certifying agent from November 1, 2002 until September 30, 2003. The Department has determined that payments will be limited to 75 percent of an individual producer's certification costs up to a maximum of $500.00.

Authority: 7 U.S.C. 1501–1524

Dated: August 19, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–21610 Filed 8–23–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–02–05]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: The meeting dates are: September 17, 2002, 8 a.m. to 6 p.m.; September 18, 2002, 8 a.m. to 6 p.m.; and September 19, 2002, 8 a.m. to 6:30 p.m. Requests from individuals and organizations wishing to make an oral presentation at the meeting are due by the close of business on September 1, 2002.

ADDRESSES: The meeting will take place at the Radisson Barceló Hotel, Board Room, 2121 P Street, NW., Washington, DC. Requests to make an oral presentation at the meeting may be sent to Ms. Katherine Benham at USDA–AMS–TMD–NOP, 1400 Independence Avenue, SW., Room 4008-So., Ag Stop 0268, Washington, DC 20250–0200. Requests to make an oral presentation at the meeting may also be sent electronically to Ms. Katherine Benham at *katherine.benham@usda.gov,* via telephone at (202) 205–7806, or via facsimile at (202) 205–7808.

The September NOSB meeting agenda is available at *http://www.ams.usda.gov/nop* or from Ms. Katherine Benham at (202) 205–7806, preceding addresses or via telephone (202) 205–7806.

FOR FURTHER INFORMATION CONTACT: Richard Mathews, Program Manager, National Organic Program, (202) 720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. Section 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development

of standards for substances to be used in organic production and to advise the Secretary on other aspects of the implementation of OFPA. The NOSB met for the first time in Washington, DC, in March 1992, and currently has six committees working on various aspects of the organic program. The committees are: Accreditation, Crops, Livestock, Materials, International, and Processing.

In August of 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture. Since that time, the NOSB has submitted 42 addenda to its recommendations and reviewed more than 220 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held on May 6–8, 2002, in Austin, Texas.

The Department of Agriculture (USDA) published its final National Organic Program regulation in the **Federal Register** on December 21, 2000 (65 FR 80548). The rule became effective April 21, 2001.

The principal purposes of the meeting are to provide an opportunity for the NOSB to: receive an update from the USDA/NOP, receive a recommendation from the Livestock Committee, and review materials to determine if they should be recommended for inclusion on the National List of Allowed and Prohibited Substances.

The Livestock Committee will present for NOSB consideration its recommendations on ''dairy animal replacement.'' The Materials Committee will present 32 materials for consideration for possible inclusion on the National List of Allowed and Prohibited Substances.

Materials to be reviewed at the meeting by the NOSB are as follows:

Crop Production: Potassium Sulfate, Ozone Gas (two petitions), Potassium Silicate, Tetrahydrofurfuryl Alcohol, Phermones (amend annotation), Sodium (Chilean) Nitrate (Remove and Amend Annotation), 1,4 Dimethylnaphthalene.

Livestock Production: Propylene Glycol, Magnesium Hydroxide/ Magnesium Oxide, Epinephrine aka Adrenaline, Kaolin Pectin, Bismuth Subsalicylate, Flunixin (Banamine), Xylazine/Tolazoline, Butorphanol, Potassium Sorbate, Cell Wall Carbohydrates, Yeast Derivatives, Proteinated Chelates, Atropine, Heparine, Furosemide, Calcium Propionate, Mineral Oil, Activated Charcoal.

Processing: Calcium Stearate, Tetrasodium Pyrophosphate, Hydroxypropyl Methylcellulose, Glucono Delta Lactone, Activated Charcoal, and Glycerol Monoleate.

For further information, see *http://www.ams.usda.gov/nop.* Copies of the NOSB meeting agenda can be requested from Ms. Katherine Benham by telephone at (202) 205–7806; or obtained by accessing the NOP website at *http://www.ams.usda.gov/nop.*

The meeting is open to the public. The NOSB has scheduled time for public input on Tuesday, September 17, 2002, from 8:30 a.m. until 11:30 a.m.; and Thursday, September 19, 2002, from 5 p.m. until 6 p.m., at the Radisson Barceló Hotel, 2121 P Street, NW., Washington, DC. Individuals and organizations wishing to make an oral presentation at the meeting may make their requests via letter, telephone, E-mail or facsimile to Ms. Katherine Benham as set forth in the addresses section of this notice. While persons wishing to make a presentation, may also sign up at the door, advance registration will ensure that a person has the opportunity to speak during the allotted time period and will help the NOSB to better manage the meeting and to accomplish its agenda. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making an oral presentation are requested to provide their comments in writing. Written submissions may contain information other than that presented at the oral presentation.

Written comments must be submitted to Ms. Benham, prior to or after the meeting, at USDA–AMS–TMD–NOP, 1400 Independence Avenue, SW., Room 4008-So., Ag Stop 0268, Washington, DC 20250–0200. Written comments may also be submitted at the meeting. Persons submitting written comments at the meeting are asked to provide 30 copies.

Interested persons may visit the NOSB portion of the NOP Web site *http://www.ams.usda.gov/nop* to view available documents prior to the meeting. Approximately 6 weeks following the meeting interested persons will be able to visit the NOSB portion of the NOP website to view documents from this meeting.

Dated: August 19, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–21611 Filed 8–23–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Steel Import License.

Agency Form Number: N/A.

OMB Number: None.

Type of Request: Regular Submission.

Burden: 166,667 hours.

Number of Respondents: 400.

Avg. Hours Per Response: 10 minutes.

Needs and Uses: On March 5, 2002, the President announced temporary safeguards for the steel industry. As part of those safeguards, the President mandated that the Commerce Department and the Secretary of the Treasury institute an import licensing system to facilitate the monitoring of certain steel imports. The Import License information is necessary for the U.S. Government to assess import trends of covered products, especially covered products imported from countries excluded from the President's safeguard provisions. In order to monitor steel imports and to effectively implement the safeguards cited in the President's announcement, the Department of Commerce must collect and provide timely aggregated summaries about imports of certain steel products, especially from the countries excluded from the remedy. The Steel Import License proposed by the Import Administration of the Department of Commerce will be the tool used to collect the necessary information. The U.S. Trade Representative (USTR) will use the information to track increases in imports from excluded countries. If a surge is noted, USTR will initiate consultations with the country increasing its steel exports to the U.S. and discuss ways the country could reduce this steel trade to historical levels.

Affected Public: Businesses or other for-profits.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and

Constitution, NW., Washington, DC 20230 or via internet at *MClayton@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: August 20, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer

[FR Doc. 02–21602 Filed 8–23–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Online Performance Data Base

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites other Federal agencies and the general public to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 25, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 or via internet at *Mclayton@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Juanita E. Berry, Department of Commerce, Minority Business Development Agency (MBDA), Room 5079, 14th and Constitution Avenue, NW., Washington, DC 20230, or call (202) 482–3262.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Performance Database identifies minority business clients receiving Agency-sponsored business development services in the form of management and technical assistance, the kind of assistance each receives, and the impact of that assistance on the growth and profitability of the client firms. MBDA requires this information to monitor, evaluate, and plan Agency programs which effectively enhance the development of the minority business sector.

II. Method of Collection

Electronic transfer of performance data.

III. Data

OMB Number: 0640–0002.

Agency Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Affected Public: State or local governments, individuals, and profit and non-profit institutions.

Estimated Number of Responses: 240 (approximately 50 respondents with numerous responses).

Estimated Time Per Response: 3–15 minutes per function, as needed (5 functions).

Estimated Total Annual Burden Hours: 4,818.

Estimated Total Annual Cost: $0 (software package is provided by MBDA).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of pubic record.

Dated: August 20, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Electronic Government Division, Office of the Chief Information Officer.

[FR Doc. 02–21601 Filed 8–23–02; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 001214352–2097–02]

Announcing Approval of Federal Information Processing Standard (FIPS) 180–2, Secure Hash Standard; a Revision of FIPS 180–1

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Secretary of Commerce has approved FIPS 180–2, Secure Hash Standard, and has determined that the standard is compulsory and binding on Federal agencies for the protection of sensitive, unclassified information.

FIPS 180–2, Secure Hash Standard, replaces FIPS 180–1, which was issued in 1992 and which specified an algorithm (SHA–1) for producing a 160-bit output called a message digest. The message digest is a condensed representation of electronic data and is used in cryptographic processes such as digital signatures and message authentication. FIPS 180–2 includes three additional algorithms, which produce 256-bit, 384-bit, and 512-bit message digests. These expanded capabilities are compatible with and support the strengthened security requirements of FIPS 197, Advanced Encryption Standard.

EFFECTIVE DATE: This standard is effective February 1, 2003.

Specifications: FIPS 180–2 is available on the NIST web page at: *http://csrc.nist.gov/encryption/tkhash.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Barker, (301) 975–2911, National Institute of Standards and Technology, 100 Bureau Drive, STOP 8930, Gaithersburg, Maryland 20899–8930. Email: *elaine.barker@nist.gov.*

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** (66 FR 29287) on May 30, 2001, announcing the proposed FIPS 180–2, Secure Hash Standard, for public review and comment. The **Federal Register** notice solicited comments from the public, academic and research communities, manufacturers, voluntary standards organizations, and Federal, state, and local government organizations. In addition to being published in the **Federal Register**, the notice was posted on the NIST web pages; information was provided about the submission of electronic comments. Comments and responses were received from three private sector organizations

or individuals, and from one federal government organization.

The comments raised technical issues related to the standard, asked for clarification of technical issues, and recommended editorial changes. None of the comments opposed the adoption of the revised Federal Information Processing Standard. All of the editorial and related comments were carefully reviewed, and changes were made to the standard where appropriate. NIST recommended that the Secretary approve FIPS 180–2. Following is an analysis of the comments received.

Comment: NIST should provide a security evaluation of the algorithms added to FIPS 180–2, and give the rationale for the various design choices. Such an analysis would increase confidence in the algorithms and facilitate external evaluation.

Response: The standard provides four secure hash algorithms, which differ in the number of bits of security provided for the data being processed. Secure hash algorithms are designed for use in conjunction with another algorithm, which may have requirements that the hash algorithm have a certain number of bits of security. For example, a digital signature algorithm that provides 128 bits of security may require that the secure hash algorithm also provide 128 bits of security.

NIST believes that these algorithms are secure because it is computationally infeasible to find a message that corresponds to a given message digest, or to find two different messages that produce the same message digest. It is highly probable that a change to a message will result in a different message digest.

FIPS 180–2 includes the technical specifications for the four algorithms that have been selected to provide 160, 256, 384 and 512 bits of security. NIST anticipates and invites external examination and scrutiny concerning the security of the algorithms.

Comment: NIST should include a note in the standard indicating whether SHA–256 could be truncated to 160 bits for use as an alternative to SHA–1 (also 160 bits).

Response: The use of hash functions will be addressed in application standards (*e.g.*, in the upcoming revision of Federal Information Processing Standard 186–2, the Digital Signature Standard).

Comment: NIST should mention in the standard that SHA–256 constants are easily extracted from the SHA–512 constants.

Response: NIST believes that the decisions concerning the use of constants and how to extract them should be made by those organizations that develop implementations of the standard.

Comment: One comment suggested that there may be weaknesses in the algorithms, and proposed a method to change the standard to address the perceived weaknesses.

Response: It would be more appropriate for the perceived weaknesses to be addressed in application standards such as the Federal Information Processing Standard for the Keyed-Hash Message Authentication Code (HMAC), which has been approved as FIPS 198, as opposed to addressing this in FIPS 180–2 itself. Furthermore, NIST expects to issue guidance on the implementation of secure hash functions.

Authority: Under section 5131 of the Information Technology Management Reform Act of 1996 and the Computer Security Act of 1987, the Secretary of Commerce is authorized to approve standards and guidelines for the cost effective security and privacy of sensitive information processed by federal computer systems.

Executive Order 12866: This notice has been determined not to be significant for purposes of E.O. 12866.

Dated: August 19, 2002.

Karen Brown,

Deputy Director, NIST.

[FR Doc. 02–21599 Filed 8–23–02; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket Number: 020729185–2185–01]

Announcement of Graduate Research Fellowships in the National Estuarine Research Reserve System for Fiscal Year 2003

AGENCY: Estuarine Reserves Division (ERD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The Estuarine Reserves Division of OCRM is soliciting applications for graduate fellowship funding within the National Estuarine Research Reserve System. This notice sets forth funding priorities, selection criteria, and application procedures.

The National Estuarine Research Reserve System of NOAA announces the availability of graduate research fellowships. The Estuarine Reserves Division anticipates that 27 Graduate Research Fellowships will be competitively awarded to qualified graduate students whose research occurs within the boundaries of at least one reserve. Minority students are encouraged to apply. The amount of the fellowship is $17,500; at least 30% of total project cost match is required by the applicant. Applicants may apply for between one and three years of funding. Fellowships will start June 1, 2003. A later start date may be requested with justification and will be reviewed by ERD for approval.

DATES: Applications must be postmarked no later than November 1, 2002. Notification regarding the awarding of fellowships will be issued on or about March 1, 2003.

ADDRESSES: Erica Seiden, program coordinator, NOAA/Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, SSMC4, 11616 Floor, Silver Spring, MD 20910, Attn: NERRS GRF. Phone: 301–713–3155 ext. 172 Fax: 301–713–4363, internet: *erica.seiden@noaa.gov.* Web page: *http://www.ocrm.nos.noaa.gov/nerr/fellow.html.* See Appendix I for National Estuarine Research Reserve addresses.

FOR FURTHER INFORMATION CONTACT: For further information on specific research opportunities at National Estuarine Research Reserves, contact the site staff listed in Appendix I or the program specialist listed in the Addresses section above. For application information, contact Erica Seiden of ERD (see contact information above).

SUPPLEMENTARY INFORMATION:

I. Authority and Background

Section 315 of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1461, establishes the National Estuarine Research Reserve System (NERRS). 16 U.S.C. 1461 (e)(1)(B) authorizes the Secretary of Commerce to make grants to any coastal state or public or private person for purposes of supporting research and monitoring within a National Estuarine Research Reserve that are consistent with the research guidelines developed under subsection (c). This program is listed in the Catalog of Federal Domestic Assistance (CFDA) under ''Coastal Zone Management Estuarine Research Reserves,'' Number 11.420.

II. Information on the National Estuarine Research Reserve System

The National Estuarine Research Reserve System consists of estuarine areas of the United States and its territories which are designated and

managed for research and educational purposes. Each reserve within the system is chosen to reflect regional differences and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921.

Each reserve supports a wide range of beneficial uses of ecological, economic, recreational, and aesthetic values which are dependent upon the maintenance of a healthy ecosystem. The sites provide habitats for a wide range of ecologically and commercially important species of fish, shellfish, birds, and other aquatic and terrestrial wildlife. Each reserve has been designed to ensure its effectiveness as a conservation unit and as a site for long-term research and monitoring. As part of a national system, the reserves collectively provide an excellent opportunity to address research questions and estuarine management issues of national significance. For detailed descriptions of the sites, refer to the NERR Web site at *http://www.ocrm.nos.noaa.gov/nerr/fellow.html* or contact the site staff.

III. Eligibility and Availability of Funds

Funds are expected to be available on a competitive basis to qualified graduate students for research within a reserve(s) leading to a graduate degree. Applicants must be admitted to or enrolled in a full-time Master's or Doctoral program at a U.S. accredited university in order to be eligible to apply. Institutions eligible to receive awards include institutions of higher education, other non-profits, commercial organizations, international organizations, state, local and Indian tribal governments. Applicants should have completed a majority of their graduate course work at the beginning of their fellowship and have an approved thesis research program. Minority students are encouraged to apply.

Applicants may request funding for up to three years; funding for years two and three will be made available based on availability of funds and satisfactory progress of research as determined by the host reserve and the applicant's faculty advisor, in consultation with NOAA's Estuarine Reserves Division.

All reserve staff are ineligible to submit an application for a fellowship under this announcement. Requested federal funds must be matched by at least 30 percent of the TOTAL cost, not the federal share, of the project (*i.e.* $7,500 match for $17,500 in federal funds for a total project cost of $25,000). Requested overhead costs under fellowship awards are limited to 10% of the federal amount. Waived overhead costs may be used as match. Students receiving fellowship funding under this announcement will begin June 1, 2003.

No more than two fellowships at any one site will be funded at any one time. Based upon fellowships awarded in the 2002 funding cycle, we anticipate 27 openings for fellowships in 2003. Fellowships are expected to be available at the following sites:

NERR Site	Openings
Apalachicola, FL	1
Chesapeake Bay, MD	2
Chesapeake Bay, VA	2
Delaware	2
Elkhorn Slough, CA	1
Grand Bay, MS	2
Great Bay, NH	1
Jacques Cousteau, NJ	2
Jobos Bay, PR	1
Kachemak Bay, AK	2
Narragansett Bay, RI	1
North Carolina	1
North Inlet-Winyah Bay, SC	2
Padilla Bay, WA	1
Rookery Bay, FL	1
Sapelo Island, GA	1
Waquoit Bay, MA	2
Weeks Bay, AL	1
Wells, ME	1

IV. Purpose and Priorities

NERR research funds are provided to support management-related research projects that will enhance scientific understanding of the reserve ecosystem, provide information needed by reserve management and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues (15 CFR 921.50).

The NERR Graduate Research Fellowship program is designed to fund high quality research focused on enhancing coastal zone management while providing students with an opportunity to contribute to the research and/or monitoring program at a particular reserve.

Research projects proposed in response to this announcement must: (1) Address coastal management issues identified as having local, regional, and/or national significance, described in the ''Scientific Areas of Support'' below; and (2) be conducted within one or more designated reserve site(s).

Funding, $17,500 per year, is intended to provide any combination of research support, salary, tuition, supplies, or other costs as needed, including overhead. All current and prospective fellows will be eligible to receive $17,500 in federal funds. Fellows will be expected to participate in the reserve's research and/or monitoring program for up to a maximum of 15 hours per week. The work plan should be devised cooperatively with the reserve's research coordinator. Fellows conducting multi-site projects may fulfill this requirement at one or a combination of sites but for no more than a total of 15 hours per week. This program may occur throughout the academic year or may be concentrated during a specific season.

Scientific Areas of Support

The National Estuarine Research Reserve System has identified the following as areas of nationally significant research interest. Proposed research projects submitted in response to this announcement must address one of the following estuarine ecosystem topics (see #1 above):

- Eutrophication, effects of non-point source pollution and/or nutrient dynamics;
- Habitat conservation and/or restoration;
- Biodiversity and/or the effects of invasive species;
- Mechanisms for sustaining resources within estuarine ecosystems; or
- Economic, sociological, and/or anthropological research applicable to estuarine ecosystem management.

Note: Each reserve has local issues of concern that fall within one of the topics above. It is strongly suggested that applicants contact the host reserve (see Appendix I) for general information about the reserve and its research needs and priorities as they relate to this announcement. Applicants should determine whether their proposed projects are relevant to the reserve's site specific research needs.

V. Guidelines for Application Preparation, Review, and Reporting Requirements

Fellowship applicants must follow the guidelines presented in this announcement. Applications not adhering to these guidelines may be returned to the applicant without further review. Minority students are encouraged to apply.

Applicants must submit an original and two (2) copies of all application materials, except letters of reference which must come directly from their source. All materials must be postmarked no later than November 1, 2002. Applications postmarked November 2, 2002 or later will be returned without review. Receipt of all applications will be acknowledged and a copy sent to the appropriate reserve staff for review.

Applicants who are selected for funding will be required to: (1) Work

with the research coordinator or manager at the host reserve to develop a plan to participate in the reserve's research and/or monitoring program for up to 15 hours per week; (2) submit semi-annual progress reports to ERD and the host reserve before the end of each funding cycle on the research accomplishments to date; and (3) acknowledge NERRS support in all relevant scientific presentations and publications. In addition, fellows are strongly encouraged to publish their results in peer-reviewed literature and make presentations at local, national and international scientific meetings.

A. Application Preparation

Applicants are required to submit:

1. Academic resume or a curriculum vitae that includes all graduate and undergraduate institutions (department or area of study, degree, and year of graduation), all publications (including undergraduate and graduate thesis), awards or fellowships, and work/research experience.

2. Cover letter indicating current academic status, research interests, career goals, and how the proposed research fits into their degree program. It is strongly suggested that the results of discussions with the host reserve regarding their contributions to the reserve's research and/or monitoring program be included in the letter.

3. Unofficial copy of all undergraduate and graduate transcripts.

4. Signed letter of support from the applicant's graduate advisor indicating the advisor's contribution (financial and otherwise) to the applicant's graduate studies, and an assurance that the student is in good academic standing.

5. Two signed letters of recommendation from other than the applicant's graduate advisor sent directly from their source. Electronically transmitted letters of support are not acceptable.

6. Research proposal must be double-spaced in a font no smaller than 12-point courier and must include the following:

a. Title page which must include:

- Name, address, telephone and fax number, e-mail address, date, and signature of applicant;
- Project title;
- Amount of funding requested;
- Name of graduate institution;
- Name of institution providing matching funds and amount of matching funds;
- Name, address, telephone number and fax number, e-mail address, date, and signature of graduate advisor;
- Reserve(s) where research is to be conducted;
- Number of years of requested support.

b. Abstract. The abstract must state the research objectives, scientific methods to be used, and the significance of the project to a particular reserve and the reserve program. The abstract must be limited to one double-spaced page.

c. Project Description. The project description must be limited to 6 double-spaced pages excluding figures. The main body of the proposal must include a detailed statement of the work to be undertaken and the following components:

(1) Introduction. This section should introduce the research setting and environment. It should include a brief review of pertinent literature and describe the research problem in relation to relevant coastal management issues and the reserve research priorities. This section should identify the primary hypotheses, as well as any additional or component hypotheses which will be addressed by the research project.

(2) Methods. This section should state the method(s) to be used to accomplish the specific research objectives, including a systematic discussion of what, when, where, and how the data are to be collected, analyzed, and reported. Field and laboratory methods should be scientifically valid and reliable and should be accompanied by a statistically sound sampling scheme. Methods chosen should be justified and compared with other methods employed for similar work.

Techniques should allow the testing of the hypotheses, but should also provide baseline data related to ecological and management questions concerning the reserve environment. Methods should be described concisely and techniques should be reliable enough to allow comparison with those made at different sites and times by different investigators.

Analytical methods and statistical tests applied to the data should be documented, thus providing a rationale for choosing one set of methods over alternatives. Quality control measures also should be documented (*e.g.*, statistical confidence levels, standards of reference, performance requirements, internal evaluation criteria). The proposal should indicate by way of discussion how data are to be synthesized, interpreted and integrated into final work products.

Social science applicants should describe the sampling and or data collection methods including surveys, evaluation research, interviews (focus group and/or personal), participant observation, questionnaires, etc. Applicants should also describe the research design (experimental and quasi-experimental) and methods for data analysis.

A map clearly showing the study location and any other features of interest must be included; a U.S. Geological Survey topographic map, or an equivalent, is suggested for this purpose. Consultation with reserve personnel to identify existing maps is strongly recommended.

(3) Project Significance. This section should provide a clear discussion of how the proposed research addresses state and national estuarine and coastal resource management issues and how the proposed research effort will enhance or contribute to improving the state of knowledge of estuaries. This section must also discuss the relation of the proposed research to the research priorities stated in Section IV. Applicability of research findings to other reserve and coastal areas should also be mentioned. In addition, if the proposed research is part of a larger research project, the relationship between the two should be described.

d. Milestone schedule. This schedule should show, in table form, anticipated dates for completing field work, data collection, data analysis, reporting and other related activities. Use ''Month 1, Month 2, etc.'' rather than ''June, July, etc.,'' in preparing these charts.

e. Personnel and Project Management. The proposal must include a description of how the project will be managed, including the names and expertise of faculty advisors and other team members. Evidence of ability to successfully complete the proposed research should be supported by reference to similar efforts previously performed.

f. Literature Cited. This section should provide complete references for literature, research, and other appropriate published and unpublished documents cited in the text of the proposal.

7. Proposed budget. The amount of federal funds requested must be matched by the applicant by at least 30% of the total project cost (*i.e.*, $7,500 match for $17,500 in federal funds for a total project cost of $25,000). Cash or in-kind contributions directly benefitting the research project may be used to satisfy the matching requirements. Overhead or indirect costs for these awards are limited to 10% of the federal share. Waived overhead costs may also be used as match. Funds from other federal agencies and reserve staff salaries supported by federal funds may not be used as match. Requirements for the

non-federal share are contained in 15 CFR Part 14, Uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, other nonprofit and commercial organizations. ERD strongly suggests that the applicant work with their institution's sponsored programs office to develop their budget.

The applicant may request funds under any of the following categories as long as the costs are reasonable and necessary to perform research: personnel, fringe benefits, travel, equipment, supplies, contractual, construction, other, and indirect. The budget should contain itemized costs with appropriate narratives justifying proposed expenditures. Applicants must supply a table showing budget categories listing the federal and match portion side by side for each year of requested funding. Please see below for further details.

—Personnel. Salaries requested must be consistent with the institution's regular practices. The submitting organization may request that salary data remain confidential.

—Fringe Benefits. Fringe benefits (*i.e.*, social security, insurance, retirement) may be treated as direct costs as long as this is consistent with the institution's regular practices.

—Travel. The type, extent, and estimated cost of travel should be explained and justified in relation to the proposed research; the justification should also identify the person traveling. Travel expenses are limited to round trip travel to field research locations and professional meetings to present the research results and should not exceed 40 percent of total award.

—Equipment. Fellowship funds may be approved for the purchase of equipment only if the following conditions are met: (a) A lease versus purchase analysis has been conducted by the applicant or the applicant's institution for equipment that costs greater than $5000 and the analyses indicate that purchase is the most economical method of procurement; (b) the equipment does not exist at the recipient's institution or the reserve site; and, the equipment is essential for the successful completion of the project.

The justification must address each of these criteria. It must also describe the purpose of the equipment and provide a justification for its use. Additionally, it must include a list of equipment to be purchased, leased, or rented by model number and manufacturer, where known. At the termination of the fellowship, disposition of equipment will be determined by the NOAA Property Administrator.

—Supplies. The budget should indicate in general terms the types of expendable materials and supplies required and their estimated costs.

8. Requests for reserve support services. On-site reserve personnel sometimes can provide limited logistical support for research projects in the form of manpower, equipment, supplies, etc. Any request for reserve support services, including any services provided as match, should be approved by the reserve manager or research coordinator prior to application submission and be included as part of the application package in the form of written correspondence. Reserve resources which are supported by federal funds are not eligible to be used as match.

9. Coordination with other research in progress or proposed. ERD encourages collaboration and cost-sharing with other investigators to enhance scientific capabilities and avoid unnecessary duplication of effort. Applications should include a description of how the research will be coordinated with other research projects that are in progress or proposed, if applicable.

10. Permits. The applicant must apply for any applicable local, state or federal permits. A copy of any permit applications and supporting documentation should be attached to the application as appendices. ERD must receive notification of the approval of the permit application before funding can be approved.

B. Application Review and Evaluation

All applications will be evaluated for scientific merit by no less than three reviewers from the scientific community. The research coordinator and/or reserve manager will oversee the review process at the reserve. Criteria for evaluation are: (1) The quality of proposed research and its applicability to the NERRS Scientific Areas of Support listed in Section IV of this announcement (70%); (2) the research's applicability to specific reserve research and resource management goals as they relate to the Scientific Areas of Support in Section IV of this announcement (20%); and (3) academic excellence based on the applicant's transcripts and two letters of reference (10%). No more than two fellowships will be awarded at any one time for any one reserve. Final selections will be made by the Chief of the Estuarine Reserves Division based on the scores submitted by the reviewers during the evaluation process. The applicant(s) with the highest scores will receive fellowships commensurate with the number of openings at the host reserve. Funding recommendations should be announced by February 2003. Unsuccessful applications will be retained at ERD.

C. Reporting Requirements

Semi-annual performance reports shall be submitted 30 days after the completion of every six month period after the project start date and a final performance report shall be submitted 90 days after the project period ending date. Applicants selected for funding will be provided with the guidelines for these reports upon receiving the award.

VI. Fellowship Awards

Awards are normally made to the fellow's graduate institution through the use of a grant. Awards can be made to institutions of higher education, other nonprofits, commercial organizations, international organizations, state, local and Indian tribal governments. Applicants whose projects are recommended for funding will be required to complete all necessary federal financial assistance forms (SF–424, SF–424A, SF–424B, and CD–511), which will be provided by ERD with the letter of fellowship notification. The Estuarine Reserves Division recommends that all applicants work with their graduate institution during the development of their budget to ensure concurrence on budgetary issues (*e.g.* the use of salary and fringe benefits as match).

The Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, reserves the right to immediately halt activity under the award if it becomes obvious that award activities are not fulfilling the mission of the National Estuarine Research Reserve System. Non-compliance with a federally approved project may result in immediate halting of the award. For applicants awarded more than one year of funding, ERD will review and approve each stage of work annually before the next begins to assure that studies will produce viable information on which to form valid coastal management decisions.

VII. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **FEDERAL REGISTER** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of

Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget, in light of a court opinion which found that the Executive Order was not legally authorized. *See Building and Construction Trades Department* v. *Allbaugh*, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

VIII. Classification

This notice has been determined to be ''not significant'' for purposes of E.O. 12866. This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216–6. This notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Because notice and comment are not required under 5 U.S.C. 553(a)(2), or any other law, for notices relating to public property, loans, grants, benefits or contracts, a Regulatory Flexibility Analysis, 5 U.S.C. 601 *et seq.*, is not required and has not been prepared for this notice.

This notice involves a collection of information subject to the requirements of the Paperwork Reduction Act. The requirements have been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

(Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management National Estuarine Research Reserves)

Dated: August 20, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Appendix I. NERRS On-Site Staff

Alabama

Mr. L.G. Adams, Manager and Dr. Scott Phipps, Research Coordinator, Weeks Bay National Estuarine Research Reserve, 11300 U.S. Highway 98, Fairhope, AL 36532, (251) 928–9792, *lg.adams@noaa.gov, scott.phipps@noaa.gov*

Alaska

Mr. Glenn Seaman, Manager and Dr. Carl Schoch, Research Coordinator, Kachemak Bay National Estuarine Research Reserve, Department of Fish and Game, 2181 Kachemak Drive, Homer, AK 99603, (907) 235–6377, *glenn_seaman@fishgame.state.ak.us, carl_schoch@fishgame.state.ak.us*

California

Ms. Becky Christensen, Manager and Dr. Kerstin Wasson, Research Coordinator, Elkhorn Slough National Estuarine Research Reserve, 1700 Elkhorn Road, Watsonville, CA 95076, (831) 728–2822, *research@elkhornslough.org*

Mr. Mike Wells, Manager and Dr. Jeffrey Crooks, Research Coordinator, Tijuana River National Estuarine Research Reserve, 301 Caspian Way, Imperial Beach, CA 92032, (619) 575–3613, *mwells@parks.ca.gov, jacrooks@yahoo.com*

Dr. Todd Hopkins, San Francisco Bay National Estuarine Research Reserve, Romberg Tiburon Center, 3152 Paradise Drive, Tiburon, CA 94920, (415) 338–6063, *thopkins@sfsu.edu*

Delaware

Mr. Mark Del Vecchio, Manager, Ms. Katie Dulin, Acting Manager, and Dr. Bob Scarborough, Research Coordinator, Delaware National Estuarine Research Reserve, Department of Natural Resources and Environmental Control, 818 Kitts Hummock Road, Dover, DE 19901, (302) 739–3436, *mdelvecchio@state.de.us, kdulin@state.de.us, bscarboroug@state.de.us*

Florida

Mr. Woodard Miley II, Manager and Mr. Lee Edmiston, Research Coordinator, Apalachicola River National Estuarine Research Reserve, Florida Department of Environmental Protection, 350 Carroll Street, Eastpoint, FL 32320, (850) 670–4783, *woodard.miley@dep.state.fl.us, lee.edmiston@dep.state.fl.us*

Mr. Kenneth Berk, Manager and Dr. Rick Gleeson, Research Coordinator, Guana Tolomato Matanzas National Estuarine Research Reserve, Florida Department of Environmental Protection, 9741 Ocean Shore Boulevard, Marineland, FL 32080, (904) 461–4054, *kenberk@bellsouth.net, rglee@whitney.ufl.edu*

Mr. Gary Lytton, Manager and Dr. Michael Shirley, Research Coordinator, Rookery Bay National Estuarine Research Reserve, Department of Environmental Protection, 300 Tower Road, Naples, FL 34113–8059, (239) 417–6310, *gary.lytton@dep.state.fl.us, michael.shirley@dep.state.fl.us*

Georgia

Mr. Buddy Sullivan, Manager and Mr. Dorset Hurley, Research Coordinator, Sapelo Island National Estuarine Research Reserve, PO Box 15, Sapelo Island, GA 31327, (912) 485–2251, buddy.sullivan@noaa.gov, *dhurley@darientel.net*

Maine

Mr. Paul Dest, Manager and Dr. Michele Dionne, Research Coordinator, Wells National Estuarine Research Reserve 342 Laudholm Farm Road, Wells, ME 04090, (207) 646–1555, *dest@wellsnerrcec.lib.me.us, michele.dionne@maine.edu*

Maryland

Ms. Carol Towle, Manager and Ms. Julie Bortz, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve, MD, Department of Natural Resources, Tawes State Office Building, E–2, 580 Taylor Avenue, Annapolis, MD 21401, (410) 260–8713, *ctowle@dnr.state.md.us, jbortz@dnr.state.md.us*

Massachusetts

Ms. Christine Gault, Manager and Dr. Chris Weidman, Research Coordinator, Waquoit Bay National Estuarine Research Reserve, Department of Environmental Management, PO Box 3092, Waquoit, MA 02536, (508) 457–0495, *christine.gault@state.ma.us, chris.weidman@state.ma.us*

Mississippi

Mr. Jan Boyd, Acting Manager and Dr. Mark Woodrey, Grand Bay National Estuarine Research Reserve, Department of Marine Resources 6005 Bayou Heron Road, Moss Point, MS 39562, (228) 475–7047, *jan.boyd@dmr.state.ms.us, mark.woodrey@dmr.state.ms.us*

New Hampshire

Mr. Peter Wellenberger, Manager and Mr. Brian Smith, Research Coordinator, Great Bay National Estuarine Research Reserve, New Hampshire Department of Fish and Game 225 Main Street, Durham, NH 03824, (603) 868–1095, *pwellenberger@starband.net, bmsmith@starband.net*

New Jersey

Mr. Michael De Luca, Manager and Dr. Michael Kennish, Research Coordinator, Mullica River National Estuarine Research Reserve, Institute of Marine and Coastal Sciences, Rutgers University, 71 Dudley Road, New Brunswick, NJ 08903, (732) 932–6555, *deluca@imcs.rutgers.edu, kennish@imcs.rutgers.edu*

New York

Ms. Elizabeth Blair, Manager and Mr. Chuck Nieder, Research Coordinator, Hudson River National Estuarine Research Reserve, New York State Department of Environmental Conservation, c/o Bard College Field Station, Annandale-on-Hudson, NY 12504, (845) 758–7010, *bablair@gw.dec.state.ny.us, wcnieder@gw.dec.state.ny.us*

North Carolina

Dr. John Taggart, Manager and Dr. Steve Ross, Research Coordinator, North Carolina National Estuarine Research Reserve, 5001

Masonboro Loop Road, 1 Marvin Moss Lane, Wilmington, NC 28409, (910) 395–3905, *taggartj@uncwil.edu, rosss@uncwil.edu*

Ohio

Mr. Eugene Wright, Manager and Dr. David Klarer, Research Coordinator, Old Woman Creek National Estuarine Research Reserve, 2514 Cleveland Road, East, Huron, OH 44839, (419) 433–4601, *gene.wright@noaa.gov, david.klarer@noaa.gov*

Oregon

Mr. Michael Graybill, Manager and Dr. Steve Rumrill, Research Coordinator, South Slough National Estuarine Research Reserve, PO Box 5417, Charleston, OR 97420, (541) 888–5558, *ssnerr@harborside.com*

Puerto Rico

Ms. Carmen Gonzalez, Manager and Dr. Pedro Robles, Research Coordinator, Jobos Bay National Estuarine Research Reserve, Department of Natural and Environmental Resources, Call Box B, Aguirre, PR 00704, (787) 853–4617, *carmen.gonzalez@noaa.gov, pedro.robles@coqui.net*

Rhode Island

Mr. Roger Greene, Manager and Dr. Kenny Raposa, Research Coordinator, Narragansett Bay National Estuarine Research Reserve, Department of Environmental Management, Box 151, Prudence Island, RI 02872, (401) 683–6780, *roger.greene@noaa.gov, kenny@gsosun1.gso.uri.edu*

South Carolina

Mr. Michael D. McKenzie, Manager and Dr. Elizabeth Wenner, Research Coordinator, Ashepoo-Combahee-Edisto (ACE) Basin, South Carolina Department of Natural Resources, PO Box 12559, Charleston, SC 29412, (843) 762–5062, *mckenziem@mrd.dnr.state.sc.us, wennere@mrd.dnr.state.sc.us*

Ms. Wendy Allen, Manager, North Inlet-Winyah Bay National Estuarine Research Reserve, Baruch Marine Field Laboratory, PO Box 1630, Georgetown, SC 29442, (803) 546–3623, *wendy@belle.baruch.sc.edu*

Virginia

Dr. William Reay, Manager and Dr. Ken Moore, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve, VA, Virginia Institute of Marine Science, College of William and Mary, PO Box 1347, Gloucester Point, VA 23062, (804) 684–7135, *wreay@vims.edu, moore@vims.edu*

Washington

Mr. Terry Stevens, Manager and Dr. Douglas Bulthuis, Research Coordinator, Padilla Bay National Estuarine Research Reserve, 10441 Bay View-Edison Road, Mt. Vernon, WA 98273–9668, (360) 428–1558, *tstevens@padillabay.gov, bulthuis@padillabay.gov*

[FR Doc. 02–21622 Filed 8–23–02; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081202A]

New Information Indicates Fine-scaled Stock Structure for Harbor Seals in Alaska

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

ACTION: Notice of information; request for comments.

SUMMARY: Recent studies indicate that stock structure of harbor seals in Alaska is more finely scaled than Stock Assessment Reports (SARs), compiled pursuant to the Marine Mammal Protection Act (MMPA), currently indicate. Under Section 119 of the MMPA, NMFS has entered into a co-management agreement to conserve Alaska harbor seals jointly with the Alaska Native Harbor Seal Commission (ANHSC). NMFS and the ANHSC have outlined a process for proceeding with further evaluating and revising harbor seal stock structure. This notice invites the public to provide additional information and viewpoints that should be considered throughout the stock structure evaluation process.

DATES: Comments must be received before close of business on September 25, 2002.

ADDRESSES: Comments should be forwarded to P. Michael Payne, Assistant Regional Administrator for Protected Resources, Alaska Regional Office, NMFS, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, Alaska Regional Office, NMFS, Juneau, Alaska, (907) 586–7824; or Thomas Eagle, Office of Protected Resources, NMFS, Silver Spring, MD, (301) 713–2322, ext. 105.

SUPPLEMENTARY INFORMATION:

Electronic Access

This notice and a map of the areas in Alaska where seal groupings appear discrete may be found at *www.fakr.noaa.gov/protectedresources.*

Background

Section 3 of the MMPA defines a population stock (referred to as ''stock'' in this notice) as ''...a group of marine mammals of the same species or smaller taxon in a common spatial arrangement that interbreed when mature.'' Section 117 of the MMPA requires that NMFS publish stock assessments for each marine mammal stock under its jurisdiction. These stock assessment reports (SARs) provide a summary of information on each stock's geographic range, abundance, and annual productivity. Additionally, SARs provide information about human-caused sources of mortality or serious injury for each marine mammal stock. An accurate characterization of stocks is necessary to meet the goals of the MMPA.

While the MMPA does not provide further guidance for identifying marine mammal stocks other than the definition above, NMFS describes its recommended approach to stock identification in its guidelines for preparing stock assessment reports. This approach is based on language in the purposes and policies sections of the MMPA that asserts that population stocks of marine mammals should not be permitted to diminish beyond the point at which they cease to be a functioning element of the ecosystem of which they are a part. The guidelines further note that a stock is a management unit that identifies a demographically isolated biological population. At the same time, the guidelines acknowledge the difficulties in obtaining comprehensive stock structure information due to resource constraints.

The guidelines state that careful consideration needs to be given to how stocks are defined, particularly where mortality may be greater than sustainable levels (above the calculated Potential Biological Removal level). An inappropriately defined stock could lead to localized depletions or extirpations.

Long-term movements and dispersal of marine mammals impact the genetic makeup of these animals. For instance, a small amount of breeding among individuals can be enough to prevent strong genetic differences from developing among adjacent groups of animals. When genetic differences are found among groups of seals, this indicates that gene flow, and movement or dispersal, among the groups is extremely low. Therefore, results of studies that show significant genetic differences provide a minimum estimate of the degree of population or stock structure. In other words, if a genetic analysis reveals some number of distinct, genetically differentiated units, a minimum of that number of demographically independent units is virtually certain.

Under Section 119 of the MMPA, NMFS signed a co-management agreement (Agreement) with the ANHSC, a representative body for native subsistence users of harbor seals in

Alaska, in April 1999. The goals of this Agreement include promoting the sustained health of harbor seals (*Phoca vitulina*) in Alaska and the culture and way of life of Native Alaskans who rely on the harvest of harbor seals for subsistence purposes. In the Agreement, NMFS and the ANHSC agreed to identify and resolve, as early as possible, and through a consultative process, any conservation issues that may arise associated with harbor seals. Over the past two years, the Alaska Scientific Review Group (SRG), a regional scientific advisory group formed pursuant to the MMPA; the Marine Mammal Commission, a national scientific advisory group formed pursuant to the MMPA; and the Alaska Harbor Seal Co-management Committee, a group of NMFS and ANHSC advisors formed pursuant to the Co-management Agreement, have all raised the need to redefine harbor seal stock structure in Alaska.

Consistent with the provisions of the Agreement, the Co-management Committee met in June 2001, to determine how to proceed with reviewing and using the newly available results of the genetics studies in a management context. The Co-management Committee agreed upon the following 3-phase process: (1) to inform all constituents about the results and availability of the genetics data; (2) to solicit additional input and discuss relevant information such as harbor seal abundance, distribution, and movement, as well as traditional and local knowledge; and (3) to make recommendations to NMFS regarding the use of all appropriate information in revising harbor seal stock structure in Alaska.

The steps identified for this process included peer-review and publication of the genetics analysis by NMFS scientists; publication of a **Federal Register** notice to notify interested parties about the genetics results and to solicit additional information and viewpoints related to the stock structure for harbor seals; and discussion of all pertinent information in the co-management process to evaluate and revise harbor seal stock structure. The genetics analyses have been peer-reviewed at several scientific meetings and the results are in the process of being published in technical journals (for more information about these analyses, consult the contacts listed under For Further Information Contact). Since June 2001, the results of these studies, and the process for incorporating these results into the marine mammal stock assessment reports, have also been discussed at several SRG meetings and at a meeting convened by the Co-management Committee to review the harbor seal research plan. The ANHSC also discussed this issue at its meeting in Dillingham, Alaska April 29 through May 1, 2002. NMFS is now publishing this **Federal Register** notice to solicit comments from interested constituents on additional information and viewpoints regarding population stock structure of harbor seals in Alaska. Following receipt of these comments, NMFS and the ANHSC will incorporate all available information, scientific and non-scientific, into its discussions and recommendations for a proposed revision to the currently recognized harbor seal population stock structure.

Recent Scientific Studies Relevant to Stock Structure

Following is a summary of recent genetic analyses, telemetry and seal movement data, and population trend studies related to Alaska harbor seal stock structure.

Genetics Studies: Recent genetic analyses indicate a much finer level of genetic differentiation among Alaska harbor seals than the current Stock Assessment Reports indicate, (three harbor seal stocks throughout the state). These analyses identify twelve genetically and demographically independent groups of seals indicating that a minimum amount of movement by seals occurs between or among the following areas: the Pribilof Islands; Bristol Bay; Tugidak Island; the northeast side of Kodiak Island; the southwest corner of Cook Inlet; the south side of the Kenai Peninsula; Prince William Sound; Glacier Bay; the inside waters (shielded from the Gulf of Alaska by large islands) of northern Southeast Alaska; the outside waters (open to the Gulf of Alaska) of northern Southeast Alaska; the inside waters of southern Southeast Alaska; and the outside waters of southern Southeast Alaska (for a map of these areas see Electronic Access).

Due to data collection limitations, some areas of the harbor seal's range cannot be included in any of the genetic groupings. Therefore, these genetic data do not represent all animals or areas in Alaska inhabited by harbor seals. However, other scientific data can be used to define distinct groups of animals in areas where genetic information is lacking. Available telemetry and seal movements data, as well as population trend data, for instance, may be used to supplement genetic analyses and infer differences among groups of harbor seals in different locations.

Results of Movement and Telemetry Studies: Satellite tagging provides useful information on the behavior and ranges of individual seals as well as insight into how stocks may be structured. Telemetry studies are important because they track movements that suggest the locations where harbor seals forage and provide information on geographic dispersal. The results of most telemetry studies on harbor seals in Alaska indicate that the animals move short distances (less than 50 kilometers). In fact, most studies indicate that the majority of adult harbor seals remain close to the location where they were tagged. For this reason, harbor seals in Alaska are generally characterized as non-migratory. The movements of adult seals support the conclusion that harbor seals exist in discrete groups among various locations.

The telemetry studies also provide information regarding geographic and habitat features that animals do not cross that may represent long-term barriers to gene flow among groups of seals. For instance, extensive tagging data from the Kodiak Archipelago indicate minimal movement of harbor seals across Shelikof Strait to the Alaska Peninsula, suggesting that this deep-water trench may be an effective barrier to harbor seal dispersal.

Other studies of harbor seal movement patterns suggest that at least two additional areas in Alaska may contain harbor seals that are discrete from seals in adjacent areas. These two areas include the Aleutian Islands west of Unimak Pass and the northeastern Gulf of Alaska coast between Cape Suckling and Icy Strait (see Electronic Access). Harbor seals in the Aleutian Islands may also be considered discrete from seals to the east (on the north side of the Alaska Peninsula) based primarily on distance between haulout sites and potential oceanographic barriers between this region and the remainder of Alaska.

The Cape Suckling to Icy Strait region of the eastern Gulf of Alaska consists of an extensive expanse of open-ocean coastline with few haulout sites. The sites that exist in this area are clustered in relatively isolated bays and inlets along the coastline that are separated from each other by long distances of relatively straight, open coastline. Inferences from the telemetry data suggest that seals in this region are geographically isolated from other adjacent groups of seals.

Results from Population Trend Analyses: The results of counts at population trend-sites throughout the Gulf of Alaska provide additional

evidence that harbor seals have a finer scale stock structure than the current SAR indicates. These counts indicate stable or increasing harbor seal numbers in Southeast Alaska, except for Glacier Bay which shows a declining trend; several distinct trends in the central Gulf of Alaska; and possibly a declining trend in the Bering Sea.

Southeast Alaska: Trend-sites for the Southeast Alaska stock were established in Ketchikan (1983), in Sitka (1984), and in Glacier Bay (1992). Current trend data for the Ketchikan trend-sites show an increasing trend among harbor seals of 7.4 percent per year (1983-1998). The Sitka area exhibits a relatively stable trend of 1.1 percent per year (1984–1999). Glacier Bay experienced a decreasing trend of –7.5 percent per year between 1992–98. These trend data indicate that Southeast Alaska is likely occupied by more than one discrete harbor seal group.

Gulf of Alaska: The Kodiak Archipelago and Prince William Sound represent the principal trend-site areas for the current Gulf of Alaska stock of harbor seals. Tugidak Island, in the Kodiak Archipelago, is the main long-term trend index site. The Tugidak Island trend-site has demonstrated an historical decline of approximately 90 percent from the mid-1970s to the 1990s. However, counts at the Tugidak Island site have indicated a 6.7 percent per year increase from 1994–1999 during the pupping period, and 4.9 percent increase per year during the molting period. Recent trend data from the greater Kodiak area (1993-1999) suggest an increasing trend of 5.6 percent per year. Overall, however, seal abundance in this area remains substantially below abundance levels in the 1970s. In Prince William Sound, counts from surveys conducted during the harbor seal molt period have declined by 58 percent since the first trend count surveys were conducted in the early 1980s. Thus, the population trend data support genetic evidence that the Gulf of Alaska is likely to contain more than one stock of harbor seals.

Bering Sea: A trend route was recently established in the eastern Bering Sea area along the north side of the Alaska Peninsula in Bristol Bay. The Bristol Bay trend route (1998-2001) indicates a declining trend of -1.3 percent per year. Total counts of harbor seals in the Bering Sea were also obtained in the 1970s and are considerably higher than the more recent counts on the Bristol Bay trend-site route. Recent population trends (1990-2000) for the land-based trend-site at Nanvak Bay indicate an increasing rate of 9.2 percent per year during the pupping period and 2.1 percent per year during the molting period. Counts in the Bering Sea are complicated by the sympatric ranges of harbor seals and spotted seals (P. largha); the two species are indistinguishable from aerial surveys.

Request for Comments

The purposes of this notice are: (1) to inform interested constituents that several lines of evidence indicate that harbor seals have a finer-scale stock structure in Alaska than current Stock Assessment Reports indicate; (2) to advise the public that NMFS and ANHSC are evaluating harbor seal stock structure through a co-management process; and (3) to solicit additional information and viewpoints that the public would like NMFS and ANHSC to consider throughout the evaluation of harbor seal stock structure.

Dated: August 19, 2002.

David Cottingham,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–21654 Filed 8–23–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082102B]

North Pacific Fishery Management Council; Notice of Committee Meeting

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

ACTION: Committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Pacific Northwest Crab Industry Advisory Committee (PNCIAC) to meet.

DATES: September 13, 2002.

ADDRESSES: NMFS/Alaska Fisheries Science Center, 7600 Sand Point Way NE, Building 9, Room A & B Seattle, WA 99115.

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

FOR FURTHER INFORMATION CONTACT: Council staff: 907–271–2809.

SUPPLEMENTARY INFORMATION: On Friday, September 13, 2002, the Committee will meet between 9 a.m.–3 p.m. in Seattle at the Alaska Fisheries Science Center. The Committee will review a report on newshell and skip-molt components of the Bering Sea opilio fishery, review status of stocks and guideline harvest levels, and receive a presentation on catchability of crabs in the surveys. The Committee may develop recommendations on these and other issues relating to crab fishery management.

Although non-emergency issues not contained in this agenda may come before the Committee for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

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: August 21, 2002.

Richard W. Surdi,

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

[FR Doc. 02–21656 Filed 8–23–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082102A]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its SOPPS (Statement of Organization Practices and Procedures) Committee, Information and Education Committee, Protected Resources Committee, NEPA (National Environmental Policy Act) Committee, Advisory Panel Selection Committee, Shrimp Committee, Spiny Lobster Committee, Snapper Grouper Committee, Highly Migratory Species Committee, Dolphin Wahoo Committee. A public hearing on the revised Atlantic Dolphin Wahoo Fishery Management Plan (FMP) will be held and a public comment period will be held to address

lobster issues. There will also be a full Council Session.

DATES: The meetings will be held in September 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407. Telephone: (1–800) 334–6660 or (843) 571–1000.

Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843–571–4366; fax: 843–769–4520; email: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. *SOPPs Committee Meeting: September 16, 2002, 10–11: a.m.*

The SOPPs Committee will meet to review the status of the Council's Statement of Organizational Practices and Procedures and develop recommended revisions.

2. *Information and Education Committee Meeting: September 16, 2002, 11–12 Noon*

The Information and Education Committee will meet to review current materials, projects and activities. The Committee will also review and make revisions to a draft strategic plan and discuss upcoming meetings.

3. *Protected Resources Committee Meeting: September 16, 2002, 1:30–3 p.m.*

The Protected Resources Committee will meet to develop recommendations for a Protected Resources Advisory Panel, discuss the Committee's direction and scope of its work.

4. *NEPA Committee Meeting: September 16, 2002, 3–4:30 p.m.*

The NEPA Committee will meet to review and discuss Committee objectives, direction and scope of its work and receive a presentation regarding the Pacific Groundfish PEIS (Programatic Environmental Impact Statement).

5. *Advisory Panel Selection Committee Meeting (CLOSED): September 16, 2002, 4:30–6 p.m.*

The Advisory Panel Selection Committee will meet in to review current applications for advisory panel positions and develop recommendations.

6. *Shrimp Committee Meeting: September 17, 2002, 8:30–10:30 a.m.*

The Shrimp Committee will meet to review the draft options paper for Shrimp Amendment 6 and provide direction to staff regarding revisions. The Committee will also discuss the status of the new TED (Turtle Excluder Device) rule.

7. *Spiny Lobster Committee Meeting: September 17, 2002, 10:30–12 Noon*

The Spiny Lobster Committee will meet to review and develop recommendations on Florida's request for regulatory action. The Committee will also review and approve a Regulatory Amendment from the Gulf of Mexico Fishery Management Council if it is available at the meeting.

8. *Snapper Grouper Committee Meeting: September 17, 2002, 1:30–3:30 p.m., and continued on September 18 from 8:30 a.m.–5 p.m.*

The Snapper Grouper Committee will hear a status report on stock assessments for vermilion snapper and black sea bass and an additional report from NOAA Fisheries (National Marine Fisheries Service) Southeast Regional Office regarding capacity work in the snapper grouper fishery. The Committee will review a draft of Amendment 13 to the Snapper Grouper Fishery Management Plan (FMP) and provide additional direction to staff. The Committee will also review a draft of Amendment 14 to the Snapper Grouper FMP and provide direction to staff.

9. *Highly Migratory Species Committee Meeting: September 17, 2002, 3:30–5:30 p.m.*

The Highly Migratory Species Committee will meet to review the status of the listing of white marlin under the Endangered Species Act (ESA), discuss bluefin tuna allocations and issues related to the fall meeting of ICCAT (International Commission for the Conservation of Atlantic Tuna).

10. *Dolphin Wahoo Committee Meeting: September 19, 2002, 8:30–12: Noon*

Note: A public hearing regarding the revised Atlantic Dolphin Wahoo FMP will be held September 19th beginning at 8:30 a.m. Immediately following the public hearing, the Dolphin Wahoo Committee will receive a briefing on the status of the ACCSP (Atlantic Coastal Cooperative Statistics Program) including the bycatch monitoring component. The Committee will then review and develop recommendations on the revised Atlantic Dolphin Wahoo FMP.

11. *Council Session: September 19, 2002, 1:30–6 p.m.*

From 1:30–1:45 p.m., the Council will have a Call to Order, introductions and roll call, adoption of the agenda, and approval of the June 2002 meeting minutes.

From 1:45–2 p.m., the Council will conduct elections for Chairman and Vice Chairman positions and make presentations.

From 2–2:45 p.m., the Council will hear a report from the Spiny Lobster Committee and address Committee recommendations regarding Florida's regulation request.

Beginning at 2 p.m., a public comment period will be held on the State of Florida's request for regulation changes involving the use of short lobsters. Immediately following the comment period, the Council will discuss the issue and make recommendations to staff.

From 2:45–3:30 p.m., the Council will hear a report from the Dolphin Wahoo Committee and take action on the Atlantic Dolphin Wahoo FMP.

From 3:30–3:45 p.m., the Council will hear a report from the Habitat and Environmental Protection Committee.

From 3:45–4:p.m., the Council will hear a report from the Shrimp Committee and approve options for Amendment 6 to the Shrimp FMP.

From 4–4:30 p.m., the Council will hear a report from the Snapper Grouper Committee.

From 4:30–5 p.m., the Council will hear a report from the Advisory Panel Selection Committee and appoint new advisory panel members.

From 5–6 p.m., the Council will receive a legal briefing on litigation affecting the Council (CLOSED SESSION).

12. *Council Session: September 20, 2002, 8:30 a.m.–12:00 Noon*

From 8:30–8:45 a.m., the Council will hear a report from the SOPPs Committee and approve revised SOPPs for submission to the Secretary of Commerce.

From 8:45–9 a.m., the Council will receive a report from the Information and Education Committee.

From 9–9:15 a.m., the Council will hear a report from the Protected Resources Committee.

From 9–9:30 a.m., the Council will hear a report from the NEPA Committee.

From 9:30–10 a.m., the Council will receive a report from the Highly Migratory Species Committee.

From 10–10:30 a.m., the Council will hear NMFS status reports on the Golden/Red Crab FMP management unit emergency request, Shrimp Amendment 5, the Sargassum FMP and the SAW/SARC (Stock Assessment Workshop/Stock Assessment Review Committee). NOAA Fisheries will also give status reports on landings for Atlantic king mackerel, Gulf king mackerel (eastern

zone), Atlantic Spanish mackerel, snowy grouper & golden tilefish, wreckfish, greater amberjack and south Atlantic octocorals.

From 10:30–12 Noon, the Council will hear agency and liaison reports, discuss other business and upcoming meetings. Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 6, 2002.

Dated: August 21, 2002.

Richard W. Surdi,

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

[FR Doc. 02–21655 Filed 8–23–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Wednesday, September 25, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–21827 Filed 8–22–02; 4:00 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On August 6, 2002, the Department of Education published a 60-day public comment period notices for the information collections, ''Annual Progress Reporting Form for the American Indian Vocational Rehabilitation Services (AIVRS) Program.'' In the Abstract, it states that copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2064. This link number should be 2121. The Leader, Regulatory Information Management, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.*

Dated: August 20, 2002.

John D. Tressler,

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

[FR Doc. 02–21624 Filed 8–23–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On August 7, 2002, the Department of Education published incorrect information regarding the public comment notice for the information collection, ''Consolidated State Application''. The information within the notice for the Consolidated State Application has been corrected. The public comment period continues through September 6, 2002.

Type of Review: Extension.

Title: Consolidated State Application.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 18,160.

Abstract: This information collection package describes the criteria and procedures that govern the consolidated State application under which State educational agencies will apply to obtain funds for implementing Elementary and Secondary Education Act (ESEA) programs. The option of submitting a consolidated application for obtaining federal formula program grant funds is provided for in the reauthorized ESEA (No Child Left Behind-NCLB) Section 9302. This information collection package will guide the States in identifying the information and data required in the application.

In addition to this comment period for the Consolidated State Application, the Department has published the Notice of Proposed Rulemaking (NPRM) for the Title 1—Improving the Academic Achievement of the Disadvantaged for public comment. The comment period for the information collection requirements pertaining to this collection has been offered through the NPRM.

The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*.

Dated: August 21, 2002.

John D. Tressler,

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

[FR Doc. 02–21689 Filed 8–23–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 19, 2002; 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.
Informal Discussion

6 p.m.
Call to Order; Introductions; Approve August Minutes; Review Agenda; Election of 2003 Officers

6:10 p.m.
DDFO's Comments
- Budget Update
- ES & H Issues
- EM Project Updates
- CAB Recommendation Status
- Other

6:30 p.m.
Ex-officio Comments

6:40 p.m.
Public Comments and Questions

6:50 p.m.
Review of Action Items

7:05 p.m.
Break

7:15 p.m.
Presentation
- Update Actions Underway as Part of Accelerated Cleanup
- C–400 Source Removal
- North-South Diversion Ditch
- Scrap Metal Removal

8 p.m.
Public Comments and Questions

8:10 p.m.
Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

8:40 p.m.
Administrative Issues
- Self Evaluation Survey Discussion
- Preparation/Discussion—October Chair's Meeting
- Review of Workplan & Agenda Priority Setting
- Review of Next Agenda
- Federal Coordinator Comments
- Final Comments

9 p.m.
Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or by telephone at 1–800–382–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC on August 21, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–21637 Filed 8–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning proposed revisions to the Form EIA–846A/C, ''Manufacturing Energy Consumption Survey.''

DATES: Comments must be filed by October 25, 2002. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Robert K. Adler. To ensure receipt of the comments by the due date, submission by FAX (202–586–0018) or e-mail (*robert.adler@eia.doe.gov*) is recommended. The mailing address is Energy Consumption Division, EI–63, Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0660. Alternatively, Mr. Adler may be contacted by telephone at 202–586–1134.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Robert K. Adler at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

The Manufacturing Energy Consumption Survey (MECS) is a mail survey designed to collect energy consumption and expenditures data from establishments in the manufacturing sector; *i.e.*, North American Industry Classification System (NAICS) codes 31–33. There are three MECS data collection forms and their use depends on an establishment's primary business activity classification under NAICS. Form EIA–846A collects information for all the manufacturing industries contained within NAICS 31–33 except for NAICS 321, 322, 324, 325, and 331111. Form EIA–846B is for establishments operating primarily in the petroleum refining industry (NAICS 324110). Form EIA–846C is for

establishments in NAICS 321, 322, 324 (except 324110), 325 and 331111.

The 2002 MECS will collect information during 2003 for business activities in calendar year 2002. For the 2002 MECS, EIA proposes to collect the following data from each MECS establishment: (1) For each energy source consumed—consumption (total, fuel and nonfuel uses) and the expenditures for each energy source, energy storage (as applicable), and energy produced onsite; (2) energy end uses; (3) general energy-saving technologies; (4) energy management activities; (5) square footage and number of buildings in the establishment; (6) fuel-switching capabilities; and (7) use of equipment and behaviors associated with the adaption to the digital economy.

The MECS has been conducted five times previously, covering the years 1985, 1988, 1991, 1994, and 1998. In all five survey years, the MECS has collected baseline data on manufacturers' energy consumption and expenditures. The MECS collected data on fuel-switching capabilities in all years except 1998. In the 1991,1994, and 1998 surveys, the MECS also collected data on end-uses, energy management technologies, building square footage, and energy-saving technologies.

The MECS information is the basis for data and analytic products that can be found in *http://www.eia.doe.gov/emeu/mecs.* Also on this website are past publications, articles, and a special analytic series, ''Industry Analysis Briefs.'' The 2002 MECS will also be used to benchmark EIA's industry forecasting model and update changes in the energy intensity and greenhouse gases data series.

The proposed 2002 MECS uses experience gained from the administration and processing of the five previous surveys and past consultations with respondents, trade association representatives, and data users. EIA has completed a web-based survey of users to obtain their advice and needs for data. The results of that survey can be found at *http://tonto.eia.doe.gov/mecs/mecs2002/user_needs/results.html.*

II. Current Actions

EIA proposes making several changes from the 1998 MECS for use in the 2002 MECS. The MECS will reinstate the fuel-switching capability data collection questions that last appeared in the 1994 survey. Volatility in energy prices during periods since the 1998 survey coupled with a need to reestablish baseline data have led to its reinstatement. To compensate for the added respondent burden and cost to the government of collecting fuel-switching data, EIA intends to delete the questions on industry-specific technologies. Those questions have proven difficult to keep up-to-date and by themselves cannot give information on the extent to which such technologies influence energy consumption at the manufacturing establishment. The number of additional data items required to do that would be prohibitive. EIA will reexamine the collection of the industry-specific technologies in the future.

EIA is also exploring ways in which the MECS can collect data which would cover energy issues in the area of the digital economy. ''Check-off'' type questions would be added that would ask about the use of manufacturing controls and real-time electricity price response. Additionally, the number of MECS sample cases would be increased to enable a more detailed breakout of NAICS 334, ''Computer and Electronic Product Manufacturing.'' The additional questions and sample depend on upcoming funding levels.

EIA would like to address certain data quality and reconciliation issues. A question under consideration for addition would ask MECS respondents to identify by name their suppliers of residual fuel oil and possibly other types of energy source suppliers, most likely natural gas. This reporting would be used to identify frame differences with other EIA reporting systems. The same level of strict confidentiality would be maintained for these data items that is in place for the rest of the MECS.

A second small set of proposed new questions would involve the issue of onsite electricity generation. In order to understand the changing financial and operational relationship between manufacturing establishments and associated power generating equipment brought about by electricity restructuring, EIA wants to quantify more exactly the extent to which those generation facilities are being sold to other entities, in whole or in part, and how that change of ownership would affect MECS reporting. Further, there may be a related question about the types of ownership arrangements that could occur.

A third area of interest is the reporting by petroleum refineries. EIA is reexamining the issue of co-located petrochemical plants and whether the current MECS is addressing energy flows properly in order for an energy accounting to be complete and nonduplicative. This reexamination may necessitate some changes in the special refinery form EIA–846B . In all the proposed data quality additions, the expected respondent burden increases would be minimal.

The 1998 MECS made the transition from the Standard Industrial Classification (SIC) system to NAICS. To aid in that transition, the major energy consumption tables were presented in terms of both industry classification systems. EIA was able to do that for the 1998 MECS because each manufacturing establishment in the MECS sample carried both a NAICS code and an SIC code. For the 2002 MECS, only the NAICS classifications will be maintained and thus data presentations will be in terms of NAICS only.

Besides the changes already discussed, the content of the 2002 MECS will be largely unchanged from the 1998 survey. The questionnaire will again be primarily in a question-answer format as opposed to the matrix style presentation. The MECS information products will continue to present Census Region level data as well as national data.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average eight hours per response for Form EIA–846A,

seven hours per response for Form EIA–846B, and nine hours per response for Form EIA–846C. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information to be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, August 20, 2002.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–21638 Filed 8–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–104–000, *et al.*]

Mountain View Power Partners, LLC, et al.; Electric Rate and Corporate Regulation Filings

August 16, 2002

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Mountain View Power Partners, LLC; Mountain View Power Partners II, LLC; PG&E Energy Trading-Power, L.P.

[Docket No. EC02–104–000]

Take notice that on August 12, 2002, Mountain View Power Partners, LLC (Mountain View), Mountain View Power Partners II, LLC (Mountain View II), and PG&E Energy Trading-Power, L.P. (PGET) tendered for filing, pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b (1994), and part 33 of the Commission's regulations, 18 CFR part 33, an application for authorization of a proposed intra-corporate reorganization whereby (1) Mountain View II will be merged with and into Mountain View and (2) PGET will transfer its interest in a long-term power sales agreement with the California Department of Water Resources to Mountain View.

Comment Date: September 3, 2002.

2. ST–CMS Electric Company Private Limited

[Docket No. EG02–179–000]

Take notice that on August 12, 2002, ST–CMS Electric Company Private Limited, Fairlane Plaza South, Suite 1000, 330 Town Center Drive, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a private limited company formed under the laws of India. ST-CMS is an indirect partially owned subsidiary of CMS Generation Co. CMS Generation is a wholly-owned direct subsidiary of CMS Enterprises Company. CMS Enterprises Company is a wholly-owned direct subsidiary of CMS Energy Corporation (CMS Energy). ST–CMS is jointly owned by ABB Power Investment (India) B.V., a subsidiary of ABB Energy Ventures B.V. ST–CMS Electric Company Private Limited owns a 250 MW lignite fuel fired electric power generation facility at Neyveli in the state of Tamil Nadu, India.

Comment Date: September 6, 2002.

3. CMS (India) Operations and Maintenance Company Private Limited

[Docket No. EG02–180–000]

Take notice that on August 12, 2002, CMS (India) Operations and Maintenance Company Private Limited, Fairlane Plaza South, Suite 1000, 330 Town Center Drive, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

CMS (India) Operations and Maintenance Company Private Limited is a private limited company formed under the laws of India. It is an indirectly wholly-owned subsidiary of CMS Generation Co. CMS Generation is a wholly-owned direct subsidiary of CMS Enterprises Company. CMS Enterprises Company is a wholly-owned direct subsidiary of CMS Energy Corporation. CMS (India) Operations and Maintenance Company Private Limited will operate, under an operations and maintenance agreement with the owner, a 250 MW lignite fuel fired electric power generation facility at Neyveli in the state of Tamil Nadu, India.

Comment Date: September 6, 2002.

4. Conectiv Delmarva Generation, Inc.

[Docket No. ER00–3168–003]

Take notice that on August 9, 2002, Conectiv, on behalf of Delmarva Power & Light Company and Conectiv Delmarva Generation, Inc. filed a notice of withdrawal of its October 31, 2001 filing in the above-captioned proceeding.

Copies of the filing were served upon the official service list.

Comment Date: August 30, 2002.

5. Reliant Energy Etiwanda, Inc.

[Docket No. ER02–2450–000]

Take notice that on August 14, 2002 Reliant Energy Etiwanda, Inc. (Reliant Etiwanda) tendered for filing a Notice of Succession in Ownership or Operation. Reliant Etiwanda requests the change be effective as of March 8, 2002.

Comment Date: September 4, 2002.

6. Reliant Energy Ellwood, Inc.

[Docket No. ER02–2451–000]

Take notice that on August 14, 2002 Reliant Energy Ellwood, Inc. (Reliant Ellwood) tendered for filing a Notice of Succession in Ownership or Operation. Reliant Ellwood requests the change be effective as of March 8, 2002.

Comment Date: September 4, 2002.

7. Reliant Energy Mandalay, Inc.

[Docket No. ER02–2452–000]

Take notice that on August 14, 2002 Reliant Energy Mandalay, Inc. (Reliant Mandalay) tendered for filing a Notice of Succession in Ownership or Operation. Reliant Mandalay requests the change be effective as of March 8, 2002.

Comment Date: September 4, 2002.

8. Entergy Services, Inc.

[Docket No. ER02–2454–000]

Take notice that on August 13, 2002, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing six copies of a Notice of Termination for Short-Term and Non-Firm Point-To-Point Transmission Service Agreements between Entergy Services and Public Service Electric and Gas Company.

Comment Date: September 3, 2002.

9. Citizens Communications Company

[Docket No. ER02–2456–000]

Take notice that on August 12, 2002, Citizens Communications Company (Citizens) filed a Service Agreement with NRG Power Marketing Inc. for Non-Firm Point-to-Point Transmission Service, designated as Service Agreement No. 12 under Citizens' Vermont Electric Division's Open Access Transmission Tariff, Electric Tariff Original Vol. 2. Citizens also filed Third Revised Sheet No. 182 (Attachment E, Index of Point to Point Transmission Service Customers) to Citizens' Vermont Electric Division's Open Access Transmission Tariff, Electric Tariff Original Vol. 2, replacing Second Revised Sheet No. 182.

Citizens requests waiver of the Commission's prior notice requirements, and an effective date of July 22, 2002 for the service agreement and revised tariff sheet.

Copies of this filing were served on the wholesale customers, state commission, and other entities listed on the certificate of service attached to the filing. In addition, a copy of the rate schedule is available for inspection at the offices of Citizens' Vermont Electric Division during regular business hours.

Comment Date: September 3, 2002.

10. Commonwealth Edison Company

[Docket No. ER02–2457–000]

Take notice that on August 9, 2002, Commonwealth Edison Company (ComEd) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of Service Agreement No. 553 and a Revised Sheet No. 1 to Service Agreement No. 553 under ComEd's Second Revised Tariff No. 5, with the designation information required by Commission Order No. 614 (FERC Stats. & Regs. ¶ 31,096), indicating that the service agreement is to be canceled effective July 8, 2002.

Comment Date: August 30, 2002.

11. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2458–000]

Take notice that on August 12, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing proposed revisions to Schedules 7, 8 and 9 of the Midwest ISO's Open Access Transmission Tariff (OATT) in order to include Wolverine Power Supply Cooperative, Inc. in the Midwest ISO as a pricing zone.

The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

The Midwest ISO has requested that the proposed revisions to the Midwest ISO OATT be made effective on the latter of October 1, 2002 or the date upon which all conditions to Wolverine's membership application have been satisfied.

Comment Date: September 3, 2002.

12. Northeast Power Coordinating Council

[Docket No. ER02–2459–000]

Take notice that on August 12, 2002, the Northeast Power Coordinating Council (NPCC), on behalf of the member Systems of the New York Independent System Operator, Inc. (NYISO) and joined by Midwest Independent Transmission System Operator, Inc. (Midwest ISO), Michigan Electric Transmission Company, LLC (Michigan Transco LLC), International Transmission Company (International Transmission), American Electric Power Company, Inc. (AEP), FirstEnergy Corp (FE), PJM Interconnection, L.L.C. (PJM), and with the support of the Independent Electricity Market Operator in Ontario (IMO) (collectively the LEER Participants) filed a revision to the Lake Erie Emergency Redispatch Agreement (LEER). NPCC coordinates Lake Erie Emergency Redispatch activities and posts all LEER-related information on the NPCC web site. The revisions embodied in this filing refine those sections of the LEER Agreement needed to reflect changes in the industry since the last LEER filing in July 2000.

NPCC states that copies of the filing were mailed to the commissions in the states of Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio Pennsylvania, South Dakota, Virginia, West Virginia and Wisconsin.

The LEER Participants request that the revised LEER Agreement described in this filing be made effective October 10, 2002.

Comment Date: September 3, 2002.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2460–000]

Take notice that on August 13, 2002, pursuant to section 205 of the Federal Power Act and section 35.12 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.12, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing an Interconnection and Operating Agreement among Valley Queen Cheese Factory, Inc., the Midwest ISO and Otter Tail Power Company.

A copy of this filing was sent to Valley Queen Cheese Factory, Inc. and Otter Tail Power Company.

Comment Date: September 3, 2002.

14. PECO Energy Company

[Docket No. ER02–2461–000]

Take notice that on August 13, 2002 PECO Energy Company (PECO) submitted for filing, on behalf of itself and PPL Electric Utilities Corporation (PPL) PECO's First Revised FERC Rate Schedule No. 26; and PPL's First Revised FERC Rate Schedule No. 40, which incorporate a modification to Article V and were revised consistent with Order 614.

Comment Date: September 3, 2002.

15. Niagara Mohawk Power Corporation

[Docket No. ER02–2462–000]

Take notice that on August 13, 2002, Niagara Mohawk Power Corporation (NIMO) filed two executed

interconnection agreements with WPS Empire State, Inc. (Empire State), the successor in interest to an entity known as CH Resources, Inc. (CH Resources). On May 31, 2002, CH Resources' stock was acquired by WPS Power Development, Inc., which entity changed CH Resources name to WPS Empire State, Inc. upon its acquisition of CH Resources. The interconnection agreements set forth the terms and conditions governing the interconnection between the Niagara generating facility (Niagara Facility) and the Syracuse generating facility (Syracuse Facility), respectively, and NIMO's transmission system. This is a compliance filing to submit the two executed interconnection agreements, known as Service Agreement Nos. 315 and 316, in an Order No. 614 format. By letter order, dated May 3, 2002 in this docket, these service agreements had previously been accepted for filing by the Commission. The filing includes a Notice of Succession In Ownership to reflect the above-referenced stock acquisition and name change.

Copies of the filing were served upon Empire State and the New York Public Service Commission.

Comment Date: September 3, 2002.

16. Dr. Mary S. Metz

[Docket No. ID–2431–002]

Take notice that on July 31, 2002, Mary S. Metz filed with the Federal Energy Regulatory Commission (Commission) an application for authority to hold interlocking positions under Section 305(b) of the Federal Power Act, 16 U.S.C. § 825(b).

Comment Date: September 6, 2002.

Standard Paragraph

E. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21612 Filed 8–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–105–000, *et al.*]

Vermont Electric Power Company, *et al.*; Electric Rate and Corporate Regulation Filings

August 20, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Vermont Electric Power Company, Inc. and Entergy Nuclear Vermont Yankee, LLC

[Docket No. EC02–105–000]

Take notice that on August 16, 2002, Vermont Electric Power Company, Inc. (VELCO) and Entergy Nuclear Vermont Yankee, LLC (Entergy Nuclear VY) jointly filed with the Federal Energy Regulatory Commission an application for authorization under section 203 of the Federal Power Act for a transfer from VELCO to Entergy Nuclear VY of minor transmission facilities located within the switchyard of Entergy Nuclear VY's generating facility.

Comment Date: September 10, 2002.

2. Western Area Power Administration

[Docket No. EF02–5091–000]

Take notice that on August 15, 2002, the Western Area Power Administration tendered for filing with the Federal Energy Regulatory Commission (Commission) the FY 2003 base charge and rates for the Boulder Canyon Project (BCP).

Comment Date: September 10, 2002.

3. Acadia Bay Energy Company, LLC

[Docket No. EG02–181–000]

Take notice that on August 13, 2002, Acadia Bay Energy Company, LLC (Acadia Bay), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Acadia Bay, a Delaware limited liability company whose sole member is Allegheny Energy Supply Company, LLC, is constructing 540 MW of combined-cycle generation in St. Joseph County, Indiana.

Comment Date: September 10, 2002.

4. Quonset Point Cogen, L.P.

[Docket No. EG02–182–000]

Take notice that on August 15, 2002, Quonset Point Cogen,L.P., with its principal office at c/o PSEG Energy Technologies Inc., filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Quonset Point Cogen, L.P. is a company organized under the laws of New Jersey. Quonset Point Cogen, L.P. will be engaged directly or indirectly, through a Section 2(a)(11)(B) affiliate, and exclusively in owning and operating a gas turbine generator set (GTG) and a heat recovery steam generator (HRSG) located at a Rhode Island facility.

Comment Date: September 10, 2002.

5. Complete Energy Services, Inc.

[Docket No. ER99–3033–002]

Take notice that on August 2, 2002, Complete Energy Services, Inc. (Complete) tendered for filing with the Federal Energy Regulatory Commission (Commission) an updated market power analysis.

Comment Date: September 10, 2002.

6. Nevada Power Company

[Docket No. ER01–3149–003]

Take notice that on August 16, 2002, Nevada Power Company tendered for filing its compliance filing making the changes to the Interconnection and Operation Agreement (Agreement) between Nevada Power Company and Mirant Las Vegas, LLC required by the Federal Energy Regulatory Commission's June 26, 2002 order in this docket. In addition, Nevada Power has made other mutually agreeable changes to the Agreement.

Comment Date: September 6, 2002.

7. Minnesota Power

[Docket No. ER02–2238–001]

Take notice that on August 15, 2002, Minnesota Power tendered for filing a Schedule 4A—Generator Imbalance Service based upon Minnesota Power's Open Access Transmission Tariff Schedule 4—Energy Imbalance and the Midwest Independent System Operator's proposed but currently suspended Schedule 4—Energy

Imbalance and Inadvertent Interchange Service. An effective date of November 1, 2002 was requested for Schedule 4A.

Comment Date: September 5, 2002.

8. UGI Development Company

[Docket No. ER02–2447–000]

Take notice that on August 14, 2002, UGI Development Company (UGID) tendered for filing a revised Wholesale Market-Based Rate Schedule. UGID requests an effective date of September 1, 2002.

Comment Date: September 4, 2002.

9. Xcel Energy Services, Inc.

[Docket No. ER02–2448–000]

Take notice that on August 14, 2002, Xcel Energy Services, Inc. (XES), on behalf of Public Service Company of Colorado (Public Service), submitted for filing a Power Purchase Agreement with Grand Valley Rural Power Lines, Inc. (Grand Valley).

XES requests that this agreement become effective on September 1, 2002.

Comment Date: September 4, 2002.

10. Reliant Energy Ormond Beach, Inc.

[Docket No. ER02–2449–000]

Take notice that on August 14, 2002 Reliant Energy Ormond Beach, Inc. (Reliant Ormond Beach) tendered for filing a Notice of Succession in Ownership or Operation. Reliant Ormond Beach requests the change be effective as of March 8, 2002.

Comment Date: September 4, 2002.

11. Reliant Energy Coolwater, Inc.

[Docket No. ER02–2453–000]

Take notice that on August 14, 2002 Reliant Energy Coolwater, Inc. (Reliant Coolwater) tendered for filing a Notice of Succession in Ownership or Operation. Reliant Coolwater requests the change be effective as of March 8, 2002.

Comment Date: September 4, 2002.

12. ISO New England Inc.

[Docket No. ER02–2463–000]

Take notice that on August 16, 2002, pursuant to Section 205 of the Federal Power Act, ISO New England Inc. filed with the Federal Energy Regulatory Commission a Reliability Agreement dated August 1, 2002 between ISO-NE and Devon Power LLC.

Copies of said filing have been served upon all parties to this proceeding, and upon NEPOOL Participants, and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the utility regulatory agencies of the six New England States.

Comment Date: September 6, 2002.

13. Niagara Mohawk Power Corporation

[Docket No. ER02–2465–000]

Take notice that on August 15, 2002, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an unexecuted agreement for service under its own Open Access Transmission Tariff for transmission service furnished to SUNY-Buffalo on November 17, 1999.

Comment Date: September 5, 2002.

14. PJM Interconnection, L.L.C.

[Docket No. ER02–2466–000]

Take notice that on August 16, 2002, PJM Interconnection, L.L.C. (PJM) tendered for filing a signature page to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA) for Sempra Energy Trading Corp. (Sempra). PJM also filed Second Revised Sheet No. 62 of the RAA including Sempra in the list of parties to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including Sempra Energy Trading Corp., and each of the state electric utility regulatory commissions within the PJM Control Area.

Comment Date: September 6, 2002.

15. Duquesne Light Company

[Docket No. ER02–2467–000]

Take notice that on August 16, 2002, Duquesne Light Company (DLC) filed Service Agreement No. 183, dated August 16, 2002 with Powerex Corp. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Powerex Corp. as a customer under the Tariff.

DLC requests an effective date of August 16, 2002 for the Service Agreement.

Comment Date: September 6, 2002.

16. Duquesne Light Company

[Docket No. ER02–2468–000]

Take notice that on August 16, 2002, Duquesne Light Company (DLC) filed Service Agreement No. 184, dated August 16, 2002 with Powerex Corp. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Powerex Corp. as a customer under the Tariff.

DLC requests an effective date of August 16, 2002 for the Service Agreement.

Comment Date: September 6, 2002.

17. The New Power Company

[Docket No. ER02–2469–000]

Take notice that on August 16, 2002, The New Power Company submitted for filing a Notice of Succession of a Service Agreement for Network Transmission Service and Operating Agreement entered into by and between Cinergy Services, Inc. and The New Power Company, which The New Power Company is requesting authorization to assign to Dominion Retail.

The New Power Company has requested an effective date of August 17, 2002. Copies of the filing have been served on Cinergy Services, Inc., Dominion Retail, Inc. and the Ohio Public Utilities Commission.

Comment Date: September 6, 2002.

18. PJM Interconnection, L.L.C.

[Docket No. ER02–2470–000]

Take notice that on August 16, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement between PJM and National Institutes of Health. PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective date agreed to by the parties.

Copies of this filing were served upon each of the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: September 6, 2002.

19. PJM Interconnection, L.L.C.

[Docket No. ER02–2471–000]

Take notice that on August 16, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing two executed interconnection service agreements between PJM and PPL West Earl, L.L.C.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties. Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: September 6, 2002.

20. PJM Interconnection, L.L.C.

[Docket No. ER02–2472–000]

Take notice that on August 16, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing two executed interconnection service agreements between PJM and Tosco Corporation and Tosco Refining Company. PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties.

Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: September 6, 2002.

21. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. OA02–8–000]

Take notice that on August 14, 2002, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Revised Standards of Conduct. Allegheny Power requests a waiver of notice requirements to make the Revised Standards of Conduct effective as of April 1, 2002.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment Date: September 9, 2002.

Standard Paragraph

E. 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–21668 Filed 8–23–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7266–8]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby at (202) 566–1672, or email at *Auby.susan@epa.gov.* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1285.05; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks Reporting and Recordkeeping Requirements in 40 CFR 86.1105–86.1111; was approved 07/01/2002; OMB No. 2060–0132; expires 07/31/2005.

EPA ICR No. 2025.01; Reporting and Recordkeeping Requirements for the Friction Materials Manufacturing NESHAP in 40 CFR 63.9535, 63.9540, 63.9545, 63.9550, 63.10 and 63.6; was approved 07/02/2002; OMB No. 2060–0481; expires 07/31/2005.

EPA ICR No. 2066.01; National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands in 40 CFR part 63, subpart PPPPP; was approved 07/02/2002; OMB No. 2060–0483; expires 07/31/2005.

EPA ICR No. 2048.01; U.S. EPA Beach Act Grant Program; was approved 07/08/2002; OMB No. 2040–0244; expires 07/31/2005 EPA ICR No. 0783.42; Motor Vehicle Emission and Fuel Economy Compliance; Light Duty Vehicles, Light Duty Trucks and Motorcycle (Consolidated/Renewal) in 40 CFR parts 85, 86, and 600; was approved 07/16/2002; OMB No. 2060–0104; expires 07/31/2005.

EPA ICR No. 0160.07; Pesticide Registration Application, Notification and Report for Pesticide-Producing Establishments in 40 CFR part 167; was approved 07/23/2002; OMB No. 2070–0078; expires 07/31/2005.

EPA ICR No. 0318.09; Clean Watersheds Needs Survey (CWNS); was approved 07/24/2002; OMB No. 2040–0050; expires 07/31/2005.

EPA ICR No. 1755.06; Regulatory Reinvention Pilot Projects Under Project XL1; was approved 08/01/2002; OMB No. 2010–0026; expires 08/31/2005.

EPA ICR No. 1854.03; Synthetic Organic Chemical Industry (SOCMI): Consolidation of Information Collection Request (Revision) in 40 CFR parts 65, subparts A—G, part 60, subparts A, BB, Ka, Kb, VV, DDD, III, NNN, and RRR, part 61, subparts BB, Y, V, part 63, subparts F, G, H, and I; was approved 08/07/2002; OMB # 2060–0443; expires 08/31/2005.

EPA ICR No. 1292.06; Aftermarket Catalytic Converter Policy; was approved 08/08/2002; OMB No. 2060–0135; expires 08/31/2005.

Short Term Extensions

EPA ICR No. 1867.01 Reporting Requirements under EPA's Voluntary Aluminum Industrial Partnership; OMB No. 2060–0411; on 07/02/2002 OMB extended the expiration date through 10/31/2002.

EPA ICR No. 1426.05; EPA Worker Protection Standard for Hazardous Waste Operations and Emergency Response in 40 CFR part 311; OMB No. 2050–0105; on 07/31/2002 OMB extended the expiration date through 10/31/2002.

Comment Filed

EPA ICR No.1992.01; Implementation of Incentives Designed for EPA's National Environmental Performance Track; on 07/31/2002 OMB filed comment.

EPA ICR No. 1189.10; Identification, Listing and Rulemaking Petitions Cathode Ray Tubes Proposed Rule in 40 CFR 261.4; OMB No. 2050–0053; on 07/02/2002 OMB filed comment.

EPA ICR No. 1597.05; Reporting and Recordkeeping Requirements for Universal Waste Handlers and Destination Facilities (Mercury Proposed Rule); in 40 CFR part 273; OMB No. 2050–0145; on 07/02/2002 OMB filed comment.

EPA ICR No. 2042.01; NESHAP for Semiconductor Manufacturing; in 40 CFR part 63, subpart BBBBB; on 07/17/2002; OMB filed comment.

EPA ICR No. 1995.01; Recordkeeping and Reporting Requirements for the Coke Oven NESHAP; Pushing, Quenching, and Battery Stacks; in 40

CFR part 63, subpart CCCCC; on 07/08/2002 OMB filed comment.

EPA ICR No. 1813.03; Regional Haze Rule—Proposed Revisions to Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States and Eligible Indian Tribes in 40 CFR 51.309; OMB No. 2060–0421; on 07/02/2002 OMB comment filed and continue.

OMB Withdrawals

EPA ICR No. 1993.01; Evaluations of Innovative Pilot Project Innovations; on 07/19/2002 this ICR was withdrawn from OMB review.

Dated: August 16, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–21657 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7268–4]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in *Sierra Club* v. *U.S. Environmental Protection Agency*, No. 02–1135 (D.C. Circuit). This case concerns the final rule entitled ''National Emission Standard for Hazardous Air Pollutants for Source Categories: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act section 112(g) and 112(j),'' published at 67 FR 16582 on April 5, 2002. The proposed settlement agreement was lodged with the United States Court of Appeals for the District of Columbia Circuit on August 15, 2002.

DATES: Written comments on the proposed settlement agreement must be received by September 25, 2002.

ADDRESSES: Written comments should be sent to Timothy D. Backstrom, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A copy of the proposed settlement agreement is available from Phyllis J. Cochran, (202) 564–7606. A copy of the proposed settlement agreement was also lodged in the case with the Clerk of the United States Court of Appeals for the District of Columbia Circuit on August 15, 2002.

SUPPLEMENTARY INFORMATION: EPA promulgated a final rule amending the MACT General Provisions, 40 CFR part 63, subpart A, and the requirements for case-by-case determinations under Clean Air Act section 112(j), 40 CFR 63.50–63.56, on April 5, 2002. 67 FR 16582. The Sierra Club filed a petition seeking judicial review of this final rule on April 25, 2002. *Sierra Club* v. *U.S. Environmental Protection Agency*, No. 02–1135 (D.C. Circuit). On June 4, 2002, Sierra Club also filed a petition seeking administrative reconsideration of certain provisions in the final rule, pursuant to Clean Air Act section 307(d)(7)(B).

Sierra Club and EPA have now reached initial agreement on a settlement of the case which could lead to the voluntary dismissal of the petition for review. The settlement requires the EPA Administrator to sign a proposed rule incorporating certain amendments no later than two months after the date the settlement was signed by counsel for the parties and lodged with the court. The settlement also requires the EPA Administrator to take final action concerning the proposed rule within seven months from the date of signature and lodging.

Under the settlement, EPA will propose to reduce the time period between submission of part 1 applications under Clean Air Act section 112(j), and submission of the more detailed part 2 application, from 24 months to 12 months. EPA originally proposed a time period of 6 months between the two parts. In view of the current schedule for promulgation of remaining MACT standards, EPA anticipates that the one year period will permit proposed MACT standards to be issued prior to the part 2 applications, thereby reducing the burden associated with preparation of the part 2 applications. EPA also anticipates that the one year period should be sufficient to prevent any need for actual issuance of case-by-case determinations under section 112(j) for all or virtually all affected source categories.

The settlement also requires that EPA propose certain amendments to the section in the MACT General Provisions which governs preparation of Startup, Shutdown, and Malfunction (SSM) plans, 40 CFR 63.6(e). EPA considers these changes to be modest in nature and consistent with the policies concerning these SSM plans described in the preamble of the original proposal.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreement. Although the comment opportunity required by section 113(g) is only mandatory with respect to persons who are not named as parties or interveners in the case in question, EPA does not believe it would be appropriate in this instance to exclude comment by those parties who have requested and been granted intervention in the *Sierra Club* case, or by those parties who have submitted petitions concerning the same rulemaking in consolidated cases. Unlike a consent degree or court-ordered settlement, no action by the Court is required to execute the settlement agreement in this case. Therefore, EPA will exercise its discretion to accept comment on the settlement agreement from all interested persons.

EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

Dated: August 16, 2002.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 02–21674 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7268–3]

Final Notification of Alternative Tier 2 Requirements for PuriNO$_X$ Diesel Fuel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the EPA has notified the Lubrizol Corporation (Lubrizol), manufacturer of a motor-vehicle diesel fuel known as PuriNO$_X$, of Alternative Tier 2 health-effects testing requirements for PuriNO$_X$ Generation 2 Winter Diesel Fuel Emulsion (Winter PuriNO$_X$) under the fuel and fuel additive registration testing requirements. EPA has also concluded that testing performed by Lubrizol on

Winter PuriNO$_X$ and a warm-climate PuriNO$_X$ will be sufficient to cover intermediate versions of PuriNO$_X$.

DATES: The Alternative Tier 2 testing requirements for Winter PuriNO$_X$ are effective upon receipt by Lubrizol of the notification letter discussed in this notice.

ADDRESSES: A copy of the notification to Lubrizol has been placed in Public Docket No. A–2002–07, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, SW., Washington, DC 20460–0001. Relevant materials have been placed in this docket. It may be inspected from 8:00 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Environmental Engineer, U.S. Environmental Protection Agency, Office of Transportation and Air Quality, Mail Code 6406J, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0001, (202) 564–9303, fax (202) 565–2085, *caldwell.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entity.* The entity regulated by this action is Lubrizol.

I. Introduction

Pursuant to sections 211(b)(2) and 211(e) of the Clean Air Act (CAA) EPA promulgated regulations requiring manufacturers of designated fuels and fuel additives (F/FA) to conduct tests to determine the potential health effects of the F/FA emissions. The final rule, promulgated May 27, 1994, established new health-effects testing requirements for the registration of designated F/FAs (59 FR 33042).

The registration requirements are organized within a three-tier structure. Tier 1 requires F/FA manufacturers to supply to EPA (1) the identity and concentration of certain emission products, and (2) any available information regarding the health and welfare effects of the whole and speciated emissions. 40 CFR 79.52. Tier 2 requires that combustion emissions of each F/FA subject to the testing requirements be tested for subchronic systemic and organic toxicity, as well as the assessment of specific health-effect endpoints. 40 CFR 79.53. Tier 3 testing may be required, at EPA's discretion, when remaining uncertainties as to the significance of observed health or welfare effects, or emissions exposures, interfere with EPA's ability to reasonably assess the potential risks posed by the emissions from a F/FA. 40 CFR 79.54. EPA's regulations permit submission of adequate existing test data in lieu of conducting new, duplicative tests. 40 CFR 79.53(b).

At its discretion, EPA may modify the standard Tier 2 health-effects testing requirements for a F/FA (or group thereof) by substituting, adding, or deleting testing requirements, or changing the underlying vehicle/engine specifications. 40 CFR 79.58(c). EPA will not, however, delete a testing requirement for a specific end point in the absence of existing adequate information, or an alternative testing requirement for that endpoint. 40 CFR 79.58(c).

II. Proposed Alternative Tier 2 Requirements for PuriNO$_X$

On May 3, 2002 EPA notified Lubrizol of proposed Alternative Tier 2 testing requirements under 40 CFR 79.58(c) for Lubrizol's Winter PuriNO$_X$ formulation. The proposed Alternative Tier 2 testing requirements were identical to the standard Tier 2 requirements with the exception that the test fuel would be the Winter PuriNO$_X$ formulation, consisting of 74% diesel fuel, 16.8% water, 5.7% methanol, and 3.5% PuriNO$_X$ Generation 2 Additive Package. Under the standard Tier 2 requirements the water and methanol would have been tested separately in diesel fuel. EPA believed that, since such separate formulations would never occur in the production of Winter PuriNO$_X$, testing of the proposed test fuel, which corresponds with its commercial composition, would produce more meaningful health-effects testing results.

Lubrizol has already conducted standard Tier 2 testing on a warm-climate PuriNO$_X$ formulation, consisting of 77% diesel fuel, 20% water, and 3% PuriNO$_X$ 1121A Additive Package. EPA also proposed that this testing, in conjunction with the Alternative Tier 2 testing for Winter PuriNO$_X$, would be sufficient to meet the Tier 2 requirements for intermediate PuriNO$_X$ combinations of diesel fuel, water, methanol, and additive package.[1] An associated **Federal Register** notice (67 FR 35808, May 21, 2002) initiated a 30-day public comment period. Only one comment was received, and it did not address either proposal. The EPA has concluded that both proposals will be finalized without change, and has notified Lubrizol by letter. A copy of the letter has been placed in the docket referenced above.

[1] Thus, if the Winter PuriNO$_X$ Alternative Tier 2 testing is successfully completed, the Tier 2 health effects testing requirements would be met for PuriNO$_X$ formulations consisting of 100%-74% diesel fuel, 0%-20% water, 0%-5.7% methanol, 0%-3.5% PuriNO$_X$ Generation 2 Additive, or 0%-3% PuriNO$_X$ 1121A.

III. Environmental Impact

This action will result in no immediate environmental impact, but may provide a basis for further regulatory action, should the collected data indicate that there may be a risk to public health or welfare.

IV. Economic Impact

This action will reduce the testing expense for Lubrizol by reducing the number of test fuels. Since this applies only to Lubrizol, which is not a small entity, there is no economic impact on small entities.

List of Subjects in 40 CFR Part 79

Environmental protection, Air pollution control, Diesel fuel, and Motor vehicle pollution.

Dated: August 19, 2002.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–21675 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7267–7]

National Drinking Water Advisory Council; Request for Nominations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

The U.S. Environmental Protection Agency (EPA) invites all interested persons to nominate qualified individuals to serve a three-year term as members of the National Drinking Water Advisory Council (Council). This Council was established by the Safe Drinking Water Act (SDWA) to provide practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the SDWA. The Council consists of fifteen members, including a Chairperson, appointed by the Deputy Administrator. Five members represent the general public; five members represent appropriate State and local agencies concerned with water hygiene and public water supply; and five members represent private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. The SDWA requires that at least two members of the Council represent small, rural water systems. On December 15 of

each year, five members complete their appointment. Therefore, this notice solicits names to fill the five vacancies, with appointed terms ending on December 15, 2005.

Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume providing the nominee's background, experience and qualifications.

Persons selected for membership will receive compensation for travel and a nominal daily compensation while attending meetings. The Council holds two face-to-face meetings each year, generally in the Spring and Fall. Additionally, members may be asked to serve on one of the Council's workgroups that are formed each year to assist the EPA in addressing specific programmatic issues. These workgroup meetings are held approximately four times a year, typically with two meetings by conference call.

Please submit nominations to Brenda P. Johnson, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0001, no later than October 15, 2002. For additional information send an e-mail to *Johnson.BrendaP@epa.gov* or call 202/564–3791.

Dated: August 16, 2002.

William R. Diamond,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–21665 Filed 8–23–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7267–4]

Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants to States and Territories in FY 2003

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has developed guidelines that describe the process and criteria to be used to award Clean Water Act (CWA) Section 319 nonpoint source grants to States and Territories (hereinafter referred to collectively as ''States'') in FY 2003. The process and criteria for FY 2003 are similar to those established for FY 2002, but are modified as described below. The guidelines continue to emphasize a concentrated focus on the implementation of projects that are designed to improve waters that have been listed as impaired under Section 303(d) of the CWA. After the President signs EPA's FY 2003 appropriations bill later this year, EPA will immediately provide to States their allocations based upon the appropriation level and the long-standing Section 319 allocation formula. EPA also intends to publish separate guidance addressing Tribal FY 2003 allocations later this year.

DATES: The guidelines are effective August 26, 2002.

ADDRESSES: Persons requesting additional information should contact Romell Nandi at (202) 566–1203; *nandi.romell@epa.gov;* or U.S. Environmental Protection Agency (4503T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The complete text of today's guidelines is also available at EPA's Nonpoint Source Web site: *http://www.epa.gov/owow/nps/cwact.html*

SUPPLEMENTARY INFORMATION:

I. Introduction

In FY 1999 and 2000, EPA stated that $100 million additional grant dollars appropriated by Congress under Section 319 of the CWA (referred to as ''incremental funds'') were to be focused on implementing watershed restoration action strategies (''WRASs'') in high-priority watersheds identified by States as being ''in need of restoration.'' In FY 2001, EPA recognized the need to increasingly focus Section 319 grant dollars on implementing approved total maximum daily loads (''TMDLs'') for waters that are impaired in whole or in part by nonpoint sources (hereinafter ''NPS TMDLs''), under EPA's existing effective TMDL regulations and guidance. Based on this need, EPA stated that incremental funds may be used in FY 2001, in addition to the activities authorized in FY 1999 and 2000, to fund the development and implementation of approved NPS TMDLs for Section 303(d)-listed waterbodies, as well as to develop and implement WRASs.

On September 13, 2001, EPA published Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants to States and Territories in FY 2002 and Subsequent Years (66 FR 47653–47657). These guidelines modified the approach of FY 1999–2001 by focusing the incremental funds entirely on NPS TMDLs rather than on WRASs. Specifically, EPA required that States use the incremental funds only within 303(d)-listed waters to develop NPS TMDLs; develop watershed-based plans that describe the actions that are necessary to implement NPS TMDLs; and to implement NPS TMDLs for which watershed plans have been completed.

Since the publication of the FY 2002 NPS guidance on September 13, 2001, EPA has held numerous public meetings around the country with States and other interested parties regarding the most appropriate means to restore waters that are listed by States as impaired under Section 303(d) of the CWA. A significant amount of discussion at these meetings and in other fora has focused upon the FY 2002 NPS guidance and generated further thinking as to the most effective means to promote expeditious implementation of nonpoint source controls needed to achieve water quality standards. Based upon these discussions and upon further reflection by EPA, EPA has decided that, for FY 2003 and subsequent years, we will somewhat modify the approach taken in the FY 2002 guidelines. The modified approach is discussed below.

Several earlier guidance documents govern the Section 319 grants process, and they remain in effect for FY 2003 and subsequent years except to the extent that they are specifically modified in this memorandum. These are summarized in Appendix A to this memorandum and may all be accessed at *http://www.epa.gov/owow/nps.*

II. Continued Focus on Restoring Waters Impaired by NPS Pollution

The priority objective for the use of Section 319 grant funds is to implement the national policy, set forth in Section 101(a) of the CWA, that nonpoint source programs be implemented expeditiously to achieve the goals of the CWA, including the restoration and maintenance of the chemical, physical, and biological integrity of the Nation's waters. To achieve this objective, the guidance places top priority on implementing on-the-ground measures and practices that will reduce pollutant loads and contribute to the restoration of impaired waters. The process described below achieves this objective by directing the use of incremental Section 319 funds ($100 million) to the development and implementation of watershed-based plans that are designed to restore waters that have been listed by States as impaired under Section 303(d) of the Clean Water Act.

This guidance also facilitates smooth and effective integration of Section 319

program objectives with those set forth in the new Farm Bill (Farm Security and Rural Investment Act of 2002). The new Farm Bill provides more conservation funding for agricultural producers than any previous Farm Bill. As discussed below, this FY 2003 guidance strongly promotes States' use of 20 percent of both the base funds and incremental funds to develop watershed-based plans that holistically identify watershed-based problems and their solutions. By working closely with the United States Department of Agriculture (USDA) State conservationists, local conservation districts, and agricultural producers to identify those areas and practices in greatest need of assistance to address water quality concerns, State nonpoint source agencies can help promote integrated approaches by all agencies and funding sources to address these needs. We strongly encourage State 319 agencies to coordinate with these critical partners to assess water quality needs, develop watershed-based plans, and to implement appropriate practices using Section 319, Environmental Quality Incentives Program, and other funding sources.

Beginning in FY 2003, EPA will award Section 319 funds only in accordance with the following principles:

1. As in the past, States may use the ''base funds'' for the full range of activities addressed in their approved NPS management programs. EPA notes in particular that States have the opportunity to focus much of these funds upon activities that protect threatened waters. In any event, States have great flexibility as to how to focus these funds.

2. As in the past, States may use up to 20% of the ''base'' funds to develop NPS TMDLs and watershed-based plans to implement NPS TMDLs; develop watershed-based plans in the absence of or prior to completion of TMDLs; develop watershed-based plans that focus on the protection of threatened waters or other unimpaired waters; and conduct other NPS monitoring and program assessment/development activities. EPA expects States to prioritize their Section 319-supported NPS TMDL development activities in accordance with their TMDL schedules that they have developed pursuant to their Section 303(d) lists.

3. States may use up to 20% of the ''incremental'' $100 million funds to develop NPS TMDLs as well as to develop watershed-based plans that describe the actions that are necessary to implement NPS activities in watersheds of Section 303(d)-listed waters. Where a NPS TMDL for the affected waters has already been developed and approved or is being developed, the watershed-based plan must be designed to achieve the load reductions called for in the NPS TMDL. However, where a NPS TMDL has not yet been developed and approved or is not yet being developed for the waters, the State may use these funds to develop a watershed-based plan in the absence of the TMDL. In such cases, the plan must be designed to reduce NPS pollutant loadings that are contributing to non-attainment of water quality standards. However, once the TMDL is completed and approved, the plan must be modified as appropriate to be consistent with the load allocation portion contained within the TMDL. For example, if the TMDL assigns a load allocation to nonpoint sources that requires greater than previously estimated load reductions, the watershed-based plan must be modified to reflect the increased nonpoint source load reduction needed to implement the TMDL.

EPA encourages States to develop NPS TMDLs or, where applicable, sets of NPS TMDLs on a watershed basis. We encourage States to implement watershed-based plans holistically, as this approach usually provides the most technically sound and economically efficient means of addressing water quality problems. Consistent with this approach, EPA encourages States to include in their watershed-based plans approaches that will address all of the sources and causes of impairments and threats to the watersheds in question. Thus, the watershed-based plans should address not only the sources of water quality impairment, but also any pollutants and sources of pollution that need to be addressed to assure the long-term health of the watershed. Finally, since watersheds with completed TMDLs have the best documentation of the load reductions needed to achieve water quality standards, EPA recommends that States assign the highest priority to implementing watershed-based plans for waters that have completed TMDLs.

We recognize that some States have not yet developed sufficiently detailed watershed-based plans to help the States and their partners determine which management measures or practices should be implemented in particular places in the watershed to assure the achievement of desired load reduction (whether identified in a NPS TMDL or prior to its development) and to ensure that all significant water quality problems in the watershed are successfully addressed. In such cases, a State may need to use more than 20% of its incremental funds to develop sound watershed-based plans that can then be implemented successfully. Where this is the case, the State and the Region should discuss the State's need to devote greater resources to completing watershed-based plans, recognizing at the same time the urgent need to focus most Section 319 funds on actual implementation efforts to achieve water quality improvements. Based on these discussions, the Region may authorize the State to use more than 20% of the incremental funds to develop these watershed-based plans in appropriate circumstances.

To ensure that Section 319 projects funded with incremental dollars make progress towards restoring waters impaired by nonpoint source pollution, watershed-based plans that are developed or implemented with Section 319 funds to address 303(d)-listed waters must include at least the elements listed below. Where the watershed-based plan is designed to implement a TMDL, these elements will help provide reasonable assurance that the nonpoint source load allocations identified in the NPS TMDL or anticipated in National Pollutant Discharge Elimination System (NPDES) permits for the watershed will be achieved, as discussed in the Assistant Administrator's August 8, 1997 memorandum, ''New Policies for Establishing and Implementing Total Maximum Daily Loads (TMDLs).'' However, even if a NPS TMDL has not yet been completed, EPA believes that these nine elements are critical to assure that public funds to address impaired waters are used effectively. (See also Appendix C of the May 1996 Nonpoint Source Guidance for more discussion of a ''well-designed watershed implementation plan,'' which specifically discusses most of the elements listed below.)

a. An identification of the causes and sources or groups of similar sources that will need to be controlled to achieve the load reductions estimated in this watershed-based plan (and to achieve any other watershed goals identified in the watershed-based plan), as discussed in item (b) immediately below. Sources that need to be controlled should be identified at the significant subcategory level with estimates of the extent to which they are present in the watershed (e.g., X numbers of dairy cattle feedlots needing upgrading, including a rough estimate of the number of cattle per facility; Y acres of row crops needing improved nutrient management or sediment control; or Z linear miles of eroded streambank needing remediation).

b. An estimate of the load reductions expected for the management measures described under paragraph (c) below (recognizing the natural variability and the difficulty in precisely predicting the performance of management measures over time). Estimates should be provided at the same level as in item (a) above (e.g., the total load reduction expected for dairy cattle feedlots; row crops; or eroded streambanks).

c. A description of the NPS management measures that will need to be implemented to achieve the load reductions estimated under paragraph (b) above (as well as to achieve other watershed goals identified in this watershed-based plan), and an identification (using a map or a description) of the critical areas in which those measures will be needed to implement this plan.

d. An estimate of the amounts of technical and financial assistance needed, associated costs, and/or the sources and authorities that will be relied upon, to implement this plan. As sources of funding, States should consider the use of their Section 319 programs, State Revolving Funds, USDA's Environmental Quality Incentives Program and Conservation Reserve Program, and other relevant Federal, State, local and private funds that may be available to assist in implementing this plan.

e. An information/education component that will be used to enhance public understanding of the project and encourage their early and continued participation in selecting, designing, and implementing the NPS management measures that will be implemented.

f. A schedule for implementing the NPS management measures identified in this plan that is reasonably expeditious.

g. A description of interim, measurable milestones for determining whether NPS management measures or other control actions are being implemented.

h. A set of criteria that can be used to determine whether loading reductions are being achieved over time and substantial progress is being made towards attaining water quality standards and, if not, the criteria for determining whether this watershed-based plan needs to be revised or, if a NPS TMDL has been established, whether the NPS TMDL needs to be revised.

i. A monitoring component to evaluate the effectiveness of the implementation efforts over time, measured against the criteria established under item (h) immediately above.

In commenting on a draft of these guidelines, several States noted the difficulty of developing this information with precision and suggested that States should be authorized to begin implementing projects without having first developed some or all of this information. EPA believes, as this guidance reflects, that there must be a balanced approach to address this concern. On one hand, it is absolutely critical that States make, at the subcategory level, a reasonable effort to identify the significant sources; identify the management measures that will most effectively address those sources; and broadly estimate the expected load reductions that will result. Without such information to provide focus and direction to the project's implementation, it is much less likely that the project can efficiently and effectively address the nonpoint sources of water quality impairments. On the other hand, EPA recognizes that even with reasonable steps to obtain and analyze relevant data, the available information at the planning stage (within reasonable time and cost constraints) may be limited; preliminary information and estimates may need to be modified over time, accompanied by mid-course corrections in the watershed plan; and it often will require a number of years of effective implementation for a project to achieve its goals. EPA fully intends that the watershed planning process described above should be implemented in a dynamic and iterative manner to assure that projects whose plans address each of the nine elements above may proceed even though some of the information in the watershed plan is imperfect and may need to be modified over time as information improves.

4. States must use any incremental funds that remain after Step 3 above to implement watershed-based plans that have been completed. Regions should assure that the plans have been completed and address all of the nine elements prior to awarding the grant. To assure that the implementation of these watershed-based plans actually results in the restoration of watersheds, as well as to maximize efficiencies in the implementation of all watershed-based plans, we recommend that States use these incremental Section 319 funds on a watershed basis to develop and implement the watershed-based plans for all the waters impaired by nonpoint source pollution in a watershed. In addition, as in the plan development stage, we recommend that States' implementation activities also address other significant sources and pollutants in the watershed, including both those that are causing water quality impairments and others that are not currently causing water quality impairments but that nonetheless should be controlled to assure a successful long-term solution to the watershed's existing and threatened water quality problems.

The watershed-based plan must address a large enough geographic area so that its implementation will solve the water quality problems for the watershed. While there is no rigorous definition or delineation for this concept, the general intent is to avoid single segments or other narrowly defined areas that do not provide an opportunity for addressing a watershed's stressors in a rational and economic manner. However, once a watershed plan meeting the nine items listed above has been established, a State may choose to implement it in portions (e.g., based on particular segments, other geographic subdivisions, or NPS categories in the watershed), consistent with the schedule established pursuant to item (f) above.

We recognize that States already have in place or have been developing watershed plans and strategies of varying levels of scale, scope, and specificity that may contribute significantly to the process of developing and implementing watershed-based plans. We encourage States to use these plans and strategies, where appropriate, as building blocks for developing and implementing the watershed-based plans. (Where these plans and strategies have been developed at a basin-wide or other large geographic scale, they will generally need to be refined at a smaller watershed scale to provide the information needs for the nine items identified above as required for watershed-based plans.) In particular, we recommend that States use their continuing planning processes, water quality management plans (WQMPs), WRASs, comprehensive conservation and management plans (CCMPs), coastal nonpoint pollution control programs under Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990, and other similar holistic watershed documents, to help guide their watershed-based approaches to watershed-based plan development and implementation.

We further recommend that States give their highest funding priority to projects that are supported by additional funding from other Federal, State, and local agencies, Clean Water State Revolving Funds (SRF), or private sector funding. Additionally, States should consult their SRF Program's Integrated Planning and Priority Setting System, if

such system is in use, to address the highest priority water quality improvement projects (see *http://www.epa.gov/owm/finan.html*). Given the significant expense of many watershed projects, such an approach will help expedite successful implementation of needed practices and thus speed the restoration of water quality. It will also help assure that watersheds are addressed in a holistic manner that accounts for the broad variety of stressors in the watersheds.

III. Protection of Threatened Waters

While States need to place very high priority on the need to restore waters impaired by nonpoint source pollution, as described above, EPA wishes to recognize and emphasize the continued need to protect waters that currently are not impaired by nonpoint source pollution to assure that they remain unimpaired. This particularly includes waters in which the good quality is threatened by such factors as changing land uses. EPA recommends that States place a high priority for the use of their base Section 319 funding on such protective activity. This includes both on-the-ground projects and broader educational and regulatory programs established by the State to promote broad awareness and implementation of activities that can help protect these waters from degradation by new and expanded land use activities which cause nonpoint source pollution.

EPA recognizes that in a few States, there is a uniquely high-priority need to focus significant funds on prevention activities in addition to the need for remediating impaired waters. While all States have significant pollution prevention and water quality protection needs, there are certain States with extensive aquatic resources that are especially valuable and at serious risk of irreparable harm, including especially good-quality aquatic habitat for salmon migration, spawning, and rearing. Therefore, EPA Regions may authorize States to use a portion of incremental funds to the extent necessary to address these unique situations. Such variation from the norm is intended to occur in only a handful of States at most, and may be provided only upon a finding by the Region that:

- The State has extensive unique aquatic resources that are especially valuable and at serious risk of irreparable harm and that therefore require a special focus on protection activities. These resources and threats to them should be documented in the State's 305(b) report.
- The State has established a schedule for TMDL development consistent with an even pace and completion of needed TMDLs within 8 to 13 years of listing.
- The State is completing TMDLs in reasonable accord with the established development schedules.
- The State has committed, upon completion and approval of any TMDL, to incorporate the TMDL's load allocations into any watershed plan that has been developed for the waterbody addressed by the TMDL, as discussed above in this guidance in the third principle in the section ''Continued Focus On Restoring Waters Impaired By NPS Pollution.''
- The State is or commits to including loading reduction estimates in all Section 319 projects as required by EPA's September 27, 2001, memorandum from Robert H. Wayland III entitled, ''Modification to Nonpoint Source Reporting Requirements for Section 319 Grants,'' *http://www.epa.gov/owow/nps/Section319/grts.html*, and as discussed further below in the section ''Reporting NPS Results.''

IV. Operation and Maintenance

Each Section 319 grant must contain a condition requiring that the State assure that its project sub-awards (e.g., sub-contracts and sub-grants) include a provision that any management practices implemented for the project be properly operated and maintained for an appropriate period of years. Following the approach used in many State and Federal funding programs, EPA recommends that State provisions generally ensure that practices are operated and maintained for a period of at least five to ten years.

For assistance in developing appropriate grant condition language, Regions should work with their Office of Regional Counsel. States may wish to consult with colleagues implementing similar programs, such as U.S. Department of Agriculture's conservation programs, for information on how to develop appropriate contract language and operation and maintenance periods that are tailored to the types of practices expected to be funded in a particular project.

V. Reporting NPS Results

Section 319(h)(8) of the CWA requires EPA to determine, prior to awarding a Section 319 grant, that the State has made ''satisfactory progress'' in meeting the schedule set forth in its NPS management program. When making this determination, the Region should include in the decision memo for the grant a concise summary of the basis for the determination. In addition, Section 319(h)(11) requires that States report annually to EPA concerning their progress in meeting their schedules of milestones contained in their nonpoint source management programs and, to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality. These annual reports in turn can assist the Region in making the satisfactory progress determination required by Section 319(h)(8).

To provide a mechanism for the State to meet the reporting requirement in Section 319(h)(11), as well as assist in the dissemination of information on States' progress in implementing their NPS programs, EPA is now upgrading the nonpoint source grants computer-based data system, the Grants Reporting and Tracking System (GRTS), which will include new and modified data elements to be reported by States. The most significant new mandated fields include the following: (1) Identify the location of the stream (or other waterbody) reach or reaches that are intended to be affected by each Section 319-funded project; (2) describe the project; (3) state whether the project consists of one or more of (a) the development of a NPS TMDL, (b) the development of a NPS TMDL implementation plan to achieve specific load-reduction goals, (c) the actual implementation of such a plan or (d) none of the above; and (4) annually provide (for nitrogen, phosphorus, and/or sediments) an estimate of load reductions achieved by the project and (for streambank and wetlands protection or restoration projects) the linear feet of streambank, or acres of wetlands, protected or restored. EPA intends to use these data as a means of tracking and reporting to Congress and the public the progress being made by States to successfully implement their NPS TMDLs and other projects to improve water quality.

To ensure that States meet the reporting requirement in section 319(h)(11) by entering information into GRTS, Regions must require States to enter all mandated data elements into GRTS as part of their negotiation of the evaluation process and reports under 40 CFR 35.115, and include it as a condition in grant awards of Section 319 funds. Information that is available at the time of grant award (e.g., project location and description) should generally be entered into GRTS within 3 months of the receipt of the grant or by a specific date agreed to by the Region and State. Other information should be entered at the appropriate time after project implementation has

begun (e.g., estimated load reductions would be reported annually once project implementation has progressed to the point that practices have been installed or implemented).

The upgraded GRTS system, including text fields, will enable States to satisfy all of their annual reporting requirements through GRTS. However, many States are using their annual reports as a means to not only meet statutory reporting requirements but also to educate State legislatures, other agencies, and the public, of the progress that they are making through implementation of their nonpoint source programs. Therefore, States may find it most beneficial to publish a separate annual report, but to do so in a cost- and time-saving manner that borrows heavily from the project summaries and data reported in GRTS.

VI. Waiver Process

Circumstances may arise which a State believes require it to develop and submit a work plan in a particular year that fails to meet one or more requirements in these guidelines. If such a circumstance arises, and the State believes that the circumstance justifies a waiver from one or more requirements in these guidelines, the State may submit a request for a waiver to EPA's Regional Water Division Director. The request should identify the requirement from which a waiver is requested; the circumstances requiring the waiver; a description of the activities and projects that the State will be implementing in lieu of those required by these guidelines; and a commitment to adhere to the guidelines to the greatest extent possible. The Regional Division Director may approve the waiver for the year requested with the concurrence of the Director of the Assessment and Watershed Protection Division.

Please note that this waiver process applies only to the requirements established in these and previous Section 319 guidelines; it does not apply to any statutory or regulatory requirements reiterated in these guidelines. In addition, this process is not required for any Regional authorization of the use of more than 20% of incremental funds to develop watershed-based plans in appropriate circumstances as discussed earlier in this memorandum.

VII. Conclusion

Significant challenges remain in our efforts to abate NPS pollution, protect threatened waters, and restore impaired aquatic resources. EPA will work with States to make the most effective use of Federal resources to meet these challenges.

Appendix A—Significant Nonpoint Source Grants Guidance Documents

EPA has published several guidance documents that apply to the Section 319 grants guidance process. These documents are listed and briefly summarized below. Each of them may be reviewed online from the following address at EPA's nonpoint source Web site: *http://www.epa.gov/owow/nps/cwact.html.*

(1) Nonpoint Source Program and Grants Guidance for Fiscal Years 1997 and Future Years (May 1996). This 33-page document is the chief national nonpoint source program document. It describes criteria and processes for States and Territories to upgrade their nonpoint source management programs; summarizes statutory and regulatory provisions that apply to the award of nonpoint source grants; and provides guidance designed to assist States and Territories in implementing effective programs and projects.

(2) Process and Criteria for Funding State and Territorial Nonpoint Source Management Programs in FY 1999 (August 18, 1998). This 6-page document established guidelines for the use of incremental dollars ($100 million) that were anticipated to be appropriated later that year. The guidance (1) authorized States and Territories to use up to 20 percent of their Section 319 funds to upgrade and refine their nonpoint source programs and assessments; (2) directed that the incremental dollars be focused upon implementation of watershed restoration action strategies in high-priority watersheds identified by the States and Territories as not meeting clean water and other natural resource goals; and (3) established a schedule for the award of the incremental funds.

(3) Funding the Development and Implementation of Watershed Restoration Action Strategies under Section 319 of the Clean Water Act (December 4, 1998). This 4-page document reiterated the priority placed on using the incremental $100 million to address the States' and Territories' high-priority watersheds that do not meet clean water and other natural resource goals, focused particularly in sub-watersheds where NPS control activities are likely to have the greatest positive impact. It identified 303(d) sub-watersheds as high-priorities for such work.

(4) Supplemental Guidance for the Award of Section 319 Nonpoint Source Grants in FY 2000 (December 21, 1999). This 10-page document (1) asked the Regions to assure that Section 319 grants that include programs or projects that assist animal feeding operations (AFO) include a provision to assure that any AFO which receives financial assistance under the grant has and will implement a comprehensive nutrient management plan; (2) recommended steps intended to achieve a suggestion by the congressional appropriations committees that 5 percent of the Section 319 funds be allocated to clean lakes; and (3) announced and discussed EPA's intention to work with the States to consider changes to the Section 319 reporting/tracking system to support program needs, including promoting better integration with Section 305(b) data and Section 303(d) lists.

(5) Supplemental Guidance for the Award of Section 319 Nonpoint Source Grants in FY 2001 (65 FR 70899–70905, Nov. 28, 2000). This document (1) discussed how States and Territories may use funding increases appropriated in FY 2001; (2) broadened the use of the ''incremental'' ($100 million) to authorize their use to develop and implement the nonpoint source components of TMDLs in watersheds throughout the State; and (3) directed that each State or Territory with conditional approval under Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (''CZARA'') devote at least $100,000 of its FY 2001 Section 319 grant dollars to specific actions that are designed to meet all outstanding conditions for NOAA and EPA approval.

(6) Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants to States and Territories in FY 2002 and Subsequent Years (66 FR 47653–47657, Sept. 13, 2001). This document (1) increased the focus of the ''incremental'' ($100 million) funding on developing TMDLs and watershed-based plans and implementing the watershed-based plans for 303(d)-listed waters throughout the State; (2) provided for a transition towards the new focus in FY 2002; (3) discussed the need for long-term operation and maintenance of practices funded with Section 319 funds; and (4) discussed pending changes in the GRTS reporting system.

Dated: August 19, 2002.

Robert H. Wayland, III,

Director, Office of Wetlands, Oceans, and Watersheds.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7268–1]

FY03 Wetland Program Development Grants Guidelines

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Wetland Program Development Grants (WPDGs) provide eligible applicants an opportunity to conduct projects that promote the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. While WPDGs can continue to be used by recipients to build and refine any element of a comprehensive wetland program, priority will be given to funding projects that address the three areas identified by EPA for FY03:

Developing a comprehensive monitoring and assessment program; improving the effectiveness of compensatory mitigation; and refining the protection of vulnerable wetlands and aquatic resources. States, Tribes, local governments (S/T/LGs), interstate associations, intertribal consortia, and national non-profit, non-governmental organizations are eligible to apply. This document describes the grant selection and award process for eligible applicants interested in applying for FY03 WPDGs.

FOR FURTHER INFORMATION CONTACT: Connie Cahanap, Office of Wetlands, Oceans, and Watersheds, Wetlands Division (MC 4502T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Telephone: (202) 566–1382, Fax: (202) 566–1349.

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I. Introduction

The goals of the Environmental Protection Agency's (EPA) wetland program include increasing the quantity and quality of wetlands in the U.S. by conserving and regaining wetland acreage and improving wetland health. In pursuing these goals, EPA seeks to build the capacity of all levels of government to develop and implement effective, comprehensive programs for wetland protection and management. The six program areas central to achieving these goals are: regulation, monitoring and assessment, restoration, wetland water quality standards, public-private partnerships, and coordination among agencies with wetland or wetland-related programs.

The Wetland Program Development Grants, initiated in FY90, provide States, Tribes, local governments (S/T/LGs), interstate associations, intertribal consortia, and national non-profit non-governmental organizations (hereafter referred to as award applicants or award recipients) an opportunity to carry out projects to develop and refine comprehensive wetland programs. Interest in the grant program has continued to grow over the years. Since 1995, Congress has appropriated $15 million annually to support the grant program. The type of projects that award recipients can undertake to develop and refine their comprehensive wetland programs are diverse. In the past, award recipients have pursued a wide range of activities, such as developing management tools for wetland resources, advancing scientific and technical tools for protecting wetland health, improving availability of data and information about wetlands, and training wetland managers and the public about wetland and watershed values. Appendix B lists other examples of potentially eligible projects.

The statutory authority for WPDGs is section 104(b)(3) of the Clean Water Act (CWA). Section 104(b)(3) of the CWA restricts the use of these grants to developing and refining wetland management programs by conducting or promoting the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. These grants may not be used for the operational support of wetland programs. All projects funded through this program must contribute to the overall development and improvement of S/T/LG wetland programs. Award applicants must demonstrate that their proposed project integrates with S/T/LG wetland programs.

The general award and administration process for WPDGs are governed by regulations at 40 CFR part 30 (''Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations''), 40 CFR part 31 (''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'') and 40 CFR part 35, subpart A (''Environmental Program Grants for State, Interstate, and Local Government Agencies'') and subpart B (''Environmental Program Grants for Tribes''). This grant guideline document outlines the administrative and programmatic procedures specific to the Wetland Program Development Grants.

II. Program Priorities

EPA has initiated an assessment of the wetland program elements that will move S/T/LGs toward developing comprehensive wetland programs. For FY03, the wetland program has identified three areas as program priorities for improving S/T/LG's ability to protect and restore their wetlands: (1) Developing a comprehensive wetland monitoring and assessment program; (2) improving the effectiveness of compensatory mitigation; and (3) refining the protection of vulnerable wetlands and aquatic resources. Applicants are encouraged to develop WPDG applications that address these priorities.

A. Developing a Comprehensive Monitoring and Assessment Program

This solicitation seeks proposals that support the development of a comprehensive S/T/LG wetland monitoring and assessment program. State and Tribal adoption of an ambient wetland monitoring and assessment program is the primary goal of this solicitation (*i.e.*, projects that build S/T/LG capacity to determine the causes, effects, and extent of pollution to wetland resources and develop pollution prevention, reduction, and elimination strategies). More information related to wetland monitoring and assessment can be found on the Internet at: *http://www.epa.gov/owow/wetlands/factsheets/monitor.pdf* and *http://www.epa.gov/owow/wetlands/factsheets/devgrants.pdf.*

Project proposals may address development, testing, and demonstration of methods and programs to monitor and assess wetlands. Projects may evaluate:

1. The use of biological assessment methods to improve the evaluation and ranking of potential wetland sites for restoration or acquisition;
2. The ecological consequences of a given regulatory action or group of actions;
3. The specifications and implementation of compensatory wetland mitigation;
4. The ecological performance of wetland restoration; and/or
5. The cumulative effect of wetland loss and restoration in terms of change in the ambient ecological condition of the overall aquatic resource.

Proposals should address how work to accomplish the particular objective(s) assists S/T/LGs to implement comprehensive wetland monitoring and assessment programs.

Proposals also should describe how methods under development will improve decision-making across various surface water management programs. Provisional reporting of ambient wetland condition, in Clean Water Act Section 305(b) reports, is a logical first step toward meeting that particular objective. When preparing proposals, care should be given to ensure that any data collected under the grant is of such qualitythat it can be relied on for other purposes (as appropriate). Accordingly, applicants may host technical training workshops, establish regional or State interagency wetland monitoring and assessment workgroups, develop volunteer monitoring programs, and improve wetland inventories (*e.g.*, use of hydrogeomorphic (HGM) wetland classification system). Examples of case studies illustrating wetland monitoring and assessment methods can be found on the Internet at: *http://www.epa.gov/*

owow/wetlands/bawwg/case.html and *http://www.epa.gov/region1/eco/wetland/index.html.* Many of the case studies listed on those Web sites were funded by WPDGs.

Monitoring data collected from wetland monitoring projects must be incorporated into 305(b) reports. Additionally, recipients must download data collected through monitoring projects into STORET (short for STOrage and RETrieval).STORET provides an accessible, nationwide central repository of water information of known quality. See *www.epa.gov/storet* for further information about uploading data into STORET.

B. Improving the Effectiveness of Compensatory Mitigation

Priority will also be given to projects that improve S/T/LG capacity to ensure ecologically effective compensatory mitigation for unavoidable impacts. For example, WPDGs can be used to develop and verify assessment methods and/or tracking (reporting) systems that document:

1. The technical adequacy of compensatory mitigation project plans (e.g., plan review standards);
2. the ecological suitability of proposed compensatory mitigation project sites (e.g., develop site review standards in context with restoration opportunity mapped at the watershed scale);
3. the compliance of mitigation projects at various stages of implementation; and
4. the assessment of mitigation opportunities to address cumulative impacts to wetlands.

WPDG can also be used to develop mitigation performance standards. Grant funds can only be used forresearch, investigations, experiments, training, demonstrations, surveys, and studies to support (or to improve or develop) mitigation programs; they cannot be used for specific mitigation activities (*e.g.*, implementation of individual mitigation projects, mitigation banks, or in-lieu-fee mitigation programs). Background information describing concepts and methods for improving the effectiveness of compensatory mitigation can be found in a recent National Academy of Science publication, entitled ''Compensating for Wetland Losses Under the Clean Water Act.'' The document can be found on the Internet at: *http://www.nap.edu/books/0309074320/html/.*

C. Refining the Protection of Vulnerable Wetlands and Aquatic Resources

While all wetlands provide important ecological functions on a watershed scale, some are better protected than others. For example, isolated wetlands and waters may be particularly at risk as may wetlands subject to damage from activities other than the discharge of dredged or fill material. S/T/LG wishing to develop comprehensive wetland protection programs to protect such vulnerable waters from a variety of potential impacts are encouraged to do so. Efforts can include, but are not limited to, information dissemination, data exchange, studying S/T/LG regulatory improvement opportunities, and surveying opportunities for land acquisition, conservation easements, and tax incentive provisions. This grant program, however, cannot fund activities to implement a wetlands program, or fund the purchase of land or conservation easements (see Appendix A for Grant Restrictions).

D. Other Program Areas

While WPDGs may be used by award recipients to develop and refine all elements of a comprehensive wetland program (see examples in Appendix B), in this and upcoming years, funding priority will be given to projects that address the three priority areas discussed above.

III. Funding Eligibility

States, Tribes, local government agencies, interstate agencies, and intertribal consortia, and national, nonprofit, non-governmental organizations are eligible. Typical wetland or wetland related agencies include, but are not limited to wetland regulatory agencies, water quality agencies (Section 401 water quality certification), planning offices, wild and scenic rivers agencies, departments of transportation, fish and wildlife or natural resources agencies, agriculture departments, forestry agencies, coastal zone management agencies, park and recreation agencies, non-point source or storm water agencies, city or county and other S/T/LG governmental agencies that conduct wetland-related activities.

In order to be eligible for WPDG funds, Tribes must be Federally recognized, although ''Treatment as a State'' status is not a requirement. Intertribal consortia that meet the requirements of 40 CFR part 35.504 are eligible for direct funding.

Interstate agency and intertribal consortia projects must be broad in scope and encompass more than one State, Tribe, or local government.

In order to provide greater assistance to S/T/LGs, non-profit, non-governmental organizations which undertake activities that advance wetland programs on a national basis are eligible. Activities must help S/T/LGs develop and refine wetland programs. For example, projects and tasks can involve advancing science or collecting and making available through publications and other appropriate means, such as training on how information about how various wetland programs across the nation protect, manage and restore their wetland resources and about initiatives to improve S/T/LG wetland programs. Local/regional chapters/affiliations of a nonprofit organization are not eligible for WPDGs and applications will only be accepted from the national headquarters level of a nonprofit, non-governmental organization.

Grant funds are awarded through a competitive process. The majority of WPDG funds are allocated to EPA Regional Offices, based on the number of States and Territories within the Region, to fund S/T/LG, interstate agencies, and intertribal consortia. Headquarters reserves a portion of the funds for national non-profit, non-governmental organizations, interstate agencies, and intertribal consortia. (see Section V for Application Procedures). Funding decisions are made by EPA Regional and Headquarters Offices and are based on the quality of the proposals received and adherence to the selection criteria (see Section IV). EPA typically receives requests for funding far in excess of available funds, therefore EPA cannot provide grant funds to all applicants.

IV. Selection Criteria

For FY03, priority in the selection process will be given to projects which support the development of a S/T/LG's monitoring and assessment program, improvement of the effectiveness of compensatory mitigation, or protection of vulnerable wetlands and aquatic resources. In addition, all proposals, regardless of topic area, will be evaluated using the following general categories of criteria:

- Clarity of Work Plan—clearly written and detailed proposals;
- Potential Environmental Results—a high probability for positive environmental results in the short- and long-term;
- Transferability of Results and/or Methods to other S/T/LG;
- Success of Previous Projects—for applicants who have received prior EPA funding;
- Involvement/Commitment of the applicant—significant financial and personnel contribution and involvement of partners;
- Incorporation of project into broad agency goals (Core Elements of a

Comprehensive Wetland Program is available on EPA's web page at *http://www.epa.gov/owow/wetlands/initiative/#financial* or by mail upon request by calling the Wetlands Helpline at (800) 832–7828).

V. Application Procedures

WPDG applications from States, Tribes, and local governments are handled through EPA Regional Offices, while applications from national non-profit, non-governmental organizations are handled through EPA Headquarters (Appendix C). Applications from interstate agencies and intertribal consortia can be submitted to either a Regional Office or Headquarters, however, the same proposals cannot be submitted to more than one office. Headquarters and Regional Office staff will review the applications received in their respective offices and select the most competitive projects for funding. Both the quality and quantity of the applications will play a significant role in the selection of grants for funding.

A. Application Package

Interested applicants must submit an application, which includes a work plan and completed EPA grant forms. As provided in 40 CFR 35.107 and 35.507, for States, Tribes, local governments, interstate agencies, and non-profit organizations, an approvable plan must specify (1) the work plan components to be funded under the grant; (2) the estimated work years and the estimated funding amounts for each work plan component; (3) the work plan commitments for each work plan component and a time frame for their accomplishment; (4) a performance and reporting schedule in accordance with 40 CFR 35.115 or 35.515; and (5) the roles and responsibilities of the recipient and EPA in carrying out the work plan commitments. For national nonprofit organizations, work plans must include: (1) A summary of key objectives and final products, preferably in 50 words or less; (2) a detailed description of project tasks and an explanation of how the project will contribute to developing or improving a S/T/LG's wetland program; (3) a time-line; (4) a budget and estimated funding amounts for each work plan component; (5) deliverables; (6) a performance evaluation process and reporting schedule; (7) roles and responsibilities of the recipient and EPA in carrying out the work plan commitments; and (8) contact information for the Program Manager, Grant Project Lead Manager, and Account Manager. Headquarters and some Regional Offices may ask S/T/LGs to submit pre-application proposals of grant projects for competitive review (see Section V Part B for deadlines). For specific regional guidance, contact your Regional or Headquarters EPA Grant Coordinator (Appendix C). Grant application forms are available at *http://www.epa.gov/ogd/hqgrant/* and by mail upon request by calling the Grants Administration Division at (202) 564–5305.

B. Deadlines

Full application proposals must be submitted to the appropriate EPA office and postmarked by the appropriate Regional and Headquarters deadlines:

Region 1
States: January 31, 2003
Tribes: June 30, 2003
Region 2
January 31, 2003
Region 3
Pre-proposal: October 9, 2002
Final proposal: January 15, 2003
Region 4
December 2, 2002
Region 5
December 20, 2002
Region 6
November 1, 2002
Region 7
December 2, 2002
Region 8
December 3, 2002
Region 9
Pre-proposal: October 11, 2002
Final proposal: February 14, 2003
Region 10
Pre-proposal: November 4, 2002
Final proposal: February 21, 2003
Headquarters
Pre-proposal: December 9, 2002
Final proposal: March 22, 2003

Please contact the appropriate Grants Coordinator (Appendix C) for further information and/or to confirm deadlines.

Applicants may request limited assistance in revising work plans, proposed funding levels to better reflect the funding available, and preliminary proposals to develop a project that better reflects program priorities.

C. Match Requirements

S/T/LG, interstate agencies, and intertribal consortia must provide a minimum of 25% of each award's total project costs in accordance with 40 CFR 31.24, 35.385, and 35.615. We encourage States, Tribes and local governments to provide a larger share of the project's cost whenever possible (*i.e.,* in excess of the required 25% of total project costs). Non-profit, non-governmental organizations must also provide a minimum of 25% of each award's total project costs.

The match requirement can be met with contributions from entities other than the award recipient. Other Federal money cannot be used as the match for this grant program unless authorized by the statute governing the award of the other Federal funds. However, Indian tribes can use funds provided under the Indian Self-Determination and Education Act (25 U.S.C. 450 *et seq.*) to provide the required matching funds to the extent authorized by that Act and implementing regulations.

Matching funds are considered grant funds. They may be used for the reasonable and necessary expenses of carrying out the work plan. Any restrictions on the use of grant funds (*i.e.,* prohibition of land acquisition with grant funds) also apply to the use of matching funds.

D. Quality Assurance/Quality Control (QA/QC)

QA/QC and peer review are sometimes applicable to these grants (see 40 CFR 30.54 and 40 CFR 31.45). QA/QC requirements apply to the collection of environmental data. Environmental data are any measurements or information that describe environmental processes, location, or conditions; ecological or health effects and consequences; or the performance of environmental technology. Environmental data include information collected directly from measurements, produced from models, and compiled from other sources such as data bases or literature. Applicants should allow sufficient time and resources for this process. EPA can assist applicants determine whether QA/QC is required for the proposed project. If QA/QC is required for the project, the applicant is encouraged to work with the appropriate EPA quality staff to determine the appropriate QA/QC practices for the project. If the applicant has an EPA-approved quality assurance project plan and it covers the project in the application, then they need only reference the plan in their application. Contact the appropriate Regional or Headquaters Grant Coordinator (Appendix C) for referral to an EPA quality staff.

VI. Additional Program Information

A. Performance Partnership Grants

A Performance Partnership Grant (PPG) is a multi-program grant made to a State, Tribe, interstate agency, or intertribal consortium from funds appropriated for many of EPA's environmental program grants. Local governments are not eligible for PPGs. PPGs are voluntary and provide

recipients the option to combine funds from two or more environmental program grants into one or more PPGs. PPGs can provide administrative and/or programmatic flexibility.

Funds for a WPDG may be included in a PPG; however, the WPDG program remains a competitive grant program. Therefore, State proposals must first be selected under the competitive grant process and, in accordance with 40 CFR 35.138, the work plan commitments that would have been included in the WPDG work plan must be included in the PPG work plan. Similarly, Tribal proposals must first be selected under the competitive grant process, and in accordance with 40 CFR 35.535. If the applicant proposes a PPG work plan that differs significantly from the proposed WPDG work plan approved for funding, the Regional Administrator must first consult with the National Program Manager for WPDGs before agreeing to the PPG work plan.

For further information, see the final rules on Environmental Program Grants for State, Interstate, and Local Government Agencies at 40 CFR part 35, subpart A and Tribes at 40 CFR part 35, subpart. The rules are also available on EPA's Web site at: *http://www.epa.gov/fedrgstr/EPA–TOX/2001/Day-09/t218.htm* (State) and at *http://www.epa.gov/fedrgstr/EPA–GENERAL/2001January/Day-16/g219.htm* (Tribal).

B. Local and Tribal Funding Targets

Each Regional Office will support the local government initiative and Tribal efforts by targeting at least 15% of their Regional allocation to local government and Tribal applications.

C. Reporting

WPDGs are currently covered under the following EPA grant regulations: 40 CFR part 30 (non-profit organizations); 40 CFR part 31 (States, Tribes, interstate agencies, intertribal consortia and local governments) and 40 CFR part 35, subpart A (States, interstate agencies and local governments) and subpart B (Tribes and intertribal consortia). These regulations specify basic grant reporting requirements, including performance and financial reports (see 40 CFR 30.51, 30.52, 31.40, 31.41, 35.115, and 35.515). In negotiating these grants, EPA will work closely with recipients to incorporate appropriate performance reporting requirements into each grant agreement consistent with 40 CFR 30.51, 31.40, 35.115, and 35.515. These regulations provide some flexibility in determining the appropriate content and frequency of performance reports. At a minimum, however, the reporting schedule must require the recipient to report at least annually.

D. Public Participation

EPA regulations require public participation in various Clean Water Act programs including grants (40 CFR Part 25). Each applicant for EPA financial assistance shall include tasks for public participation in their project's work plan submitted in the grant application (40 CFR 25.11). The project work plan should reflect how public participation will be provided for, assisted, and accomplished.

E. Annual Wetlands Meeting/Training

EPA encourages S/T/LGs to include travel plans for wetland personnel to attend at least one national wetland meeting in support of the project or for training each year (e.g., National EPA, State, Tribal, Local Wetland Meeting, wetland monitoring workshops). Applicants should account for travel plans and costs in the work plans and the project budget. EPA's Wetlands Division does not anticipate providing travel for State, Tribal or local government staff to attend meetings other than through this grant program.

Appendix A—Grant Restrictions

Based on experience gained from previous years and policy and regulation, we offer the following comments/restrictions on funding eligibility.

- Universities that are agencies of State government are eligible to receive grant funds from the Regional Offices. Universities must provide documentation acceptable to the EPA Regional Office to demonstrate that they function as a State agency. Universities (that are not chartered as a part of State government) are not eligible for direct funding from the Regional Offices. Also, any award recipients may award such entities contracts in accordance with 40 CFR 31.36, and subgrants in accordance with 40 CFR 31.37. The State, Tribe, local agency, or national non-profit organization should not simply pass through funding to an organization that is not eligible to receive funding directly. Land grant schools do not automatically qualify for direct funding as an agency of state because of their status as a land grant school.
- This grant program cannot fund land acquisition or purchase of easements. However, this program may support research, investigations, experiments, training, demonstrations, surveys, and study efforts directed at identifying areas for acquisition, which would help address water pollution problems.
- This grant program cannot fund payment of taxes for landowners who have a wetland on their property.
- While contractual efforts can be a part of these grants, each recipient must be significantly involved in the administration of the grant. EPA recommends that recipients use no more than 50% of the grant funds to contract with non-governmental entities. However, if the applicant wants to exceed this limit, the applicant may submit a written justification for greater involvement by non-governmental contractors. EPA will evaluate the need for greater contractual participation and may approve the request if they agree that there is adequate justification to exceed the 50% limit. For the purposes of this requirement, EPA will not consider work performed under a contract with other S/T/LG agencies, interstate associations, and intertribal consortia. If the contractual work is being done by another S/T/LG agency, interstate agencies, or intertribal consortia, these should be clearly indicated in the grant application.
- Inventory or mapping for the sole purpose of locating wetlands is not eligible for funding under this grant program. A description of how mapping or inventory projects will directly develop or improve the eligible applicant's wetland protection programs must be included in the grant application for these types of projects to be considered for funding under this grant program.
- Each grant project must be completed with the initial award of funds. Recipients should not anticipate additional funding beyond the initial award of funds for a specific project. Eligible applicants should request the entire amount of money needed to complete the project in the original application. Each grant should produce a final, discrete product. Funding and project periods can be for more than one year.
- Grant funds cannot be used to fund an honorarium under this program.
- Any field work or research-type activities are limited to activities that have a direct, demonstrated link to program development or refinement included in the application.
- Purchase/lease of vehicles (including boats, motor homes) and office furniture is not eligible for funding under this program.
- Grant funds cannot be used to pay for travel by Federal agency staff unless travel costs are related to the grant project.

Appendix B—Example WPDG Project Topics

EPA has developed a database of all projects supported through the Wetland Program Development Grants funding. This searchable database is available on EPA's web page at: *http://yosemite.epa.gov/water/grant.nsf*.

Projects must be in support of conducting or promoting the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. The following is a list of examples of projects that may be funded through Wetland Program Development Grants:

- Comprehensive planning of wetland resources;
- Research, investigations, experiments, training, demonstrations, surveys, and studies in support of integration of wetland management into broad watershed protection approaches;

• Development of S/T/LG Wetland Conservation Plans (WCP);
• Development of a framework for assuming the CWA Section 404 program;
• Development of a framework for implementing a Programmatic General Permits program;
• Development of widely applicable model wetland training programs for S/T/LGs;
• Development of wetland water quality standards, or refining criteria to appropriately reflect water quality conditions in wetlands;
• Research, investigations, experiments, training, demonstrations, surveys, and studies in support of wetland and riparian restoration programs;
• Development, demonstration, and refinement of wetland bioassessment methods and programs to evaluate wetland health and performance of protection and restoration activities;
• Development of and/or participation in training that builds watershed and wetland partnership and technical skills (*e.g.*, the Watershed Academy); and
• Development of outreach programs that improve public understanding of S/T/LG wetland protection and regulatory efforts and facilitate public-private partnerships and wetland restoration efforts.

This is not an exhaustive list, and eligible applicants may submit any eligible proposal for wetland program development that addresses EPA's goals and criteria outlined in this document.

Appendix C—Regional Grant Coordinators

Region 1: Jeanne Cosgrove, *cosgrove.jeanne@epa.gov*—617–918–1669
Region 2: Kathleen Drake, *drake.kathleen@epa.gov*—212/637–3817
Region 3: Alva Brunner, *brunner.alva@epa.gov*—215/814–2715
Region 4: Sharon Ward, *ward.sharon@epa.gov*—404/562–9269
Region 5: Cathy Garra, *garra.catherine@epa.gov*—312/886–0241
Region 6: Sondra McDonald, *mcdonald.sondra@epa.gov*—214/665–7187
Region 7: Raju Kakarlapudi, *kakarlapudi.raju@epa.gov*—913/551–7320
Region 8: Ed Stearns, *stearns.edward@epa.gov*—303/312–6946
Region 9: Cheryl McGovern, *mcgovern.cheryl@epa.gov*—415/744–2013
Region 10: David Kulman, *kulman.david@epa.gov*—206/553–6219
Headquarters:
Connie Cahanap, *cahanap.concepcion@epa.gov*—202/566–1382
Donna An, *an.donna@epa.gov*—202/566–1384

[FR Doc. 02–21670 Filed 8–23–02; 8:45 am]
BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Emergency Notice of Public Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

DATES AND PLACE: August 29, 2002, at 3 p.m. This meeting will take place via a telephone conference call. In light of the short notice of this meeting, OSTP will undertake to make this meeting available to the public through the following call-in number: 1–800–403–2017, access code: 186046. Any interested member of the public may call this number and listen to the meeting. To ensure the agency secures an appropriate number of lines, however, such persons are asked to register with OSTP by calling Cynthia Chase at 202–456–6010 by 4 p.m. on Wednesday, August 28, 2002.

TYPE OF MEETING: Open.

PROPOSED SCHEDULE AND AGENDA: The President's Council of Advisors on Science and Technology (PCAST) is tentatively scheduled to meet in open session on Thursday, August 29, 2002, at approximately 3 p.m., to discuss (and, pending the discussion, approve) a draft letter to the President on federal investments in research and development. This session will end at approximately 3:30 p.m.

PUBLIC COMMENTS: Written public comments are welcome at any time prior to the meeting. Please fax your comments to (202) 456–6021. In light of the compressed notice period for this meeting, public comments are also welcome for additional three business days after the meeting (*i.e.*, up to close of business Wednesday, September 4, 2002). Please fax such comments to the same fax number noted above. The transcript of the meeting will be posted on the PCAST web site as soon as possible following the meeting.

REASON FOR EMERGENCY NOTICE: Pursuant to 41 CFR part 102–3.150(b), less than 15 days notice is being given for this meeting because of the exigencies involved in providing timely and relevant advice to the President on the matters to be discussed. In light of these exceptional circumstances, regular notice and meeting procedures would prevent PCAST from rendering advice pertinent to these current events in a timely fashion.

FOR FURTHER INFORMATION CONTACT: Information on this meeting will be published on the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.* The draft report to be discussed during the call will be posted on this Web site at the earliest possible opportunity. Any updates on the scheduling of the conference call will also be posted. For additional information, please call Cynthia Chase at (202) 456–6010.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger III, the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers.

Barbara Ann Ferguson,
Assistant Director for Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 02–21807 Filed 8–23–02; 8:45 am]
BILLING CODE 3170–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank)

Summary: The Sub-Saharan Africa Advisory Committee was established by Pub. L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

Time and Place: Friday, September 13, 2002, at 9:30 a.m. to 12:30 p.m. The meeting will be held at the Export-

Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: This meeting will focus on improving deal flow for transactions in Sub-Saharan Africa. SAAC members and the Bank staff will discuss business development plans, the Bank's pipeline of prospective transactions, and the industry-specific experience of particular SAAC members.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 6, 2002, Teri Stumpf, Room 1215, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

Further Information: For further information, contact Teri Stumpf, Room 1215, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3502.

Peter B. Saba,

General Counsel.

[FR Doc. 02–21605 Filed 8–23–02; 8:45 am]

BILLING CODE 6690–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve on the Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention, Department of Health and Human Services

The Centers for Disease Control and Prevention (CDC) is soliciting nominations for possible membership on the Advisory Committee on Immunization Practices (ACIP). This committee provides advice and guidance to the Secretary of the Department of Health and Human Services, and the Director of the Centers for Disease Control and Prevention, regarding the most appropriate application of antigens and related agents for effective communicable disease control in the civilian population. The Committee reviews and reports regularly on immunization practices and recommends improvements in the national immunization efforts.

The Committee also establishes, reviews, and as appropriate, revises the list of vaccines for administration to children eligible to receive vaccines through the Vaccines for Children Program.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the Committee's objectives. Nominees will be selected based upon expertise in the field of immunization practices; multi-disciplinary expertise in public health; expertise in the use of vaccines and immunologic agents in both clinical and preventive medicine; knowledge of vaccine development, evaluation, and vaccine delivery; or knowledge about consumer perspectives and/or social and community aspects of immunization programs. Federal employees will not be considered for membership. Members may be invited to serve up to four-year terms.

Consideration is given to representation from diverse geographic areas, both genders, ethnic and minority groups, and the disabled. Nominees must be U.S. citizens.

The following information must be submitted for each candidate: Name, affiliation, address, telephone number, and a current curriculum vitae. e-mail addresses are requested if available.

Nominations should be sent, in writing, and postmarked by September 15, 2002 to: Gloria Kovach, Program Analyst, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, M/S E–61, Atlanta, Georgia 30333. Telephone and facsimile submissions cannot be accepted.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 20, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–21630 Filed 8–23–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, September 26, 2002.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. at the Maderia Club located at 46 Maderia Avenue in Central Fall, RI for the following reasons:

1. Approval of Minutes.
2. Chairman's Report.
3. Executive Director's Report.
4. Approval Financial Budget.
5. Public Input.

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Michael Creasey,

Executive Director BRVNHCC.

[FR Doc. 02–21681 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Merritt Island National Wildlife Refuge

ACTION: Notice of Intent to prepare a Comprehensive Conservation Plan for Merritt Island National Wildlife Refuge, located in Brevard and Volusia Counties, FL.

SUMMARY: This notice advises the pubic that the Fish and Wildlife Service intends to gather information necessary to prepare a comprehensive conservation plan and associated environmental documents pursuant to the National Environmental Policy Act and implementing regulations to: (1) Advise other agencies and the public of our intentions; and (2) obtain suggestions and information on the

scope of issues to include in the environmental documents.

DATES: An open house to begin the public scoping process is scheduled for Saturday, September 21, 2002, from 10 a.m. to 2 p.m., at the Merritt Island National Wildlife Refuge Visitor Center. The Visitor Center is located 5 miles east of Titusville, Florida, on State Route 402. Special mailings, newspaper articles, and announcements will inform the public of times and locations of additional meetings to seek public input. The Service intends to hold at least three meetings during October and November 2002.

ADDRESSES: Comment, requests for additional information, and/or requests to be placed on the mailing list should be sent to: Natural Resource Planner, Merritt Island National Wildlife Refuge Complex, P.O. Box 6504, Titusville, Florida 32782–6504; telephone 321/861–2368; fax 321/861–1276. Information concerning this refuge and a mailing list request form may be found at the following Web site: *http://merrittisland.fws.gov.*

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet at the above website. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact the refuge directly at the above phone number or address. Finally, you may hand-deliver comments to the refuge's Visitor Center at the above address. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law.

SUPPLEMENTARY INFORMATION: It is the policy of the Fish and Wildlife Service to have all lands within the National Wildlife Refuge System managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies the goals, objectives, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The plan will provide other agencies and the public with a clear understanding of the management strategies to be implemented.

The Service has initiated the planning process for Merritt Island National Wildlife Refuge for the conservation and enhancement of its natural resources. Covering approximately 140,000 acres and including designations such as Essential Fish Habitat, Outstanding Florida Waters, Great Florida birding Trail Eastern Gateway, Candidate Marine Protected Area, and Brevard County Historic Landmark, the refuge spans Brevard and Volusia Counties and is generally located between the Atlantic Ocean and the Indian River Lagoon, near the city of Titusville, Florida.

The Service is especially interested in receiving public input during this planning process. What do you value most about the refuge? What problems or issues do you see affecting management or public use of the refuge? What improvements do you recommend for the refuge? What changes, if any, would you like to see in the management of the refuge? The Service has provided these questions for optional use and has no requirement that information be provided.

The Fish and Wildlife Service is the principal federal agency responsible for conserving, protecting, and enhancing fish, wildlife, and plants and their habitats for the continuing benefit of the American people.

Dated: July 29, 2002.

Sam D. Hamilton,

Regional Director.

[FR Doc. 02–21631 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Associated NEPA Document for the Stone Lakes National Wildlife Refuge and Notice of Public Open Houses

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Intent to Prepare a Comprehensive Conservation Plan and Associated National Environmental Policy Act Document for the Stone Lakes National Wildlife Refuge, Sacramento County, California and Notice of Public Open Houses.

SUMMARY: The Fish and Wildlife Service (Service) is preparing a Comprehensive Conservation Plan (CCP) and National Environmental Policy Act (NEPA) document for Stone Lakes National Wildlife Refuge (refuge). This notice advises the public that the Service intends to gather information necessary to prepare a CCP and environmental documents pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended, and NEPA. The public is invited to participate in the planning process. The Service is furnishing this notice in compliance with the Service CCP policy to: advise other agencies and the public of our intentions; obtain suggestions and information on the scope of issues to include in the environmental documents; and announce a series of public scoping meetings to occur in September and October 2002. See **SUPPLEMENTARY INFORMATION** for meeting information.

DATES: To ensure that the Service has adequate time to evaluate and incorporate suggestions and other input into the planning process, comments should be received within 30 days from the date of this notice.

ADDRESSES: Send written comments or requests to be added to the mailing list to: Planning Team Leader—Stone Lakes NWR, California/Nevada Refuge Planning Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, W–1916, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Address comments and requests for additional information to: Mr. Miki Fujitsubo, Planning Team Leader, (916) 414–6507.

SUPPLEMENTARY INFORMATION: The Stone Lakes National Wildlife Refuge is in southern Sacramento County, California, adjacent to the community of Elk Grove. The refuge is situated within the Morrison Creek, Cosumnes River, and Mokelumne River watersheds, and the Sacramento-San Joaquin River Delta (Delta).

The beginnings of the refuge started in the early 1970s with the recognition of the importance of the Stone Lakes Basin floodplain by the State of California and the County of Sacramento. There was strong support for a refuge because the unique lakes and waterways of the basin are entirely within the 100-year floodplain. The basin also occupies a strategic location for buffering urban encroachment into the Delta.

The refuge boundary was established in 1992 and with its first land acquisition in 1994 was officially designated the 505th unit in the National Wildlife Refuge System. The approved refuge boundary is 18,000 acres with the refuge currently owning or managing more than 4,000 acres.

The National Wildlife Refuge System Administration Act of 1966, as amended, mandates that all lands within the National Wildlife Refuge

System are to be managed in accordance with an approved CCP. The CCP will guide management decisions and identify refuge goals, long-range objectives and management strategies for achieving refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection, cultural resources, and environmental effects. Public input into this planning process is very important and encouraged. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the refuges and how the Service will implement management strategies.

The Service is soliciting information from the public via written comments. The Service will send out special mailings, newspaper articles, and announcements to people who are interested in the refuge. These mailings will provide information on how to participate in public involvement for the CCP. Comments received will be used to develop goals, key issues, and habitat management strategies. Additional opportunities for public participation will occur throughout the process. Data collection has been initiated to create computerized mapping, including vegetation, topography, habitat types and existing land uses.

Public open houses have been scheduled for the following dates and locations. All meeting times are from 7 p.m. to 9 p.m.

1. Monday, September 16, 2002, at the Elk Grove Community Services District Board Room, 8820 Elk Grove Blvd., Elk Grove, CA 95624.

2. Thursday, September 26, 2002, at the Clunie Community Center (Auditorium)—McKinnley Park, 601 Alhambra Blvd., Sacramento, CA 95816.

3. Wednesday, October 2, 2002, at the Jean Harvie Community Center, 14273 River Road, Walnut Grove, CA 95690.

4. Thursday, October 10, 2002, at the Veterans' Memorial Center—(Club Room), 203 East 14th Street—(corner of 14th & B Street), Davis, CA 95616.

The outcome of this planning process will be a CCP to guide the refuge management for the next 15 years. We have estimated that a draft CCP and NEPA document will be made available for public review in early 2004.

Dated: August 19, 2002.

Ken McDermond,

Acting California/Nevada Operations Manager, U.S. Fish and Wildlife Service, Sacramento, California.

[FR Doc. 02–21604 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Incidental Take Permit and Habitat Conservation Plan for AT&T Corporation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: AT&T Corporation (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service proposes to issue a 10-year permit that would authorize take (e.g., harm and harassment) of the endangered Point Arena mountain beaver (*Aplodontia rufa nigra*) incidental to otherwise lawful activities. Such take would occur as the result of construction to connect an existing fiber optic conduit to the AT&T Point Arena Cable Station located near Manchester, Mendocino County, California.

We request comments from the public on the permit application which includes a Habitat Conservation Plan (HCP) for the Point Arena mountain beaver. We also request comments on our preliminary determination that the HCP qualifies as a ''low-effect'' habitat conservation plan, eligible for a categorical exclusion from additional documentation under the National Environmental Policy Act.

DATES: Written comments should be received on or before September 25, 2002.

ADDRESSES: Send written comments to Mr. Bruce G. Halstead, Project Leader, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, California, 95521. Comments may also be sent by facsimile to (707) 822–8411.

FOR FURTHER INFORMATION CONTACT: Mr. John Hunter, Fish and Wildlife Biologist, at the above address or call (707) 822–7201.

SUPPLEMENTARY INFORMATION:

Document Availability

The permit application, HCP, and the Service's low-effect HCP screening form are available for public review. The HCP describes the proposed project and the measures that the Applicant would undertake to minimize and mitigate take of Point Arena mountain beavers. The screening form describes the basis for the Service's preliminary determination that the HCP qualifies as a low effect plan eligible for a categorical exclusion under the National Environmental Policy Act.

Please contact the above office if you would like copies of the application, HCP and screening form. Documents will also be available for review, by appointment, during normal business hours at the above address. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public.

Background

Section 9 of the Act and Federal regulations prohibit the ''take'' of fish and wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act to include kill, harm, or harass. The Service may, under limited circumstances, issue permits to authorize incidental take; *i.e.*, take that is incidental to, and not the purpose of, otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 50 CFR 17.22, respectively.

The Applicant has applied to the Service for a section 10(a)(1)(B) incidental take permit for the point Arena mountain beaver, on the AT&T Point Arena Cable Station, in Mendocino County, California. The term of the permit would be 10 years. The AT&T Cable Station consists of 11.2 acres of privately-owned land located approximately 1 mile northwest of the town of Manchester. Prior to the listing of the Point Arena mountain beaver, three 5-inch-diameter steel bore pipes were installed below the surface of the ground from a point offshore of the cable station in the Pacific Ocean to a point about 88 feet from the north side of the cable station building. An occupied Point Arena mountain beaver burrow system is located 30 feet north from the end of the bore pipes. The Applicant proposes to install an access vault at this location, trench and bury cable conduit for 77 feet, and then install a manhole at the end of the cable conduit. The Applicant may then utilize this system by placing fiber optic cables in these pipes and conduits. The Service considers this project to entail take of Point Arena mountain beaver since noise and vibration disturbance and habitat loss will occur near occupied burrows.

The AT&T Cable Station is composed of structures, a parking lot, access roads, occupied Point Arena mountain beaver habitat and unoccupied potential habitat. The occupied, and some of the unoccupied, habitat consists of stabilized dunes dominated by bush lupine (*Lupinus arboreus*) and other coastal scrub and coastal strand species

such as coyote brush (*Baccharis pilularis*), coast goldenrod (*Solidago spathulata*), ice-plant (*Carpobrotus* sp.), and other mixed grasses and forbs. Much of the currently unoccupied habitat consists of non-native, invasive conifers including Monterey pine (*Pinus radiata*) and Monterey cypress (*Cypress macrocarpa*). Habitat in the surrounding areas are similar, although there are large areas of unsuitable agricultural pasture lands.

The proposed project will permanently remove approximately 15 square feet of suitable but currently unoccupied habitat, and cause about 7 days of non-breeding season disturbance of all mountain beavers on about 0.25 acre of occupied habitat. There may also be 1 day of breeding season disturbance on the same 0.25 acre while fiber optic cables are pulled through the pipes and conduits. Mitigation for the HCP involves rehabilitation and maintenance of 1 acre of unoccupied and currently unsuitable habitat presently covered by non-native conifers. This rehabilitation work will cause disturbance for an additional 3 to 5 days during the non-breeding season and will affect all Point Arena mountain beaver associated with approximately 3 acres of occupied habitat.

As described in the HCP, the Applicant proposes the following measures to minimize and mitigate the anticipated project impacts: (A) All construction (except cable pulling) and habitat rehabilitation work will occur outside of the Point Arena mountain beaver breeding season (December 15 to June 30) and during daylight hours; (B) an 8-foot-high, 3/4-inch-wide plywood sound barrier will be placed between the construction and the occupied habitat; (C) vibratory compactors will only be used at the proposed manhole location; (D) areas altered by trenching will be restored as much as possible to a prework condition; (E) all activities including entry of personnel into the occupied habitats will be closely supervised by a biological monitor; and (F) material from cut conifers will be disposed off site.

Monitoring of the mountain beaver population at the entire Cable Station site will consist of two surveys per year, every other year, for 10 years. The methods for this monitoring will closely follow a methodology and a layout which have been in place on this site since 1992, and will thereby contribute to the only long-term monitoring program for this subspecies. In addition, counts of burrow openings in areas rehabilitated by non-native conifer removal will also occur on the same schedule in order to assess the effectiveness of the mitigation.

The Service's Proposed Action consists of the issuance of an incidental take permit and implementation of the HCP, which includes measures to minimize and mitigate impacts of the project on Point Arena mountain beaver. One alternative to the taking of listed species under the Proposed Action is considered in the HCP. Under the No Action Alternative, no permit would be issued. However, this alternative would result in an economic burden to the Applicant and no Point Arena mountain beaver habitat rehabilitation would occur.

The Service has made a preliminary determination that the HCP qualifies as a ''low effect'' plan as defined by its Habitat Conservation Planning Handbook (November 1996). The Service determination that a habitat conservation plan qualifies as a low-effect plan is based on the following criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in the Screening Form for Low-Effect HCP Determinations, the Applicant's HCP for the Point Area Cable Station qualifies as a ''low-effect'' plan for the following reasons:

1. Approval of the HCP would result in minor or negligible effects to the Point Arena mountain beaver. The Service does not anticipate significant direct or cumulative effects to the Point Arena mountain beaver resulting from the proposed construction. No other federally listed, proposed, or candidate species are known or expected to occur within or immediately adjacent to the proposed construction.

2. Approval of the HCP would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any cumulative or growth inducing impacts and, therefore, will not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local, or tribal law or requirement imposed for the protection of the environment.

5. Approval of the HCP would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has made a preliminary determination that approval of the HCP qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1). Based on this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

The Service provides this notice pursuant to section 10(c) of the Act. We will evaluate the permit application, the HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, the Service will issue a permit for the incidental take of the Point Arena mountain beaver from the proposed construction project. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: August 19, 2002.

Ken McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–21603 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Impact Report/ Environmental Impact Statement and Habitat Conservation Plan for the Natomas Basin, Sacramento County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The City of Sacramento, Sutter County, and the Natomas Basin Conservancy (the ''applicants'') have applied to the Fish and Wildlife Service (Service) for 50-year incidental take permits for 22 covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applications address the potential for ''take'' of covered species associated with various activities within the Natomas Basin, a 53,537-acre area in the

Sacramento region. These activities (the ''covered activities'') include 15,517 acres of planned land development, and development and management of mitigation lands. A conservation program to minimize and mitigate for the covered activities would be implemented as described in the Natomas Basin Habitat Conservation Plan (Plan), which would be jointly implemented by the applicants.

The permit applications, available for public review, include the Plan which describes the proposed program and mitigation, and an accompanying Implementing Agreement (legal contract).

The Service also announces the availability of a Draft Environmental Impact Report/Environmental Impact Statement (Draft EIR/EIS) that addresses the environmental effects associated with issuing the permits and implementing the Plan. The analysis provided in the Draft EIR/EIS is intended to accomplish the following: inform the public of the proposed action and alternatives; address public comments received during the scoping period; disclose the direct, indirect, and cumulative environmental effects of the proposed action and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

DATES: Written comments should be received on or before October 22, 2002.

Public meetings are scheduled as follows:

1. September 23, 2002, First Session: 4 p.m. to 6 p.m.; Second Session: 7 p.m. to 9 p.m., Sacramento, California;

2. September 25, 2002, First Session: 4 p.m. to 6 p.m.; Second Session: 7 p.m. to 9 p.m., Yuba City, California.

ADDRESSES: Comments should be addressed to the Field Supervisor, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. Written comments may be sent by facsimile to (916) 414–6711.

The public meetings will be held at the following locations:

1. Sacramento—1231 I Street, First Floor;

2. Yuba City—Whitaker Hall, 44 Second Street.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Campbell, Chief, Conservation Planning Division, at the Sacramento Fish and Wildlife Office (*see* **ADDRESSES**); telephone: (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the applications, Draft EIR/EIS, Plan, and Implementing Agreement should immediately contact the Service by telephone at (916) 414–6600 or by letter to the Sacramento Fish and Wildlife Office (*see* **ADDRESSES**). Copies of the Draft EIR/EIS, Plan, and Implementing Agreement also are available for public inspection, during regular business hours, at the Sacramento Fish and Wildlife Office; the City of Sacramento Planning and Building Department, 1231 I Street, Room 300, Sacramento, California; State Library, 914 Capitol Mall, Sacramento, California; Central Library, 828 I Street, Sacramento, California; South Natomas Library, 2901 Truxel Road, Sacramento, California; and Sutter County Library, 750 Forbes Avenue, Yuba City, California.

Comments

Written comments will be received at the public meetings. Written comments also may be received after the public meetings, until the close of the comment period [*see* **DATES**]. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Background Information

Section 9 of the Act and Federal regulation prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under limited circumstances, the Service may issue permits to authorize ''incidental take'' of listed animal species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

The applicants are seeking permits for take of the following federally listed species: the threatened giant garter snake (*Thamnophis gigas*), threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), threatened vernal pool fairy shrimp (*Branchinecta lynchi*), endangered vernal pool tadpole shrimp (*Lepidurus packardi*), threatened Colusa grass (*Neostapfia colusana*), endangered Sacramento Orcutt grass (*Orcuttia viscida*), and threatened slender Orcutt grass (*Orcuttia tenuis*). The proposed permits would also authorize future incidental take of the currently unlisted Swainson's hawk (*Buteo swainsoni*), Aleutian Canada goose (*Branta canadensis leucopareia*), bank swallow (*Riparia riparia*), tricolored blackbird (*Agelaius tricolor*), northwestern pond turtle (*Clemmys marmorata marmorata*), white-faced ibis (*Plegadis chihi*), loggerhead shrike (*Lanius ludovicianus*), burrowing owl (*Athene cunicularia*), California tiger salamander (*Ambystoma californiense*), western spadefoot toad (*Scaphiopus hammondii*), midvalley fairy shrimp (*Branchinecta mesovallensis*), Boggs Lake hedge-hyssop (*Gratiaola heterosepala*), legenere (*Legenere limosa*), delta tule pea (*Lathyrus jepsonii* ssp. *jepsonii*) and Sanford's arrowhead (*Sagittaria sanfordii*), should any of these species become listed under the Act during the life of the permit. Collectively, the 22 listed and unlisted species are referred to as the ''covered species'' in the Plan.

The applicants propose to minimize and mitigate the effects to covered species associated with the covered activities by participating in the Plan. The purpose of this basin-wide conservation program is to promote biological conservation in conjunction with economic and urban development within the Natomas Basin. Through the payment of development fees, one-half acre of mitigation land would be established for every acre of land developed within the various permit areas (a total of 7,759) acres of mitigation land to be acquired based on 15,517 acres of urban development). The mitigation land would be acquired and managed by the Natomas Basin Conservancy. In addition to the requirement to pay mitigation fees, the Plan also includes take avoidance and minimization measures.

The Draft EIR/EIS considers four alternatives in addition to the Proposed Action and the No Action Alternative. Under the No Action Alternative, no section 10(a)(1)(B) permits would be issued for take of listed species associated with the covered activities; the applicants would address the potential for take of listed species on a case-by-case basis. The Increased Mitigation Ratio Alternative would double the extent of required mitigation land relative to the Plan. The Habitat-Based Mitigation Alternative would prescribe mitigation based on the value of habitat to be disturbed, rather than on a general ratio applied to all lands to be disturbed. The Reserve Zone Alternative would prioritize specific areas within the Natomas Basin for acquisition, in contrast to the general acquisition strategy described in the Plan. The Reduced Potential for Incidental Take Alternative would result in reduced urban development covered by the

permits, and would therefore reduce the potential for incidental take associated with urban development.

In August 2001, (66 FR 43267), two water agencies, Reclamation District No. 1000 (RD 1000), and Natomas Central Mutual Water Company (Natomas Mutual), decided to join the City of Sacramento and Sutter County as applicants for permits and participated in drafting the Plan. At this time, RD 1000 and Natomas Mutual have chosen not to submit an application for an incidental take permit. They may decide to apply at a later time and commit to the terms of the Plan, and through issuance of a permit by the Service, join as full permittees at a future date. It should be noted that because of RD 1000 and Natomas Mutual's previous participation as potential applicants, and the possibility that they may decide to apply for a permit at some future date, the description of and analysis of the two water agencies as permittees has remained in both the Plan and the EIR/EIS. Should the water agencies apply for a permit in the future, then additional notification and documentation may be needed pursuant to the National Environmental Policy Act.

The Service invites the public to comment on the Plan and Draft EIR/EIS during a 60-day public comment period. This notice is provided pursuant to section 10(a) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to prepare a Final EIR/EIS. A decision on the permit applications will be made no sooner than 30 days after the publication of the Final EIR/EIS.

Dated: August 19, 2002.

Steve Thompson,

Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–21680 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Pinedale Anticline Working Group and Task Groups; Notice

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Pinedale Anticline Working Group and Task Groups—notice of establishment.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior has established the Pinedale Anticline Working Group and Task Groups. The purpose of the Committee and Subcommittees will be to advise the Bureau of Land Management, Pinedale Field Office Manager, regarding recommendations on matters pertinent to the Bureau of Land Management's responsibilities related to the Pinedale Anticline Environmental Impact Statement (EIS) and Record of Decision (ROD).

Members of the Working Group and Task Groups will be comprised of a representative from the State of Wyoming, a representative from the Town of Pinedale (Wyoming), a representative from the oil/gas operators, a representative from the Sublette County (Wyoming) Government, a representative from environmental groups, a representative from the affected landowners, a representative of the local livestock operators, and two members from the public-at-large.

FOR FURTHER INFORMATION CONTACT: Ms. Priscilla E. Mecham, Pinedale Field Office Manager, Bureau of Land Management, 432 East Mill Street, P.O. Box 768, Pinedale, Wyoming 82941, Phone: (307) 367–5300. The certification of establishment is published below.

Certification

I hereby certify that the establishment of the Pinedale Anticline Working Group and Task Groups is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Dated: August 15, 2002.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 02–21683 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–AE]

Notice of Public Meeting: Northwest California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Wednesday and Thursday, Oct. 23 and 24, 2002, at the Weaverville Victorian Inn, 1709 Main St., Weaverville, California. On Oct. 23, the meeting begins at 10 a.m. Council members will participate in a field tour to BLM-managed areas in Trinity County. On Oct. 24, the meeting begins at 8 a.m. in the Victorian Inn Conference Room. Time for public comments has been set for 1 p.m.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, Field Manager, BLM Arcata Field Office, 1895 Heindon Rd., Arcata, CA 95521, or telephone (707) 825–2300; or BLM Public Affairs Officer Joseph J. Fontana, telephone (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting, agenda topics include a proposal for development of a Weaverville Community Forest, an overview of fire and fuels projects, and review of a grant proposal for the Chappie-Shasta Off Highway Vehicle Area near Redding, California. Members will also hear reports from managers of the BLM's Arcata, Redding and Ukiah field offices.

All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: August 19, 2002.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 02–21606 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–421–1]

Pedestal Actuators from China

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 421(b) of the Trade Act of 1974 (19 U.S.C. 2451(b)) (the Act).

SUMMARY: Following receipt of a petition properly filed on August 19, 2002, on behalf of Motion Systems Corp., Eatontown, NJ, the Commission instituted investigation No. TA–421–1 under section 421(b) of the Act to determine whether pedestal actuators [1] from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and E (19 CFR part 206).

EFFECTIVE DATE: August 19, 2002.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION:

Participation in the Investigation and Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Confidential Business Information (CBI) Under an Administrative Protective Order (APO) and CBI Service List

Pursuant to § 206.47 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

Hearing

The Commission has scheduled a hearing in connection with this investigation beginning at 9:30 a.m. on October 1, 2002, at the U.S. International Trade Commission Building. Subjects related to both market disruption or threat thereof and remedy may be addressed at the hearing. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 23, 2002. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 26, 2002 at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by §§ 201.6(b)(2) and 201.13(f) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is September 25, 2002. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is October 4, 2002. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of market disruption or threat thereof and/or remedy on or before October 4, 2002. Parties may submit final comments on remedy on October 21, 2002. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain CBI must also conform with the requirements of § 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with § 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Remedy

Parties are reminded that no separate hearing on the issue of remedy will be held. Those parties wishing to present arguments on the issue of remedy may do so orally at the hearing or in their prehearing brief, posthearing brief, or final comments on remedy.

Authority: This investigation is being conducted under the authority of section 421 of the Trade Act of 1974; this notice is published pursuant to § 206.3 of the Commission's rules.

Issued: August 21, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–21690 Filed 8–23–02; 8:45 am]

BILLING CODE 7020–02–P

[1] Pedestal actuators consist of electromechanical linear actuators, imported with or without motors, or as part of scooter subassemblies, all the foregoing used for lifting and lowering, or for pushing or pulling. The products under investigation include any subassembly of pedestal actuator parts and components. Pedestal actuators are powered by fractional horsepower DC or AC motors, which drive a ball bearing screw or acme screw through a gear reducer to convert rotary to linear motion. The products are designed for flat or base mounting, have telescoping members, with bearings or bearing surfaces, and rigidly support the load and provide anti-rotation. The imported products are provided for in subheadings 8483.40.50, 8501.31.40, and 8501.40.40 of the Harmonized Tariff Schedule of the United States (HTS). Although the HTS categories are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office; National Industrial Security Program Policy Advisory Committee: Notice of Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2) and implementing regulation 41 CFR 101.6, announcement is made for the following committee meeting:

Name of Committee: National Industrial Security Program Policy Advisory Committee (NISPPAC).

Date of Meeting: September 25, 2002.

Time of Meeting: 10 a.m. to 12 noon.

Place of Meeting: National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Room 105, Washington, DC 20408.

Purpose: To discuss National Industrial Security Program policy matters. This meeting will be open to the public. However, due to space limitations and access procedures, the names and telephone numbers of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than September 16, 2002. Written statements from the public will be accepted in lieu of an opportunity for comment.

FOR FURTHER INFORMATION CONTACT: J. William Leonard, Director, National Archives Building, 700 Pennsylvania Avenue, NW, Room 100, Washington, DC 20408, telephone (202) 219–5250.

Dated: August 20, 2002.

Nancy Allard,

Acting Committee Management Officer.

[FR Doc. 02–21600 Filed 8–23–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting #52

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on Monday, September 9, 2002 from 10:30 a.m. to approximately 12:30 p.m. The meeting will be held in the Carriage House of the Stephen Decatur House Museum, 748 Jackson Place, NW., Washington, DC 20006.

The Committee meeting will begin at 10:30 a.m. for coffee followed at 10:45 a.m. with a welcome and introductions by Adair Margo, Committee Chairman. Executive Director Henry Moran and Committee members Adair Margo, Mercedes Paz-Slimp, and Cindy Sites will present reports. There will be a presentation and discussion on ''Preservation in America'' as well as a presentation by Legal Counsel. The meeting will conclude with a presentation and discussion on future projects, activities, and meetings.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the Institute of Museum and Library Services on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c) (4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend must contact Georgianna Paul of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Paul.

If you need special accommodations due to a disability, please contact Ms. Paul through the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Dated: August 19, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–21640 Filed 8–23–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Federal Advisory Committee on International Exhibitions

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions (FACIE) will be held on September 17, 2002 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, (Room 716) Washington, DC 20506. A portion of this meeting, from 2:30 p.m. to 3:30 p.m., will be open to the public for policy discussion. The remaining portion of this meeting, from 10 a.m. to 2:20 p.m., will be closed.

The closed portion of this meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: August 20, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–21639 Filed 8–23–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL INDIAN GAMING COMMISSION

Notice of Approval of Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of class III gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

EFFECTIVE DATE: This notice is effective upon date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Frances Fragua, Office of General Counsel at the National Indian Gaming Commission, 202/632–7003, or by facsimile at 202/632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (Commission). Section 2710 of the IGRA authorizes the Commission to approved class II and

class III tribal gaming ordinances. Section 2710(d)(2)(B) of the IGRA as implemented by 25 CFR 522.8 (58 FR 5811 (January 22, 1993)) requires the Commission to publish, in the **Federal Register**, approved class III gaming ordinances.

The IGRA requires all tribal gaming ordinances to contain the same requirements concerning ownership of the gaming activity, use of net revenues, annual audits, health and safety, background investigation and licensing of key employees. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission. The Commission believes that publishing a notice of approval of each class III gaming ordinance is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Also, the Commission will make copies of approved class III ordinances available to the public upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission, (Attention: Legal Staff Assistant) 1441 L Street, NW., Suite 9100, Washington, DC 20005.

The following constitutes a consolidated list of all Tribes for which the Chairman has approved tribal gaming ordinances authorizing class III gaming.

1. Absentee-Shawnee Tribe of Oklahoma.
2. Agua Caliente Band of Cahuilla Indians.
3. Ak Chin Indian Community.
4. Alturas Indian Rancheria.
5. Assiniboine & Sioux Tribes of the Fort Peck Reservation.
6. Augustine Band of Mission Indians.
7. Bad River Band of Lake Superior Tribe of Chippewa .
8. Barona Band of Mission Indians.
9. Bay Mills Indian Community.
10. Bear River Band of the Rohnerville Rancheria.
11. Big Lagoon Rancheria.
12. Big Pine Paiute Tribe of the Owens Valley.
13. Big Valley Rancheria of Pomo Indians.
14. Bishop Paiute Tribe .
15. Blue Lake Rancheria.
16. Boise Forte Band of Chippewas.
17. Buena Vista Rancheria of Me-Wuk Indians.
18. Burns Paiute Tribe.
19. Cabazon Band of Mission Indians.
20. Caddo Indians Tribe of Oklahoma.
21. Cahto Tribe of the Laytonville Rancheria.
22. Cahuilla Band of Mission Indians.
23. Campo Band of Mission Indians.
24. Chemehuevi Indian Tribe.
25. Cheyenne and Arapaho Tribes of Oklahoma.
26. Cheyenne River Sioux Tribe.
27. Chickasaw Nation of Oklahoma.
28. Chicken Ranch Band of Me-Wuk Indians.
29. Chippewa Cree Tribe of the Rocky Boy's Reservation.
30. Chitimacha Tribe of Louisiana.
31. Citizen Band Potawatomi Indians of Oklahoma.
32. Cloverdale Rancheria of Pomo Indians of California.
33. Coast Indian Community of the Resighini Rancheria.
34. Cocopah Indian Tribe.
35. Coeur d'Alene Tribe.
36. Colorado River Indian Tribes.
37. Colusa Band of Wintun Indians.
38. Comanche Indian Tribe.
39. Confederated Salish and Kootenai Tribes of the Flathead Reservation.
40. Confederated Tribes and Bands of the Yakama.
41. Confederated Tribes of the Chehalis Reservation.
42. Confederated Tribes of the Colville Reservation.
43. Confederated Tribes of the Grand Ronde Community.
44. Confederated Tribes of the Siletz Indians of Oregon.
45. Confederated Tribes of the Umatilla Indian Reservation.
46. Confederated Tribes of the Warm Springs Reservation.
47. Coquille Indian Tribe.
48. Coushatta Indian Tribe of Louisiana.
49. Cow Creek Band of Umpqua Indians.
50. Coyote Valley Band of Pomo Indians.
51. Crow Creek Sioux Tribe.
52. Crow Indian Tribe.
53. Delaware Tribe of Indians.
54. Delaware Tribe of Western Oklahoma.
55. Dry Creek Rancheria.
56. Eastern Band of Cherokee Indians.
57. Eastern Shawnee Tribe of Oklahoma.
58. Elem Indian Colony.
59. Elk Valley Rancheria.
60. Ewiiaapaayp Band of Mission Indians.
61. Fallon Paiute-Shoshone Tribes.
62. Flandreau Santee Sioux Tribe.
63. Fond du Lac Reservation Business Committee.
64. Forest County Potawatomi Community.
65. Fort McDermitt Paiute-Shoshone Indian Tribe.
66. Fort McDowell Mohave-Apache Indian Community.
67. Fort Mojave Tribal Council.
68. Gila River Indian Community.
69. Grand Portage Band of Chippewa Indians.
70. Grand Traverse Band of Ottawa/Chippewa Indians.
71. Grindstone Indian Rancheria.
72. Hannahville Indian Community.
73. Ho-Chunk Nation.
74. Hoopa Valley Tribe.
75. Hopland Band of Pomo Indians.
76. Hualapai Tribe.
77. Iowa Tribe of Kansa and Nebraska.
78. Iowa Tribe of Oklahoma.
79. Jackson Rancheria Band of Miwuk Indians.
80. Jamestown S'Klallam Tribe.
81. Jena Band of Choctaw Indians.
82. Jicarilla Apache Tribe.
83. Kaibab Band of Paiute Indians.
84. Kalispel Tribe of Indians.
85. Keweenaw Bay Indian Community.
86. Kickapoo Nation of Kansas.
87. Kickapoo Traditional Tribe of Texas.
88. Kickapoo Tribe of Oklahoma.
89. Kiowa Tribe of Oklahoma.
90. Klamath Tribes.
91. Klawock Cooperative Association.
92. Kootenai Tribe of Idaho.
93. Lac Courte Oreilles Band of Lake Superior Chippewa.
94. Lac du Flambeau Band of Lake Superior Chippewa.
95. Lac Vieux Desert Band of Lake Superior Chippewa.
96. LaJolla Band of Luiseno Indians.
97. Lake Miwok Indian Nation of the Middletown Rancheria.
98. Las Vegas Paiute Tribe.
99. Leech Lake Band of Chippewa Indians.
100. Little River Band of Ottawa Chippewa.
101. Little Traverse Bay Bands of Odawa Indians.
102. Lower Brule Sioux Tribe.
103. Lower Sioux Indian Community.
104. Lummi Nation.
105. Lytton Band of Pomo Indians.
106. Manzanita Band of Mission Indians.
107. Mashantucket Pequot Tribe.
108. Mechoopda Indian Tribe of Chico Rancheria.
109. Menominee Indian Tribe of Wisconsin.
110. Mescalero Apache Tribe.
111. Miami Tribe of Oklahoma.
112. Mille Lacs Band of Chippewa Indians.
113. Mississippi Band of Choctaw Indians.
114. Moapa Band of Pauites.
115. Modoc Tribe of Oklahoma.
116. Mohegan Tribe of Indians of Connecticut.
117. Mooretown Rancheria.
118. Morongo Band of Mission Indians.
119. Muckleshoot Indian Tribe.
120. Muscogee (Creek) Nation.

121. Narragansett Indian Tribe.
122. Nez Perce Tribe.
123. Nisqually Indian Tribe.
124. Nooksack Indian Tribe.
125. Northern Arapaho Tribe of the Wind River Indians.
126. Northern Cheyenne Tribe.
127. Nottawaseppi Huron Band of Potawatomi.
128. Oglala Sioux Tribe.
129. Omaha Tribe of Nebraska.
130. Oneida Nation of New York.
131. Oneida Tribe of Indians of Wisconsin.
132. Ottawa Tribe of Oklahoma.
133. Pala Band of Mission Indians.
134. Pascua Yaqui Tribe of Arizona.
135. Paskenta Band of Nomlaki Indians.
136. Pauma-Yuima Band of Mission Indians.
137. Pawnee Tribe of Oklahoma.
138. Picayune Rancheria of the Chukchansi Indians.
139. Pit River Tribe.
140. Ponca Tribe of Nebraska.
141. Ponca Tribe of Oklahoma.
142. Port Gamble S'Klallam.
143. Prairie Band Potawatomi.
144. Prairie Island Indian Community.
145. Pueblo of Acoma.
146. Pueblo of Isleta.
147. Pueblo of Laguna.
148. Pueblo of Pojoaque.
149. Pueblo of San Felipe.
150. Pueblo of San Juan.
151. Pueblo of Sandia.
152. Pueblo of Santa Ana.
153. Pueblo of Santa Clara.
154. Pueblo of Taos.
155. Pueblo of Tesuque.
156. Puyallup Tribe of Indians.
157. Pyramid Lake Paiute Tribe.
158. Quapaw Tribe of Oklahoma.
159. Quechan Indian Tribe.
160. Quileute Indian Tribe.
161. Quinault Indian Nation.
162. Red Cliff Band of Lake Superior Chippewa.
163. Red Cliff, Sokaogon Chippewa and Lac Courte Oreilles Band.
164. Red Lake Band of Chippewa Indians.
165. Redding Rancheria.
166. Redwood Valley Rancheria.
167. Reno-Sparks Indian Colony.
168. Rincon San Luiseno Band of Mission Indians.
169. Robinson Rancheria of Pomo Indians.
170. Rosebud Sioux Tribe.
171. Round Valley Indian Tribes.
172. Rumsey Indian Rancheria.
173. Sac & Fox Tribe of Mississippi in Iowa.
174. Sac & Fox Nation of Missouri.
175. Saginaw Chippewa Indian Tribe.
176. Salt River Pima-Maricopa Indian Community.
177. San Carlos Apache Tribe.
178. San Manuel Band of Mission Indians.
179. San Pasqual Band of Indians.
180. Santa Rosa Band of Tachi Indians of the Santa Rosa.
181. Santa Ynez Band of Mission Indians.
182. Santa Ysabel Band of Mission Indians.
183. Santo Domingo Tribe.
184. Sauk-Suiattle Indian Tribe.
185. Sault Ste. Marie Tribe of Chippewa Indians.
186. Scotts Valley Band of Pomo Indians.
187. Seminole Tribe.
188. Shakopee Mdewakanton Sioux Community.
189. Sheep Ranch Tribe of We-Wuk Indians.
190. Sherwood Valley Rancheria.
191. Shingle Springs Band.
192. Shoalwater Bay Indian Tribe.
193. Shoshone-Bannock Tribes.
194. Sisseton-Wahpeton Sioux Tribe.
195. Skokomish Indian Tribe.
196. Smith River Rancheria.
197. Snoqualmie Tribe.
198. Soboba Band of Mission Indians.
199. Sokaogon Chippewa Community.
200. Southern Ute Indian Tribe.
201. Spirit Lake Sioux Nation.
202. Spokane Tribe of Indians.
203. Squaxin Island Tribe.
204. St. Croix Chippewa Indians of Wisconsin.
205. St. Regis Mohawk Tribe.
206. Standing Rock Sioux Tribe.
207. Stillaguamish Tribe of Indians.
208. Stockbridge-Munsee Community.
209. Suquamish Tribe.
210. Susanville Indian Rancheria.
211. Swinomish Indian Tribal Community.
212. Sycuan Band of Mission Indians.
213. Table Mountain Rancheria.
214. Temecula Band of Luiseno Mission Indians.
215. Three Affiliated Tribes of the Fort Berthold Reservation.
216. Tohono O'odham Nation.
217. Tonkawa Tribe of Oklahoma.
218. Tonto Apache Tribe.
219. Torres Martinez Desert Cahuilla Indians Tribe.
220. Trinidad Rancheria.
221. Tulalip Tribes of Washington.
222. Tule River Tribe of the Tule River Indian Reservation.
223. Tunica-Biloxi Tribe of Louisiana.
224. Tuolumne Band of MeWuk Indians.
225. Turtle Mountain Band of Chippewa Indians.
226. Twenty Nine Palms Band of Mission Indians.
227. Tyme Maidu Tribe of the Berry Creek Rancheria.
228. U-tu Utu Gwaitu Paiute Tribe of Benton Paiute Reservation.
229. United Auburn Indian Community of Auburn Rancheria.
230. Upper Sioux Community.
231. Upper Skagit Indian Tribe.
232. Ute Mountain Ute Tribe.
233. Washoe Tribe of Nevada and California.
234. White Earth Band of Chippewa Indians.
235. White Mountain Apache Tribe.
236. Winnebago Tribe of Nebraska.
237. Wyandotte Tribe of Oklahoma.
238. Yankton Sioux Tribe.
239. Yavapai Apache Tribe.
240. Yavapai-Prescott Indian Tribe.
241. Yurok Tribe.

Montie R. Deer,

Chairman, National Indian Gaming Commission.

[FR Doc. 02–21623 Filed 8–23–02; 8:45 am]

BILLING CODE 7565–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corp.; R. E. Ginna Nuclear Power Plant; Notice of Receipt of Application for Renewal of Facility Operating License No. DPR–18 for an Additional 20-Year Period

On August 1, 2002, the U.S. Nuclear Regulatory Commission received, by letter dated July 30, 2002, an application from the Rochester Gas and Electric Company, filed pursuant to Section 104b of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54, which would authorize the applicant to operate the R. E. Ginna Nuclear Power Plant for an additional 20-year period. The current operating license for the R. E. Ginna Nuclear Power Plant expires on September 18, 2009. The R. E. Ginna Nuclear Power Plant is a pressurized water reactor designed by Westinghouse Electric Company and is located in Wayne County, New York. The acceptability of the tendered application for docketing and other matters, including an opportunity to request a hearing, will be the subject of a subsequent **Federal Register** notice.

Copies of the application are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible

from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* In addition, the application is available on the NRC web page at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*, while the application is under review. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, please contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

The license renewal application for the R. E. Ginna Nuclear Power Plant is also available to local residents at the Rochester Public Library, in Rochester, New York, and at the Ontario Public Library, in Ontario, New York.

Dated at Rockville, Maryland, this 19th day of August, 2002.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–21643 Filed 8–23–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority, Watts Bar Nuclear Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–90 held by the Tennessee Valley Authority (TVA or the licensee) for operation of the Watts Bar Nuclear Plant (WBN), Unit 1, located in Rhea County, Tennessee. Therefore, as required by Title 10, Code of Federal Regulations (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 change WBN's Technical Specifications to allow TVA to irradiate up to 2304 tritium-producing burnable absorber rods (TPBARs) in WBN's reactor core. Irradiating the TPBARs in the reactor core supports the U.S. Department of Energy (DOE) in maintaining the nation's tritium inventory. TVA will insert the TPBARs into positions in the reactor core where conventional burnable poison rods would normally be (poison rods contain boron which reacts with neutrons making them unavailable for interacting with uranium atoms, thereby slowing fission and heat generation). TPBARs are not reactor fuel and do not generate thermal energy for generating electrical energy.

TPBARs use lithium rather than boron. Neutron irradiation in the reactor core converts the lithium in the TPBARs into tritium. After one operating cycle, TVA would remove the fuel assemblies containing TPBARs from the WBN core and put them into the spent fuel pool. TVA would, after several weeks (based on plant schedules rather than decay considerations), remove the irradiated TPBARs from the fuel assemblies and consolidate them into shipping casks for DOE to transport to its tritium extraction facility at its Savannah River Site.

The proposed action is in accordance with the licensee's application of August 20, 2001, as supplemented by letters of October 29, November 14, November 21, December 7, December 19, 2001, and January 14, February 19, February 21, May 21, May 23, and July 30, 2002.

The Need for the Proposed Action

The proposed action would allow WBN to provide irradiation services for DOE to maintain the nation's tritium supply as prescribed by Public Law (Pub. L.) 106–65. Section 3134 of PL 106–65 directs the Secretary of Energy to produce new tritium at TVA's Watts Bar power plant.

Environmental Impacts of the Proposed Action

DOE's Environmental Impact Statement, DOE/EIS–0288, *Final Environmental Impact Statement (EIS) for the Production of Tritium in a Commercial Light Water Reactor,* dated March 1999, assessed the environmental impacts of producing tritium at WBN. TVA was a cooperating Federal agency in preparing this EIS and adopted the EIS in accordance with 40 CFR 1506.3(c) of the Council on Environmental Quality regulations. DOE also prepared a Tritium Production Core (TPC) Topical Report, NDP–98–181, Rev. 1, to address the safety and licensing issues associated with incorporating TPBARs in a reference pressurized-water reactor. The NRC used its Standard Review Plan (NUREG–0800) as the basis for evaluating the impact of the TPBARs on a reference plant. The NRC reviewed the TPC Topical Report and issued a Safety Evaluation Report, NUREG–1672, in May 1999. NUREG–1672 identified 17 plant-specific interface issues that a licensee would have to address in support of a plant specific amendment to operate a tritium production core. TVA's application of August 20, 2001, and supplements, addressed these interface issues. NRC staff is reviewing TVA's amendment request and will issue a safety evaluation documenting its review.

1. Radiological Impact from Tritium Release to the Reactor Coolant System (RCS) Under Normal Plant Operations with 2304 TPBARs in the Core

Tritium levels in the RCSs of large pressurized-water reactors have ranged as high as 4000 curies per year (Ci/yr) without exceeding regulatory limits. TVA estimated, as discussed in its May 23, 2002, letter, that the tritium level in the RCS at WBN would increase from about 1826 Ci/yr to 3170 Ci/yr with 2304 TPBARs in the reactor. This increased tritium level could increase overall occupational exposure, but NRC data summarized in NUREG–0713, ''Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities,'' dated 1995, indicate tritium exposure is not an important contributor to overall occupational exposure.

TVA stated that WBN does not expect this increased activity to affect normal RCS feed-and-bleed operation throughout the cycle, as discussed in its May 23, 2002, letter. The NRC staff finds no reason to disagree with TVA's conclusion. Thus, primary coolant discharge volumes should be similar to current volumes.

The staff concludes that the additional dose rate from operating WBN with 2304 TPBARs in the reactor will not have a significant impact on TVA's ability to control worker radiation doses and keep them well within regulatory limits using the controls and practices in WBN's existing Radiation Protection Program.

If increased RCS feed and bleed is required, it may be necessary to temporarily store the increased volume of tritiated liquid onsite, or to dilute the tritiated liquid to ensure that 10 CFR part 20 discharge limits are met. WBN has sufficient storage tanks to accommodate this additional liquid waste.

2. Radiological Impact from Liquid Effluents Under Normal Plant Operations with 2304 TPBARs in the Core

The WBN facility has waste-treatment systems designed to collect and process waste that may contain radioactive material. The tritium in liquid effluents from WBN is diluted to a relatively low

concentration before it reaches even the most highly exposed members of the public. TVA's submittal of May 23, 2002, shows that the total additional dose to the maximally-exposed members of the public within 50 miles of WBN from tritium in liquid effluents is estimated to be 0.01 millirem per year (mrem/yr). This total dose, considering the minimal increase from tritium production, is less than 1.0 percent of the NRC 3-mrem/yr guideline for effluent exposure to the public. The staff concludes that the potential radiological impact on plant workers, members of the public, and the environment from operation with the TPC complies with all regulatory dose limits.

3. Radiological Impact from Radioactive Gaseous Emissions Under Normal Plant Operations with 2304 TPBARs in the Core

A portion of the tritium might be released to the atmosphere. The amount would depend on plant conditions and the manner in which TVA operates WBN. Individuals could be exposed to tritium in a variety of pathways if it was released to the atmosphere. These pathways include inhalation and skin absorption, as well as consumption of meat, vegetables and milk. According to TVA, in its submittal of May 23, 2002, the calculated tritium dose to the most highly-exposed members of the public through all pathways would be about 63 percent of the NRC annual exposure guideline for airborne effluents.

4. Radiological Impact from Solid Radioactive Waste Under Normal Plant Operations with 2304 TPBARs in the Core

Irradiation of TPBARs is expected to increase the number of curies and volume of solid radioactive waste, primarily because of disposal (offsite) of the associated base plates and thimble plugs, which become irradiated. The estimated increase in activity inventory is from approximately 1800 Ci/year to approximately 3500 Ci/yr. The estimated increase in volume is from 32,820 cubic feet/year to 32,853 cubic feet/year. The estimated resultant total worker dose resulting from handling the increased solid waste is approximately 1.1 percent of the dose assessment estimate of record. Offsite shipment and disposal would be in accordance with established agreements between TVA and DOE.

5. Radiological Impact to Workers in the Fuel Storage Area Under Normal Plant Operations with 2304 TPBARs in the Core

The proposed amendment is not expected to significantly affect the doses to the workers in the fuel storage area. The TPBARs are designed to have minimal effect on plant operations, including refueling operations. Unirradiated TPBARs will produce no increase in exposure, occupational or public, because they are essentially non-radioactive. Possible increases in tritium airborne activity may increase dose to workers handling and consolidating radioactive TPBARs. However, TVA stated, in its submittal of May 23, 2002, that WBN's station dose assessment of record bounds the expected increase.

6. Non-Radiological Impact with 2304 TPBARs in the Core

The proposal does not affect non-radiological plant effluents. The proposal does not result in any significant changes to land use or water use. It also does not result in any significant changes to the quantity or quality of effluents, and no effects on endangered or threatened species or on their habitat are expected. Therefore, no changes in, or different types of, non-radiological environmental impacts are expected as a result of the amendment.

7. Radiological Impact from Postulated Accidents with 2304 TPBARs in the Core

TVA's submittal of May 23, 2002, discussed the effects of TPBARs on the possible consequences of the following postulated accidents discussed in WBN's Updated Final Safety Analysis Report (UFSAR):

- Fuel-handling accident
- Design basis loss-of-coolant accident (LOCA)
- Main steamline failure outside of containment
- Steam generator tube rupture
- Loss of normal alternating current power to plant auxiliaries
- Waste gas decay tank failure
- Rod ejection accident
- Failure of small lines carrying primary coolant outside containment

Discussions of the postulated accidents with the greatest radiological consequences appear below.

a. Fuel-Handling Accident

This accident is defined as dropping a spent fuel assembly containing irradiated TPBARs resulting in rupture of the cladding on all the fuel rods. TVA's calculations conservatively assumed that 24 TPBARs (the maximum possible number) are in the dropped spent fuel assembly and that they all rupture and transfer their tritium to the spent fuel pool. Releasing this activity to the (1) control room boundary, (2) Exclusion Area Boundary over 2 hours, and (3) Low Population Zone over 30 days results in the doses to the thyroid, skin (beta), whole body (gamma), and Total Effective Dose Equivalent (TEDE), as defined in 10 CFR part 20, that are small percentages of regulatory limits.

b. LOCA

This accident is defined as losing reactor coolant at a rate in excess of the capability of the reactor coolant makeup system. LOCAs could occur from breaks in pipes in the reactor coolant pressure boundary up to and including a break equivalent in size to the double-ended rupture of the largest pipe in the RCS. TVA conservatively assumed that the entire tritium content of the 2304 TPBARs is released into containment during a postulated LOCA. Releasing this activity to the (1) control room boundary, (2) Exclusion Area Boundary over 2 hours, and (3) Low Population Zone over 30 days results in doses to the thyroid, skin (beta), whole body (gamma), and TEDE that are small percentages of regulatory limits.

8. Post-LOCA Hydrogen Generation Inside Containment

TVA's submittal of August 20, 2001, stated that TPBARs could release additional hydrogen to the containment following a large-break LOCA (LBLOCA). WBN has emergency operating procedures in place to start a hydrogen recombiner train when the containment volumetric percentage of hydrogen reaches 3 percent. Previous analysis for a conventional (non-TPBAR) core in the WBN UFSAR indicated that for an LBLOCA, with no recombiners started, the containment hydrogen concentration reached 3.75 percent 4 days following event initiation. With additional hydrogen from the TPBARs, TVA's analysis indicated that the containment hydrogen concentration would only slightly increase 2 days following event initiation. If one recombiner train is started 24 hours after event initiation for the TPBAR core, the peak containment hydrogen concentration is limited to less than 4 percent for up to 6 days. Having up to 24 hours to place a recombiner train in service to maintain the containment hydrogen concentration below 4 percent is adequate in satisfying NRC Regulatory Guide 1.7. Accordingly, reactor operation with the TPBARs will not be a significant contributor to the post-LOCA hydrogen inventory, and will not

have a significant impact on the total hydrogen concentration within the containment when compared to the values associated with the non-TPBAR core. The maximum containment hydrogen concentration can be maintained at less than the lower flammability limit of 4.0-volume-percent, with one recombiner train started at a 3-percent hydrogen concentration approximately 24 hours after an LBLOCA.

Summary

The Commission has completed its evaluation of the proposed action. The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released 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 a potential to affect historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no significant change in current environmental impacts. However, because there are no significant environmental impacts associated with this action, and because Pub. L. 106–65 directs that DOE produce tritium at WBN or the Sequoyah Nuclear Plant, this is not considered a viable option.

Alternative Use of Resources

DOE evaluated the action, including completing construction of one or both of the Bellefonte Nuclear Plant Units and construction of an accelerator facility at the Savannah River site and concluded that the proposed alternative has the least environmental impact of the options considered. The NRC has no reason to disagree with DOE's decision.

Agencies and Persons Consulted

On August 15, 2002, the staff consulted with the Tennessee State official, Debra Schults of the Tennessee Bureau of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 20, 2001, as supplemented by letters dated October 29, November 14, November 21, December 7, December 19, 2001, and January 14, February 19, February 21, May 21, May 23, and July 30, 2002. 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 20th day of August, 2002.

For the Nuclear Regulatory Commission,

L. Mark Padovan,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–21644 Filed 8–23–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46375; File No. SR–Amex–2002–68]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Revising the Maintenance Listing Criteria for Underlying Securities in Amex Rule 916

August 16, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 12, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amex submitted Amendment No. 1 to the proposed rule change on August 16, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 916 to permit the addition of a new series of individual equity option contracts that otherwise meet the maintenance listing standards except for the requirement that the market price per share of the underlying security be at least $3.00. The text of the proposed rule change is below. Proposed new language is italicized; deletions are in brackets.

* * * * *

Rule 916. Withdrawal of Approval of Underlying Securities

No Change.

Commentary

.01 No Change.

1. No Change.
2. No Change.
3. No Change.
4. *Subject to Commentary .02 below,* [T]*t*he market price per share of the underlying security closed below $3 on the previous trading day as measured by the highest closing price reported in the primary market (as that term is defined in Rule 900(26)) in which the underlying security traded.
5. No Change.
6. No Change.
7. No Change.

.02 In connection with paragraph 4 of Commentary .01 above, the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This notice, representing Amendment No. 1, replaces the original filing in its entirety. In Amendment No. 1, the Exchange revised the proposed rule text to add the following language: ''and at the time the additional series was listed by such other registered national securities exchange it met the $3 market price requirement'; and requested expedited review and accelerated effectiveness of the proposed rule change, as amended, pursuant to Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2). *See* letter from Jeffrey Burns, Assistant General Counsel, Amex, to Florence E. Harmon, Assistant Director, Division of Market Regulation, Commission, dated August 15, 2002 (''Amendment No. 1'').

shall not open for trading any additional series of option contracts of the class covering an underlying security at any time when the market price per share of such underlying security is less than $3 in the primary market in which it is traded *unless the additional series is traded on at least one other registered national securities exchange and at the time the additional series was listed by such other registered national securities exchange it met the $3 market price requirement.* Subject to Paragraph 4 of Commentary .01 above, the Exchange may open for trading additional series of option contracts of a class covering an underlying security when the market price per share of such underlying security is at or above $3 at the time such additional series are authorized for trading. For purposes of this Commentary .02, the market price of such underlying security is measured by (i) for intra-day series additions, the last reported trade in the primary market in which the underlying security trades at the time the Exchange determines to add these additional series; and (ii) for next-day and expiration series additions, the closing price reported in the primary market in which the underlying security traded on the last trading day before the series are added.

.03 No Change.
.04 No Change.
.05 No Change.
.06 No Change.
.07 No Change.
.08 No Change.
.09 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, the Amex 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 III below. The Amex 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

Commentary .01 to Amex Rule 916 sets forth the guidelines to be used in determining whether an underlying individual equity security previously approved for options trading meets the requirements for continuance of such approval. The Amex states that these maintenance listing standards are uniform among the options exchanges. Specifically, Guideline 4 of Commentary .01 to Rule 916 (''Guideline 4'') states that the Exchange may not list additional series for an option class if the market price per share of the underlying security closed below $3 on the previous trading day as measured by the highest closing price reported in the primary market in which the underlying security is traded.[4] If the underlying security does not meet the guideline price then the Exchange will not open for trading additional series of that class and may take other actions such as prohibiting opening purchase transactions in existing series. Subject to Guideline 4, Commentary .02 to Rule 916 provides that the Exchange may open for trading additional series of options contracts of the class covering an underlying security at any time when the market price per share of such underlying security is at or above $3 at the time such additional series are authorized for trading.[5]

In recent months, the Exchange notes that the addition of additional series of existing options classes have not been uniform due to the operation of the maintenance listing standards. For example, for intra-day series additions, the underlying security may trade at or above $3 for a brief period and then drop below $3 for the foreseeable future. If an exchange and its staff fail to quickly note that a particular underlying security is trading at or above $3, the Exchange may be prohibited from adding the additional series if at the time of authorization the underlying security is trading below $3.[6] Accordingly, the ability to trade an additional series of an approved options class may solely depend on the exchange that is quicker posting (*i.e.* point and click) or bringing up the series. The Exchange states that this is not the intention of the maintenance listing standard and is contrary to the purpose of the Act in promoting the development of a national market system for options. In addition, the mechanics of adding an additional series of approved options classes, especially intra-day, is effectively anti-competitive.

The Exchange proposes to amend Guideline 4 to Commentary .01 and Commentary .02 to Rule 916 to permit the addition of any additional series of options contract of the class covering such underlying security regardless of the market price of the underlying security *if* such options series is traded on at least one other registered national securities exchange.[7] This amendment to Commentary .02 to Rule 916 will provide that, for underlying securities that satisfy all of the maintenance listing requirements other than the $3.00 per share price requirement, the Exchange would be permitted to list additional options series on securities regardless of the market price so long as such series are traded on at least one other registered national securities exchange. The Amex does not believe that the $3 guideline is necessary to accomplish the intended purpose of the maintenance requirement when the options series is trading at another options exchange. In particular, the Amex believes that the listing of a series already trading at another options exchange is not susceptible to manipulation and will not lead to a proliferation of options classes on underlying securities that lack liquidity needed to maintain fair and orderly markets.

The Exchange believes that the maintenance listing standards other than price assure that options will be listed and traded on the securities of companies that are financially sound. Accordingly, the Exchange will continue to apply the other maintenance listing guidelines which assure that: (1) The underlying security consists of a large number of outstanding shares held by non-affiliates of the issuer; (2) the underlying security is actively-traded; (3) there are a large number of holders

[4] *See* Securities Exchange Act Release No. 45074 (November 16, 2001), 66 FR 59278 (November 27, 2001). The Amex amended Commentaries .01 and .02 to Rule 916 to reduce from $5 to $3 the price above which the underlying security must be traded before the Exchange may add additional series of options.

[5] Commentary .02 to Rule 916 provides that the market price for such underlying security is measured by (i) for intra-day series additions, the last reported trade in the primary market in which the underlying security is traded at the time the Exchange determines to add these additional series; and (ii) for next-day and expiration series additions, the closing price reported in the primary market in which the underlying security is traded on the last trading day before the series are added.

[6] During the past three (3) months, the Amex has been unable to add additional series of approved options classes on the following underlying securities: (1) The Williams Companies, Inc.; (2) Elan Corporation Plc; (3) Atmel Corporation; (4) JDS Uniphase Corporation; and (5) Lucent Technologies Inc.

[7] The Exchange states that this proposal is consistent with a similar change to the Exchange's original listing criteria permitting the listing of an options class without reference to the market price of the underlying security if such options are traded on at least one other national securities exchange and the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been 5,000 contracts. *See* Commentary .01 to Rule 915 and Securities Exchange Act Release No. 45505 (March 5, 2002), 67 FR 10941 (March 11, 2002).

of the underlying security; and (4) the underlying security continues to be listed on a national securities exchange or traded through the facilities of a national securities association.

The Amex believes that the demands of options customers and the marketplace should determine the securities on which options continue to be traded. The Exchange represents that the use of the revised guidelines will continue to ensure that options will be traded on securities of companies that are financially sound and are still subject to adequate minimum standards.

The Amex believes that although the maintenance listing requirements are generally uniform among the options exchanges, the application of such standards in the current market environment have had an anticompetitive effect. Specifically, the Exchange states that on several occasions during the past year, it was unable to list additional options series because the price of the underlying security had fallen below the requirement of $3 after a series was added on another exchange.[8] Because the underlying security will otherwise continue to meet the maintenance listing standards, the other options exchange(s) may continue to trade the additional series while the Amex (as well as other options exchanges) may not add such options series.

Amex believes that its proposal is narrowly drafted to address the circumstances where a series of an approved options class is currently ineligible for addition on the Amex while at the same time, such series is trading on another options exchange. The Amex notes that when an underlying security otherwise meets the maintenance listing standards and at least one other exchange trades the options series, the options already are available to the investing public. The Exchange believes competition for order flow in these additional series of approved options classes will benefit investors and the marketplace for both options and the underlying security. Accordingly, the Amex notes that the current proposal will not introduce any additional options series.

Because the addition of an options series under the proposed alternative maintenance listing standard requires trading of such series on another options exchange, the Amex believes that there would be no investor protection concerns with listing such additional options series on the Amex. In addition, the Exchange believes that listing these options series on the Amex would enhance competition and benefit investors.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent 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 Amex. All submissions should refer to File No. SR–Amex–2002–68 and should be submitted by September 16, 2002.

IV. Commissions' Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b)(5) of the Act.[11] The Commission believes investors benefit from the competition among options exchanges that results when options are listed on more than one options exchange; and that investors are sufficiently protected, even though Amex will be permitted to list a series of option contracts when the market price of the underlying security is below $3, because all of the other maintenance listing requirements of the Exchange must still be complied with, and the market price of the underlying security was at or above $3 when it was listed on the first options exchange.[12] Therefore, the Commission finds that proposed rule change, as amended, will promote just and equitable principles of trade, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[13]

The Amex has requested that the proposed rule change, as amended, be given accelerated approval pursuant to Section 19(b)(2) of the Act.[14] The Commission believes accelerated approval of the proposal would enhance competition among the options exchanges. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[15] to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Amex–2002–68), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21608 Filed 8–23–02; 8:45 am]

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[8] *See supra* note 6.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(5).

[12] The Commission notes that such series must have been properly listed by the original options exchange.

[13] 15 U.S.C. 78f(b)(5). In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2).

[15] *Id.*

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 240.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46380; File No. SR–MSRB–2002–07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Relating to Rule G–14, on Reports of Sales or Purchases

August 19, 2002.

On July 3, 2002, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–2002–07). The proposed rule change relates to MSRB Rule G–14, on Reports of Sales or Purchases.

The Commission published the proposed rule change for comment in the **Federal Register** on July 17, 2002.[3] The Commission received one comment letter relating to the forgoing proposed rule change. The proposed rule change does not change the wording of Rule G–14. This order approves the Board's proposal.

I. Description of the Proposed Rule Change

To add greater transparency in the municipal securities market, the MSRB filed with the Commission the forgoing proposed rule change. The MSRB has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. Since 1995, the MSRB has expanded the scope of the public transparency reports in several steps. Each step has provided industry participants and the public successively more information about the market.[4]

In May, 2001, the MSRB announced its plan to begin reporting trades in ''real time'' on a schedule coordinated with the industry's timetable for migration to an environment of next-day settlement of securities transactions.[5] To attain real-time reporting, the MSRB intends in the future to file an amendment to Rule G–14 to require dealers to report their trades within 15 minutes of the time they are effected. The planned implementation date for real-time reporting is now set for mid-2004.

Prior to the implementation of real-time transaction reporting, the MSRB intends to continue to increase transparency in the market using the currently available data. As its next step, the MSRB is now proposing to disseminate the Daily Comprehensive Report with a one-week delay. The proposed Report would contain details of all municipal securities transactions that were effected during the trading day one week earlier. Data about each trade on the proposed Report would be the same as that on the current Daily Comprehensive Transaction Report. For each trade, the proposed Report, like the current report, would show the trade date, the CUSIP number of the issue traded, a short issue description, the par value traded, the time of trade reported by the dealer, the price of the transaction, and the dealer-reported yield of the transaction, if any. Each transaction would be categorized as a sale by a dealer to a customer, a purchase from a customer, or an inter-dealer trade.

The current Daily Comprehensive Report began operation on November 1, 2001.[6] The proposed Report, with a one-week delay, would replace the current report that has a two-week delay.

Description of Service

Like the current two-week delayed report, the new Report will be available daily to subscribers. Subscribers to the current two-week delayed report would continue to access the proposed Report via the Internet and download copies from the MSRB's computer using a password-protected FTP account. The MSRB expects that the proposed Report would be available within two weeks of approval by the Commission.

The MSRB will continue the established annual fee for the Service of $2,000. The fee is structured approximately to defray the MSRB's costs for production of daily data sets, operation of telecommunications lines, and subscription maintenance. Subscription fees that have been paid for the two-week delayed report will be applied toward the one-week delayed report.

To enable the MSRB to compile a comprehensive trades database for enforcement purposes, dealers report a small amount of data after trade date, and a few trades may be added, deleted or amended as late as a few weeks after trade date.[7] To ensure that subscribers to the report have access to those trades, the MSRB will make available each day an ''updated'' report containing all trades effected one month previously. This will enable subscribers to see the effect of changes reported by dealers after the one-week report was disseminated.

II. Summary of Comments

The Commission received one comment letter addressing the proposed rule change.[8] In addition to offering support for the proposed rule change, this letter provided suggestions on how to advance price transparency in the future.

The comment letter, from The Bond Market Association (''TBMA''), expressed strong support of the MSRB's initiative to decrease the time interval for transparency of all reported bonds.[9] The TBMA expressed its belief that decreasing the dissemination of trade data to one-week delay, from two-weeks, may enhance the value of the data to all market participants. Moreover, the more current information would not confuse investors or adversely impact the municipal market.[10] But, with its support of the proposal, the letter urges the MSRB to create a process for evaluating any adverse market impacts that may result from disseminating trade information for ''very inactive bonds''.[11] This process of evaluation would involve several critical questions relating to the objective and relevancy of ''full transparency'' in the municipal market.[12] TBMA believes that price dissemination on a next-day basis for all bonds that trade only once per day

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–46180 (July 10, 2002), 67 FR 47012.

[4] The MSRB's report summarizing prices for issues that are frequently traded on the inter-dealer market began operation in 1995; in 1998, dealer-customer prices were added in a second summary report; in January 2000, a report with details of trades in frequently traded issues was added; in October 2000, a monthly comprehensive report, covering all transactions effected during the previous month, began operation; and in November 2001, a daily comprehensive report was begun, with trades effected two weeks earlier.

[5] *See* ''Real-Time Reporting of Municipal Securities Transactions,'' *MSRB Reports,* Vol. 21, No. 2 (July 2001) at 31–36.

[6] *See* Release No. 34–44894 (October 2, 2001), 66 FR 51485 (October 9, 2001).

[7] *See* Release No. 34–43060 (July 20, 2000), 65 FR 46188–46189 (July 27, 2000) at note 7. Approximately one percent of the trades in the database have data submitted between one week and one month after trade date.

[8] Letter from Frank Chin, Salomon Smith Barney, Chair, Municipal Executive Committee, The Bond Market Association, to Mr. Jonathan G. Katz, Secretary, Commission, dated August 8, 2002.

[9] *See id* at page 2.

[10] *See id.*

[11] The TBMA letter makes reference to the recent Commission approval of the MSRB's proposed rule change that decreases the trade threshold for information dissemination to three trades per day from four trades. *See* Release No. 34–45861 (May 1, 2002) 67 FR 30989.

[12] *See* TBMA letter at page 3.

''would not necessarily provide useful information to investors and other market participants or could adversely affect liquidity and be misleading.'' [13] Furthermore, the TBMA believes that trading activity that is limited to a single trade may reflect insufficient market interest to justify dissemination.

III. Discussion

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Act and the rules and regulations thereunder, which govern the MSRB.[14] The language of Section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[15]

After careful review, the Commission finds that the MSRB's proposed rule change relating to Rule G–14, on Reports of Sales or Purchases, meets the requisite statutory standard. The Commission believes that this proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder. In addition, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(C) of the Act, as set forth above.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[16] that the proposed rule change (File No. SR–MSRB–2002–07) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21607 Filed 8–23–02; 8:45 am]

BILLING CODE 8010–01–P

[13] *See id* at page 2.

[14] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78o–4(b)(2)(C).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46376; File No. SR–NASD–99–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Microcap Initiative—Recommendation Rule

August 19, 2002.

I. Introduction

On February 19, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''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 that would require members to review current financial statements of, and current material business information about, an issuer prior to recommending a transaction to a customer in an over-the-counter (''OTC'') equity security.

The proposed rule change was published for comment in the **Federal Register** on March 1, 1999.[3] The Commission received six comment letters on the Original Proposal. On January 11, 2002, the NASD filed Amendment No. 1 to the proposed rule change, which among other things addressed the issues raised by commenters.[4] Amendment No. 1 was published for comment in the **Federal Register** on January 22, 2002.[5] On July 26, 2002, the NASD filed Amendment No. 2 to the proposed rule change.[6]

The Commission received no comments regarding the proposal as amended. This order approves the proposed rule change, as amended.

II. Description of Proposal

To respond to concerns about abuses in the trading and sales of thinly traded, thinly capitalized securities (*i.e.*, microcap securities) quoted in the OTC market, NASD Regulation has proposed to amend NASD rules to include new NASD Rule 2315, entitled ''Recommendations to Customers in OTC Equity Securities'' (''Recommendation Rule'' or ''Rule''). In the view of NASD Regulation, the lack of reliable and current financial information about issuers of microcap securities can create the potential for fraud and manipulation.

The proposed rule would be limited to equity securities that are published or quoted in a quotation medium and that either: (1) Are not listed on Nasdaq or a national securities exchange, or (2) are listed on a regional securities exchange and do not qualify for dissemination of transaction reports via the Consolidated Tape (''covered securities'').[7] The requirements in the Recommendation Rule is intended to supplement requirements under the federal securities laws and under NASD rules that a broker-dealer that recommends securities to its customers is required to have a reasonable basis for those recommendations.[8] In addition, the proposed rule is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability or for any other legal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41075 (February 19, 1999), 64 FR 10037 (''Original Proposal'').

[4] In the Original Proposal, the NASD proposed subparagraph (e) to NASD Rule 6740. That provision would have permitted a member to submit a certification to the NASD stating that the firm complied with the requirements of SEC Rule 15c2–11, 17 CFR 240.15c2–11, including the member's review obligation, if the documents the firm was required to review were contained in the Commission's Electronic Data Gathering and Retrieval System, in lieu of submitting a copy of the documents reviewed. This proposed rule text was deleted as part of Amendment No. 1, although the change was not reflected in the narrative portion of the Amendment.

[5] *See* Securities Exchange Act Release No. 45277 (January 14, 2002), 67 FR 2937.

[6] See Letter from Marc Menchel, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 26, 2002 (''Amendment No. 2). In Amendment No. 2, the NASD amended proposed NASD Rule 2315(a) to clarify that members conducting transactions in securities that are listed on a regional securities exchange, but do not qualify for dissemination of transaction reports via the Consolidated Tape, must comply with the review requirements of the Recommendation Rule if such securities are published or quoted in a quotation medium. The NASD also amended NASD Rule 2315(e)(1)(G)(2) to substitute ''NASD'' for the reference to ''the Association'' contained in the Rule.

[7] ''Quotation medium'' is defined as a system of general circulation to brokers or dealers that regularly disseminates quotations or indications of interest of identified brokers or dealers; or a publication, alternative trading system or other device that is used by brokers or dealers to disseminate quotations or indications of interest to others. The Recommendation Rule is intended to cover equity securities that are published or quoted in a quotation medium and that either: (1) Are not listed on Nasdaq or a national securities exchange, or (2) are listed on a regional securities exchange and do not qualify for dissemination of transaction reports via the Consolidated Tape.

[8] See NASD Rule 2310 (Suitability Rule), which requires a member to have reasonable grounds for believing that a recommendation to a customer is suitable based on facts disclosed, other security holdings and financial situation and needs.

obligation or requirement imposed under NASD rules or the federal securities laws.

A. Review Requirements

Proposed NASD Rule 2315 would require a member and its associated persons to review the current financial statements of an issuer and current material business information about an issuer prior to recommending the purchase or short sale of any OTC equity security to a customer.[9] Under the proposed rule, members must designate a person who is registered as a Series 24 principal, or who is supervised by a Series 24 principal, to conduct the required review. The person designated by the member must have the requisite skills, background and knowledge to conduct the review. Members are also required to document the information reviewed, the date of the review, and the name of the person performing the review of the required information.

B. Information To Be Reviewed

As stated above, members must review the ''current financial statements'' of the issuer, as well as ''current material business information'' about the issuer, before recommending the purchase or short sale of an OTC security. NASD Regulation has stated that current material business information includes material information that is available or relates to events that have occurred within the last 12 months prior to the recommendation. Under the Recommendation Rule, because of differences in accounting practices, what constitutes ''current financial statements'' depends on whether the issuer is or is not a foreign private issuer.

1. Issuers That Are Not Foreign Private Issuers

The current financial statements of issuers that are not foreign private issuers that must be reviewed prior to a recommendation to purchase or sell short a covered security are as follows:

- Publicly available financial statements and other financial reports filed during the 12 months preceding the date of the recommendation with the issuer's principal financial or securities regulatory authority in its home jurisdiction;
- All publicly available financial information filed with the Commission during the 12 months preceding the date of the recommendation contained in registration statements or Regulation A filings;
- A balance sheet as of a date less than 15 months before the date of recommendation; and
- A statement of profit and loss for the 12 months preceding the date of the balance sheet.

However, if the balance sheet is not as of a date less then 6 months before the date of the recommendation, the member must review additional statements of profit and loss for the period from the date of the balance sheet to a date less than 6 months before the date of the recommendation.

2. Issuers That Are Foreign Private Issuers

The current financial statements of issuers who are foreign private issuers that must be reviewed prior to a recommendation for purchase or short sale are as follows:

- Publicly available financial statements and other financial reports filed during the 12 months preceding the date of the recommendation and up to the date of the recommendation with the issuer's principal financial or securities regulatory authority in its home jurisdiction, including the Commission, foreign regulatory authorities, bank and insurance regulators;
- A balance sheet as of a date less than 18 months before the date of the recommendation; and
- A statement of profit and loss for the 12 months preceding the date of the balance sheet.

However, if the balance sheet is not as of a date less than 9 months before the date of the recommendation, the member must review additional statements of profit and loss for the period from the date of the balance sheet to a date less than 9 months before the date of the recommendation, if any such statements have been prepared by the issuer.

In addition, if any issuer has not made current filings required by the issuer's principal financial or securities regulatory authority in its home jurisdiction, including the Commission, foreign regulatory authorities, or bank and insurance regulators, the required review must include an inquiry into the circumstances concerning the failure to make current filings, and a determination, based on all the facts and circumstances, that a recommendation is appropriate under the circumstances. Such a determination must be made in writing and maintained by the member.

C. Exemptions

Under the Recommendation Rule, there are several transactions that are not subject to the Rule. Broker-dealers are not required to comply with the Recommendation Rule when effecting the following transactions:

- Transactions that meet the requirements of Rule 504 of Regulation D of the Securities Act of 1933 (''Securities Act'')[10] and transactions by[11] an issuer not involving any public offering pursuant to Section 4(2) of the Securities Act;[12]
- Transactions with or for an account that qualifies as an ''institutional account'' under NASD Rule 3110(c)(4) or with a customer that is a ''qualified institutional buyer'' under Rule 144A of the Securities Act[13] or ''qualified purchaser'' under Section 2(a)(51) of the Investment Company Act of 1940;[14]
- Transactions in an issuer's securities if the issuer has at least $50 million in total assets and $10 million in shareholder's equity are exempt;
- Transactions in securities of a bank as defined in Section 3(a)(6) of the Act[15] and/or insurance company subject to regulation by a state or federal bank or insurance regulatory authority are exempt;
- Transactions involving securities with a worldwide daily trading volume value of at least $100,000 during each month of the six full calendar months immediately before the date of the recommendation, and transactions involving any convertible security based on a security meeting this requirement are exempt;[16] and
- Transactions involving securities that have a bid price, as published in a quotation medium, of at least $50 per share.[17]

[9] The current financial and business information that a broker-dealer must review prior to recommending the purchase or short sale of a covered security is similar to that required by Rule 15c2–11 under the Act for those broker-dealers initiating or resuming quotations for securities covered by that rule. 17 CFR 240.15c2–11.

[10] 17 CFR 230.504.

[11] Proposed NASD Rule 2315(e)(1)(A) contained a typographical error. In pertinent part, the Rule should read ''transactions *by* an issuer not involving any public offering pursuant to Section 4(2) of the Securities Act'' instead of ''transactions *with* an issuer not involving any public offering pursuant to Section 4(2) of the Securities Act.'' (Emphasis added.) Telephone conversation between Phil Shaikun, Associate General Counsel, NASD Regulation, and Jennifer Colihan, Special Counsel, Division, Commission, on August 12, 2002.

[12] 15 U.S.C. 77d(2).

[13] 15 U.S.C. 77(a).

[14] 15 U.S.C. 80a–2(a)(51).

[15] 15 U.S.C. 78c(a)(6).

[16] *See* Securities Exchange Act Release No. 41110 (February 25, 1999), 64 11124 (March 8, 1999)(''Rule 15c2–11 Reproposing Release''). This exemption is consistent with exemptions contained proposed Rules 15c2–11(h)(6) and (7).

[17] This exemption is consistent with an exemption contained in proposed Rule 15c2–

Continued

In addition, under the proposed rule the NASD may, for good cause shown, exempt any person, security or transaction, or any class or classes of person, securities or transactions, either unconditionally or on specified terms, from any or all of the requirements of the Rule if it determines that such exemption is consistent with the purpose of the rule, the protection of investors and the public interest.[18]

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule is consistent with the provisions of Section 15A(b)(6) of the Act,[19] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

A. Review Requirements

Manipulative and fraudulent schemes often have involved infrequently-traded securities of little-known issuers. Unscrupulous broker-dealers have recommended that customers purchase the securities of unseasoned issuers whose securities do not trade in a listed market, without giving due regard to the fundamentals regarding these issuers. Among the most critical pieces of information that a broker-dealer should have before making a recommendation regarding a security are the financial condition of, and business information about, the issuer, particularly with respect to those issuers whose securities are not listed on a national securities exchange or Nasdaq. Therefore, the Commission finds that the NASD's proposal to require broker-dealers to independently review current financial and business information about these issuers prior to making a recommendation to purchase or sell short covered securities is consistent with the Act, particularly its mandate that the Association's rules be designed to prevent fraudulent and manipulative acts.[20]

While the Commission considers the review requirement to be appropriate, it also believes that the requirement is properly tailored to meet the Rule's objectives without over-burdening members. Under the Recommendation Rule, broker-dealers are required to review publicly available current financial statements and material business information. The Commission believes that the Recommendation Rule establishes appropriate parameters regarding what constitutes ''current financial information'' and ''current material business information'' that members and their sales personnel must review before making a recommendation as a means to lessen the opportunity for abusive practices when broker-dealers recommend covered securities to investors.

1. Foreign Private Issuers vs. Non-foreign Private Issuers

Further, as detailed above, these definitions also distinguish between information that must be reviewed for issuers that are foreign private issuers and those that are not. The Commission believes that this is an important distinction because the customary accounting periods for foreign issuers are often different from those for domestic issuers. Foreign issuers maybe permitted to report financial information on a semi-annual basis, rather than on a quarterly basis, as is required for domestic issuers. Therefore, the Commission believes that it is appropriate to establish different time parameters regarding when financial information should be considered ''current'' for foreign private issuers in order to address this difference in accounting practices.

2. Delinquent Issuers

The Commission notes that the Recommendation Rule contains a provision covering the situation when the issuer has not made current filings as required by the issuer's principal financial or securities regulatory authority in its home jurisdiction, including the Commission, foreign regulatory authorities, and bank and insurance regulators. In the event the issuer is delinquent with its filings, the Recommendation Rule requires that the member make an inquiry into the circumstances concerning the failure to make current filings and make a determination that a recommendation is appropriate under the circumstances.

The Commission believes that the Rule is appropriately limited in that it does not prohibit recommendations in the event the issuer's filings are delinquent, nor does it require that a member confirm that the issuer is not delinquent in its filings with any regulatory authority prior to making a recommendation. Rather, the Rule requires that a member conduct an inquiry in the event that an issuer has been delinquent in its filings with its principal financial or securities regulatory authority in its home jurisdiction and then determine whether the recommendation is appropriate. The Commission believes that this requirement strikes a proper balance in those cases where the issuer has failed to make current filings.

3. Persons Responsible for Review

The Commission believes that it is appropriate to require that the person responsible for conducting the financial information review be registered as a Series 24 principal or be someone who is supervised by a Series 24 principal, as these individuals are under the jurisdiction of the NASD. Registered Series 24 principals are persons who are associated with a member and are permitted to manage or supervise the member's investment banking or securities business for corporate securities, direct participation programs, and investment company products/variable contracts. Therefore, the Commission believes that this requirement will ensure that financial information is reviewed by individuals who have the proper skills, background and knowledge to conduct a thorough analysis of the information prior to the firm or its associated persons making a recommendation.

B. Exemptions From Recommendation Rule'

As indicated above, the Recommendation Rule lists several transactions that are exempt from the Rule and provides the Association with the authority, for good cause, to grant additional exemptions from its provisions. The Commission believes

11(h)(8). *See* Rule 15c2–11 Reproposing Release, *supra* note 16.

[18] As part of this proposed rule change, the NASD has added the Recommendation Rule to NASD Rule 9610, which provides the procedures for requesting exemptive relief from various Association rules.

[19] 15 U.S.C. 78*o*–3(b)(6).

[20] The Recommendation Rule will apply to equity securities that are quoted on the OTCBB, in The Pink Sheets, or in any other system that regularly disseminates indications of interest and quotation information among broker-dealers and those securities either: (1) Are not listed on Nasdaq or a national securities exchange, or (2) are listed on a regional securities exchange and do not qualify for dissemination of transaction reports via the Consolidated Tape. *See* Proposed NASD Rule 2315(a). As part of its application to become a national securities exchange, Nasdaq has filed rules to operate the OTCBB, which is expected to be renamed the Bulletin Board Service (''BBS''). NASD Regulation has advised the Commission that the Recommendation Rule will apply to BBS securities when Nasdaq operates the BBS. The Commission is also aware that Nasdaq intends to develop the OTCBB/BBS into a listed market, which will be called the Bulletin Board Exchange (''BBX''). *See* NASD–2001–82, pending before the Commission. Securities trading on the BBX would be listed securities, and therefore would not be covered under the current wording of the Recommendation Rule. NASD Regulation has advised the Commission that it will amend the Recommendation Rule at the appropriate time to ensure that securities listed on the BBX are covered by the Rule.

that these provisions are appropriately tailored to serve the purposes of the Rule so that only those transactions that are more likely to raise risks for retail investors are subject to the Rule, and that those transactions that are less likely to be the subject of fraudulent sales practices are not covered by the Rule.

C. Interaction With Other NASD Rules and Federal Securities Laws

Finally, as noted in the Preliminary Note to the Recommendation Rule, the Commission emphasizes that the requirements of the Rule are in addition to other existing broker-dealer obligations under NASD rules and the federal securities laws, including obligations to determine the suitability of particular securities transactions with customers and to have a reasonable basis for any recommendation made to a customer. The Commission reiterates that the Recommendation Rule is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability or for any other legal obligation or requirement imposed under NASD rule or the federal securities laws.

D. Operational Date

The Commission notes that the NASD will announce the operational date of the proposed rule change in a Notice to Members to be published no later than 60 days following the date of approval by the Commission. The operational date will be 30 days following the date of publication of the Notice to Members announcing Commission approval.

IV. Amendment No. 2

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 2, the NASD amended NASD Rule 2315(a) to add a category of equity securities that, pursuant to NASD Rule 6530(b)(2), are eligible for quotation on the OTCBB. This change provides that members conducting transactions in securities that are listed on a regional securities exchange, but do not qualify for dissemination of transaction reports via the Consolidated Tape, must comply with the review requirements of the Recommendation Rule if such securities are published or quoted in a quotation medium.

Because securities that are listed on a regional securities exchange but not eligible for the reporting of transactions to the Consolidated Tape are eligible for quotation on the OTCBB, and thus fall within the category of securities contemplated to be covered by the Recommendation Rule, the Commission believes that it is appropriate for these securities to be covered by the Recommendation Rule.

In Amendment No. 2, the NASD also amended NASD Rule 2315(e)(1)(G)(2) to substitute ''NASD'' for the reference to ''the Association'' contained in the Rule. The Commission believes that this is a technical, non-substantive change to the proposal.

In sum, the Commission finds that the NASD's proposed changes in Amendment No. 2 further strengthen and clarify the proposed rule change and raise no new regulatory issues. Further, the Commission believes that Amendment No. 2 does not significantly alter the original proposal, which was subject to a full notice and comment period. Therefore, the Commission finds that granting accelerated approval to Amendment No. 2 is appropriate and consistent with Section 19(b)(2) of the Act.[21]

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether the proposed amendment 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 amendment that are filed with the Commission, and all written communications relating to the amendment 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–04 and should be submitted by [insert date 21 days from date of publication].

VI. Conclusion

For all of the aforementioned reasons, 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.

[21] 15 U.S.C. 78s(b)(2).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NASD–99–04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21651 Filed 8–25–02; 8:45 am]

BILLING CODE 8010–01–P

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46374; File No. SR–NSCC–2002–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Revising the Fee Schedule

August 16, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 29, 2002, the National Securities Clearing Corporation (''NSCC'') 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 NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will adjust the fees NSCC charges for the Initial Application Information (''APP'') of its Insurance Processing Service (''IPS'').[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections A, B,

[1] 15 U.S.C. 78s(b)(1).

[2] The new fee schedule is attached as Exhibit A to NSCC's filing.

and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adjust the fees that NSCC charges for the APP feature of its IPS. The effective date for the adjustment is (i) July 1, 2002, with respect to changes resulting in a decrease in fees paid by members and (ii) August 1, 2002, with respect to all other changes.

The current transaction fee for APP is:

- For 0 to 249 items per month, $7.50 per item;
- For 250 to 999 items per month, $4.00 per item;
- For 1,000 to 2,499 items per month, $2.00 per item; and
- For more than 2,499 items per month, $1.00 per item.

Pursuant to this rule change, the transaction fee for APP will be as follows:

- For 0 to 499 items per month, $5.00 per item;
- For 500 to 1,249 items per month, $4.00 per item;
- For 1,250 to 2,499 items per month, $2.00 per item; and
- For more than 2,499 items per month, $1.00 per item.

The file fee of $15.00 per file, per day will continue to apply to APP.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among NSCC's participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a 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 relating to the proposed rule change have been solicited or received. NSCC has notified participants who use IPS of the fee changes. NSCC will notify the Commission of any written comments received by NSCC.

[3] The Commission has modified the text of the summaries prepared by NSCC.

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)(ii) of the Act[4] and Rule 19b-4(f)(2)[5] thereunder because the proposed rule change is changing a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, U.S. 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 rule proposal that are filed with the Commission, and all written communications relating to the rule proposal 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at NSCC's principal office. All submissions should refer to File No. SR–NSCC–2002–07 and should be submitted by September 16, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–21609 Filed 8–23–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4108]

Culturally Significant Objects Imported for Exhibition; Determinations: ''George Romney, 1734–1802: British Art's Forgotten Genius''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''George Romney 1734–1802: British Art's Forgotten Genius,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Huntington Library, Art Collections, and Botanical Gardens, San Marino, CA, from on or about September 15, 2002, to on or about December 1, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 19, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–21682 Filed 8–23–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13191]

Review of Great Lakes Pilotage Bridge Hour Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Coast Guard is holding four public meetings at which interested parties will be given the opportunity to speak about issues relevant to Great Lakes Pilotage Bridge Hour Standards. The Coast Guard is conducting a review to determine the appropriate bridge hour standards for pilotage on the Great Lakes.

DATES: The meeting dates are:

1. September 5, 2002, 4 p.m. to 7 p.m., Massena, NY.
2. October 10, 2002, time to be announced in later notice, Duluth, MN.
3. October 21, 2002, 10 a.m. to 1 p.m., Cleveland, OH.
4. October 24, 2002, 10 a.m. to 1 p.m., Washington, DC.

Allow enough time to pass through security at Federal buildings. Written material and requests to make oral presentations should reach the Coast Guard not later than 2 working days before the meeting you plan to attend. These meetings may close early if all business is finished.

ADDRESSES: The meeting locations are:

1. Massena—St. Lawrence Hotel, corner of Main Street and West Orvis Street, Massena, NY 13662.
2. Duluth—location to be announced in later notice.
3. Cleveland—Marine Safety Office, Coast Guard Twin Anchors Club, 1055 E. 9th Street, Cleveland, OH 44114.
4. Washington—U.S. Department of Transportation Headquarters (Nassif) Building, room 6200–6204, 400 Seventh Street SW., Washington, DC 20590.

Send requests to make oral presentations, comments, and written material for distribution to LCDR Mary K. Jager, Commandant (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice, and the convening letter for the Coast Guard's review of Great Lakes Pilotage bridge hour standards, including review questions, are available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: LCDR Mary K. Jager, telephone 202–267–0715, fax 202–267–4700.

SUPPLEMENTARY INFORMATION:

The Review

The review is being conducted to study the Coast Guard's management and methodology for the development of Great Lakes pilotage bridge hour standards and to produce a recommendation of the appropriate standards. Bridge hour standards are a critical element in determining the number of U.S. pilots needed to provide service to commercial vessels engaged in foreign trade on the Great Lakes. The current bridge hour standards are published in the appendix, Ratemaking Analyses and Methodology, to 46 CFR part 404.

Procedural

RADM J. T. Riker, USCGR will chair the four public meetings. The four public meetings are open for public participation. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. The speaker's time may be limited. Please bring a written copy of remarks to be entered into the record in the event that you are not able to complete them verbally. If you would like to make an oral presentation at a meeting, please notify LCDR Mary K. Jager no later than 2 working days before that meeting. If you would like a copy of your material distributed at a meeting, please submit 15 copies to LCDR Mary K. Jager no later than 2 working days before that meeting.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at a meeting, contact LCDR Mary K. Jager as soon as possible.

Dated: August 19, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–21687 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Wiscasset and Edgecomb, ME

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent; correction.

SUMMARY: The FHWA published a notice of intent in the **Federal Register** of July 29, 2002 concerning an environmental impact statement (EIS) to be prepared for a proposed highway project in the Towns of Wiscasset and Edgecomb, Maine. The county information is incorrectly listed; the correct county is Lincoln County, Maine.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Hasselmann, Manager, Right of Way and Environment, Maine Division, Federal Highway Administration, 40 Western Ave. Augusta, Maine 04330, Tel. 207/622–8355, ext. 24; Edward W. Hanscom, P.E., Project Manager, Maine Department of Transportation, State House Station 16, Augusta, Maine 04333–0016, Tel. 207/624–3320.

Correction

In the **Federal Register** of July 29, 2002, in FR Doc. 02–19027 Filed 7–26–02; 8:45 am, on page 49056 under Summary, change ''Sagadahoc County, Maine'' to read ''Lincoln County, Maine.''

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: August 19, 2002.

Paul L. Lariviere,

Division Administrator, Federal Highway Administration, Augusta, Maine.

[FR Doc. 02–21615 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13188]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GAUGUIN.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 25, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13188. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th

St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: GAUGUIN. *Owner:* Michael Mickelwait.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''42′ in length, displaces 16,500 lbs.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''The intended use is for day charters, inter-island charters and sailing school cruises in the Hawaiian Island for six passengers or less.''

(4) *Date and Place of construction* and (if applicable) rebuilding. *Date of construction:* 1995. *Place of construction:* France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''Having been in this business for 28 years I suspect minimal impact on other operations of this type as they are practically non-existent in Hawaii.''

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* ''I also believe that this waiver would have no impact on U.S. shipyards.''

Dated: August 20, 2002.

By Order of the Maritime Administrator.

Christine S. Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 02–21633 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13189]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MAKALI'I.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 25, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13189. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: MAKALI'I. Owner: Michael Mickelwait.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''50′ in length, 14.5 gross tonnage.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''The intended use is for day charters, inter-island charters and sailing school cruises in the Hawaiian Island for six passengers or less.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1990. *Place of construction:* France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''Having been in this business for 28 years I suspect minimal impact on other operations of this type as they are practically non-existent in Hawaii.''

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* ''I also believe that this waiver would have no impact on U.S. shipyards.''

Dated: August 20, 2002.

By Order of the Maritime Administrator.

Christine S. Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 02–21634 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–13177]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel NIKE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 25, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13177. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: NIKE. *Owner:* Elizabeth M. Solberg.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''Length—44.1 ft, 13.0 tons.''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''Charter service; Southern Florida Keys.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1990. *Place of construction:* Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''There should not be any negative impact on other vessel operators since most charters carry more than twelve passengers and operate on half day to full day charters staying close to port.

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant*: ''There will be no negative impact on U.S. shipyards. We will use local shipyards for all major maintenance, supplies, etc. to keep this vessel operating under full compliance with all local and federal laws; *i.e.* U.S. Coastguard vessel regulations.''

Dated: August 20, 2002.

By Order of the Maritime Administrator.

Christine S. Gurland,

Acting Secretary.

[FR Doc. 02–21635 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13019]

Notice of Receipt of Petition for Decision That Nonconforming 2003 Harley Davidson VRSCA Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2003 Harley Davidson VRSCA motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2003 Harley Davidson VRSCA motorcycles 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 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 September 25, 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: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

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**.

Milwaukee Motorcycle Imports, Inc. of Milwaukee, Wisconsin (''MMI'') (Registered Importer 99–192) has petitioned NHTSA to decide whether non-U.S. certified 2003 Harley Davidson VRSCA motorcycles are eligible for importation into the United States. The vehicles which MMI believes are substantially similar are 2003 Harley Davidson VRSCA motorcycles that were manufactured for sale in the United States and certified by their manufacturer, Harley Davidson Motor Company, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2003 Harley Davidson VRSCA motorcycles 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.

MMI submitted information with its petition intended to demonstrate that non-U.S. certified 2003 Harley Davidson VRSCA motorcycles, 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 2003 Harley Davidson VRSCA motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems,* and 205 *Glazing Materials.*

The petitioner also states that vehicle identification number (VIN) plates that meet the requirements of 49 CFR part 565 are already affixed to non-U.S. certified 2003 Harley Davidson VRSCA motorcycles and that each vehicle's 17-digit VIN is stamped onto its headstock at the time of manufacture.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S. model headlamp assemblies which incorporate headlamps that are certified to meet the standard; (b) replacement of all stop lamp and directional signal bulbs with bulbs that are certified to meet the standard; (c) replacement of all lenses with lenses that are certified to meet the standard; and (d) replacement of all rear reflectors with red rear reflectors that are certified to meet the standard. The petitioner states that although there are no daytime running lights on the non-U.S. certified version of the vehicle, its headlamp and tail lamp are activated when the ignition is turned on.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information label that displays the recommended tire size, rim size, and cold inflation pressure. The petitioner states that the vehicle is equipped with rims that are certified to meet the standard.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour and a U.S. model odometer that measures distance traveled in miles. The petitioner states that the components installed will include a resetable trip meter with diagnostic capabilities, fuel gauge, low fuel light, oil pressure indicator light, cooling temperature light, engine diagnostic light, and security alarm light.

The petitioner states that when the vehicle has been brought into conformity with all applicable Federal motor vehicle safety standards, a certification label that meets the requirements of 49 CFR part 567 will be affixed to the front of the motorcycle frame.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. 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: August 21, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–21685 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13018]

Notice of Receipt of Petition for Decision that Nonconforming 2003 Harley Davidson FX, FL, and XL Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2003 Harley Davidson FX, FL, and XL motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2003 Harley Davidson FX, FL, and XL motorcycles 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 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 September 25, 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: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

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**.

Milwaukee Motorcycle Imports, Inc. of Milwaukee, Wisconsin (''MMI'') (Registered Importer 99–192) has petitioned NHTSA to decide whether non-U.S. certified 2003 Harley Davidson FX, FL, and XL motorcycles are eligible for importation into the United States. The vehicles which MMI believes are substantially similar are 2003 Harley Davidson FX, FL, and XL motorcycles 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 2003 Harley Davidson FX, FL, and XL motorcycles 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.

MMI submitted information with its petition intended to demonstrate that non-U.S. certified 2003 Harley Davidson FX, FL, and XL motorcycles, 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 2003 Harley Davidson FX, FL, and XL motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials*.

The petitioner also states that vehicle identification number plates that meet the requirements of 49 CFR part 565 are already affixed to non-U.S. certified 2003 Harley Davidson FX, FL, and XL motorcycles and that each vehicle's 17-digit VIN is stamped onto its headstock at the time of manufacture.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S. model headlamp assemblies which incorporate headlamps that are certified to meet the standard; (b) replacement of all stop lamp and directional signal bulbs with bulbs that are certified to meet the standard; (c) replacement of all lenses with lenses that are certified to meet the standard.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*: installation of a tire information label that displays the recommended tire size, rim size, and cold inflation pressure.

Standard No. 123 *Motorcycle Controls and Displays*: installation of a U.S. model speedometer calibrated in miles per hour and a U.S. model odometer that measures distance traveled in miles.

The petitioner states that when the vehicle has been brought into conformity with all applicable Federal motor vehicle safety standards, a certification label that meets the requirements of 49 CFR Part 567 will be affixed to the front of the motorcycle frame.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. 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: August 21, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–21686 Filed 8–23–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Removal of Designation of Terrorism—Related Blocked Person

AGENCIES: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is removing the name of Mr. Liban Hussein from the list of those persons whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001, pertaining to persons who commit, threaten to commit, or support terrorism. Mr. Hussein was designated pursuant to Executive Order 13224 on November 7, 2001.

DATES: The removal of Mr. Liban Hussein from the list of persons whose property and interests in property have been blocked pursuant to Executive Order 13224 is effective as of July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202–622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: *fedbbs.access.gpo.gov.* This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac,* or in fax form through the Office's 24-

hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On September 23, 2001, President Bush issued Executive Order 13224 (the ''Order'') imposing economic sanctions on persons who commit, threaten to commit, or support certain acts of terrorism. In an annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order (66 FR 49079, September 25, 2001). Additional persons have been blocked pursuant to authorities set forth in the Order since that date and notice of such published in the **Federal Register**. One such additional person, Mr. Liban Hussein, was designated by the Secretary of the Treasury in consultation with the Secretary of State and the Attorney General, acting pursuant to authorities set forth in the Order, on November 7, 2001 (67 FR 12644, March 19, 2002). The Treasury's Office of Foreign Assets Control has determined that Mr. Hussein no longer continues to meet the standards for designation under E.O. 13224 and is appropriate for removal from the list of persons designated under Executive Order 13224.

The removal of Mr. Hussein's name from the list of those persons designated pursuant to Executive Order 13224 is effective as of July 15, 2002. All property and interests in property of Mr. Hussein, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of United States persons, including their overseas branches, are now unblocked.

The following designation is removed from the list of persons designated pursuant to Executive Order 13224:

INDIVIDUAL (1):

HUSSEIN, Liban, 2019 Bank St., Ottawa, Ontario, Canada; 925 Washington St., Dorchester, Massachusetts, U.S.A.

Dated: July 16, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 13, 2002.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 02–21641 Filed 8–22–02; 10:34 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–8: OTS Nos. H–3881 and 05031]

Atlantic Liberty Savings, F.A., Brooklyn, NY; Approval of Conversion Application

Notice is hereby given that on, August 12, 2002, the Director, Examination Policy, Office of Thrift Supervision (''OTS''), or her designee, acting pursuant to delegated authority, approved the application of Atlantic Liberty Savings, F.A., Brooklyn, New York, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552, and the OTS Northeast Regional Office, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: August 21, 2002.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 02–21642 Filed 8–23–02; 8:45 am]

BILLING CODE 6720–02–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0098]

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 notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine if spouses, surviving spouses, and children of veterans are eligible for Dependents' Educational Assistance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 25, 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. 2900–0098'' 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 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, 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: Application for Survivors' and Dependents' Educational Assistance (Under Provisions of chapter 35, Title 38, U.S.C.), VA Form 22–5490.

OMB Control Number: 2900–0098.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–5490 serves as an application for Dependents' Educational Assistance (DEA). Spouses, surviving spouses, and children of veterans must submit evidence to establish eligibility and entitlement to DEA under Title 38, U.S.C., 3513. VA uses the information to determine if an individual claimant qualifies for DEA benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 12,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 25,000.

Dated: August 15, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–21647 Filed 8–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0002]

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 notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine eligibility and benefit rates for veterans' disability pension and compensation based on individual unemployability.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 25, 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. 2900–0002'' 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 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, 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: Income-Net Worth and Employment Statement (In support of Claim for Total Disability Benefits), VA Form 21–527.

OMB Control Number: 2900–0002.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–527 is used by claimant to submit a supplemental claim for disability pension or disability compensation based on the individual's unemployability. The information requested is necessary to determine veteran's eligibility to these benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 104,440.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 104,440.

Dated: August 15, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–21648 Filed 8–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0171]

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 notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine an applicant's eligibility for tutorial assistance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 25, 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. 2900–0171'' 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 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, 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: Application and Enrollment Certification for Individualized Tutorial Assistance (38 U.S.C. Chapters 30, 32, or 35 and 10 U.S.C. Chapter 1606), VA Form 22–1990t.

OMB Control Number: 2900–0171.

Type of Review: Extension of a currently approved collection.

Abstract: This form is used by students who are receiving VA educational assistance and who require tutoring to overcome a deficiency in one

or more courses. The information submitted by the student must be certified by the tutor, and the certifying official of the educational institution that the student is attending.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

Number of Responses Annually: 2,400.

Dated: August 15, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–21649 Filed 8–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0613]

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 notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed by State approving agencies to determine if courses offered by a flight school should be approved.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 25, 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. 2900–0613'' 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 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, 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: Recordkeeping at Flight Schools (38 U.S.C. 21.4263(h)(3).

OMB Control Number: 2900–0613.

Type of Review: Extension of a previously approved collection.

Abstract: The regulation requires flight schools to maintain records on students to support continued approval of their courses. State approving agencies that approve courses for VA training use these records to determine if courses offered by a flight school should be approved. VA representative inspects the records to determine if payments made to VA students at the flight school are correct.

Estimated Annual Burden: 800 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 265.

Estimated Annual Responses: 2,400.

Dated: August 15, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–21650 Filed 8–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits 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 Benefits Administration (VBA), 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 September 25, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), 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–NEW.''

SUPPLEMENTARY INFORMATION:

Title: Suspension of Monthly Check, VA Form 29–0759.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: When funds are returned to VA from the Department of the Treasury due to a beneficiary's check not being cashed within one year from the issued date, VA Form 29–0759 is used to inform the beneficiary that his or her monthly insurance checks have been suspended. The form will also be used to obtain the beneficiary's current address or if desired, a banking institution for direct deposit for monthly checks.

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 June 3, 2002, at page 38320.

Affected Public: Individuals or households.

Estimated Annual Burden: 200 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

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–NEW'' in any correspondence.

Dated: August 15, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–21646 Filed 8–23–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 67, No. 165

Monday, August 26, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[SW H–FRL–7241–8]

RIN 2050–AE88

Correction to Typographical Errors and Removal of Obsolete Language in Regulations on Reportable Quantities

Correction

In rule document 02–16866 beginning on page 45314, in the issue of Tuesday, July 9, 2002 make the following corrections:

1. On page 45314, in the third column, in the table of contents, in G.1.B., ''c. Final RQ'' should be moved to the next line before ''Category Column''.

2. On page 45317, in Table 1., in the first column, in the 10th line, ''2, 4, 5,-TP acid'' should be moved to the next line.

3. On page 45317, in Table 1., in the second column, in the 12th line, ''(''– should read ''(''–''.

4. On page 45318, in Table 1., in the first column, in the 11th line from the bottom, ''8alpha.'' should read ''8alpha,''.

5. On the same page, in the same table, in the same column, in the eighth line from the bottom, ''8beta.'' should read ''8beta,''.

6. On the same page, in the same table, in the same column, in the fifth line from the bottom, ''6beta.'' should read ''6beta,''.

7. On the same page, in the same table, in the same column, in the second line from the bottom, ''6alpha.'' should read ''6alpha,''.

8. On page 45319, in Table 2., in the first column, in the first line, ''***'' should read ''...''.

9. On the same page, in the same table, in the second column, in the fourth line, ''***'' should read ''...''.

10. On the same page, in the same table, in the second column, in the seventh line, ''redical'' should read ''radical''.

11. On the same page, in the same table, in the first column, in the eighth line, ''***'' should read ''...''.

12. On the same page, in the same table, in the same column, in the same line, ''smelting'' should read ''smelting.''.

13. On the same page, in the same table, in the same column, in the ninth line, ''***'' should read ''...''.

14. On the same page, in the same table, in the same column, in the 10th line ''***'' should read ''...''.

15. On the same page, in the same table, in the same column, in the 12th line, ''***'' should read ''...''.

16. On the same page, in the same table, in the same column, in the 14th line, ''***'' should read ''...''.

17. On the same page, in the same table, in the same column, in the 16th line, ''***'' should read ''...''.

18. On the same page, in the same table, in the same column, in the 18th line, ''***'' should read ''...''.

19. On page 45319, in the same table, in the second column, in the fifth line from the bottom, ''***'' should read ''...''.

20. On page 45320, in Table 3., in the first column, in the fourth line, ''n-2,3&'' should read ''n-2,3''.

21. On page 45322, in Table 302.4, in the second column titled, ''CASRN'', in the fourth line, ''107—20'' should read ''107—20—0''.

22. On the same page, in the same table, in the same column, in the 10th line, ''5417—640—19—7'' should read ''640—19—7''.

23. On the same page, in the same table, in the same column, in the 11th line remove the ''7''.

24. On page 45323, in Table 302.4, in the first column titled ''Hazardous substance'', in the 24th line, ''†Aroclor 1260'' should read ''Aroclor 1260''.

25. On the same page, in the same table, in the same column, in the 18th line from the bottom, ''(1,1-dimethyl-2-58-5-propynol)-'' should read ''(1,1-dimethyl-2propynol)-''.

26. On page 45324, in Table 302.4, in the column titled ''CASRN'', in the fifth line, ''496-72–0'' should read ''496–72–0''.

27. On the same page, in the same table, in the same column, in the sixth line, ''823–40-5'' should read ''823–40–5''.

28. On the same page, in the same table, in the same column, in the seventh line, ''25376-45–8'' should read ''25376–45–8''.

29. On the same page, in the same table, in the 16th line from the bottom, ''207–-08-9'' should read ''207–08–9''.

30. On the same page, in the same table, in the column titled ''RCRA waste No.'', in the 12th line from the bottom, delete the ''–''.

31. On the same page, in the same table, in the column titled ''''CASRN'', in the ninth line from the bottom, ''191–24-2'' should read ''191–24–2''.

32. On the same page, in the same table, in the column titled, ''Statutory code'', in the ninth line from the bottom, ''–'' should read ''2''.

33. On the same page, in the same table, in the column titled, ''RCRA waste No.'', in the 10th line from the bottom, delete the ''—''.

34. On the same page, in the same table, in the column titled, ''Hazardous substance'', in the eigth line from the bottom, ''2H-1'' should read ''2H–1''.

35. On the same page, in the same table, in the column titled, ''RCRA waste No.'', in the third line from the bottom, delete the ''—''.

36. On page 45325, in Table 302.4, in the column titled, ''CASRN'', in the 22nd line from the bottom, ''13952-84–6'' should read ''13952–84–6''.

37. On page 45327, in Table 302.4, in the column titled, ''CASRN'', in the 33rd line from the bottom, ''589366–3'' should read ''5893–66–3''.

38. On the same page, in the same table, in the column titled, ''Hazarous substance'', in the 12th line from the bottom, ''6β'' should read ''6β–''.

39. On page 45328, in Table 302.4, in the column titled, ''CASRN'' in the 20th line ''1194–1–65—6'' should read ''1194–65–6''.

40. On page 45332, in Table 302.4, in the column titled, ''Hazardous substance'', in the sixth line, ''Lead‡‡'' should read ''Lead††''.

41. On the same page, in the same table, in the same column, in the 21st line from the bottom remove, ''Mercury'' and add it to the line below.

42. On the same page, in the same table, in the column titled, ''Statutory code'', in the 21st line from the bottom, ''2,3,4''. should be moved to the line below.

43. On the same page, in the same table, in the column titled, ''RCRA

waste No.'', in the 19th line from the bottom, ''U151'' should be moved to the line below.

44. On the same page, in the same table, in the column titled, ''Fianl RQ pounds (Kg), in the 18th line from the bottom, '' 1 (0.454)'' should be moved to the line below.

45. On page 45333, in Table 302.4, in the column titled, ''Hazardous substance'', in the 16th line, ''Oone'' should read ''one''.

46. On the same page, in the same table, in the column titled, ''Hazardous substance'', in the seventh line from the bottom, ''3.3‡'' should read ''3,3′ ''.

47. On the same page, in the same table, in the same column, in the same line, ''1,1‡'' should read ''1,1′ ''.

48. On the same page, in the same column, in the same line, ''4,4‡'' should read ''4,4′ ''.

49. On page 45334, in Table 302.4, in the column, titled ''Hazardous substance, in the second line, ''Nickel‡'' should read ''Nickel††''.

50. On page 45335, in Table 302.4, in the column titled, ''Hazardous substance'', in the 13th line, ''4 methylcarbamate (ester)'' should read ''methylcarbamate (ester)''.

51. On page 45350, in Appendix A to § 302.4, in the column titled, ''CASRN'', in the fifth line, after ''68122'' add ''

* * * * *''.

52. On the same page, in the same table, in the same column, in the third line from the bottom, after ''91667'', add''

* * * * *''.

53. On page 45351, in Appendix A to §302.4, in the column titled, ''CASRN'', directly beneath ''92933'' add ''93721''.

[FR Doc. C2–16866 Filed 8–23–02; 8:45 am]

BILLING CODE 1505–01–D

GENERAL SERVICES ADMINISTRATION

Notice of Availability; Environmental Assessment and Finding of No Significant Impact for the Proposed Master Development Plan for the U.S. Consumer Product Safety Commission, Gaithersburg, MD

Correction

In notice document 02–21072 beginning on page 53945 in the issue of Tuesday, August 20, 2002, make the following corrections:

1. On page 53946, in the first column, under **FOR FURTHER INFORMATION CONTACT:**, in the last line the e-mail address ''*ernest.hall@hsa.gov*'' should read ''*ernest.hall@gsa.gov*''.

2. On the same page, in the same column, in the fourth paragraph, in the last line the e-mail address ''*ernest.hall@hsa.gov*'' should read ''*ernest.hall@gsa.gov*''.

[FR Doc. C2–21072 Filed 8–23–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
August 26, 2002

Part II

Department of Energy

10 CFR Part 600

Financial Assistance Regulations; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 600

RIN 1991–AB57

Financial Assistance Regulations

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and opportunity for public comment.

SUMMARY: The Department of Energy (DOE) proposes adding a new subpart to the DOE Assistance Regulations, making minor amendments to existing subparts to reflect this change, and eliminating a section that contains internal procedures for DOE officials or requirements that are contained in other sections. The new subpart would establish new administrative requirements that are specifically tailored for awards to for-profit organizations and eliminate the need to apply existing uniform administrative requirements for awards with institutions of higher education, hospitals, and other nonprofit organizations to awards with for-profit organizations.

DATES: Written comments must be received by October 25, 2002.

ADDRESSES: Comments (3 copies) should be addressed to: Trudy Wood, U.S. Department of Energy, Office of Procurement and Assistance Management, ME–61, 1000 Independence Avenue, SW, Washington, DC 20585. If possible, a copy should also be e-mailed to *fanotice@pr.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Trudy Wood, Office of Procurement and Assistance Policy, Department of Energy, at (202) 586–5625.

SUPPLEMENTARY INFORMATION:

I. Background
II. Comments and Responses
III. Discussion of Rule Provisions
IV. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 13211
V. Approval of the Secretary of Energy

I. Background

Office of Management and Budget (OMB) Circular A–110 provides standards for the administration of grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations. OMB Circular A–110 also states that ''Federal agencies may apply the provisions of this Circular to commercial organizations * * *.'' Consistent with this guidance, when DOE implemented the requirements of Circular A–110 in its financial assistance regulations at 10 CFR part 600, subpart B, the Department, as a matter of discretion, also applied the provisions of the Circular to commercial organizations.

DOE has been actively engaged in the Government-wide effort to streamline and simplify the application, administrative, and reporting procedures for Federal financial assistance programs pursuant to Public Law 106–107, Federal Financial Assistance Management Improvement Act of 1999 (''the Act''). As part of its initiative to consult with non-Federal entities, the Department solicited comments and suggestions from the grant community.

In response, DOE received comments from for-profit organizations relating to issues that were unique to DOE and that were not being addressed in the Government-wide effort to implement the Act. In response to these comments, DOE published a notice in the **Federal Register** on May 8, 2001 (66 FR 23197) requesting comments on whether DOE should initiate a rulemaking that established administrative requirements for financial assistance awards tailored specifically to for-profit organizations. The notice also requested comments on the specific changes proposed. DOE received three sets of comments and questions on the proposed initiative. The respondents strongly endorsed the concept of administrative requirements specifically tailored to for-profit organizations.

Today DOE is proposing to add a new subpart D containing provisions similar to subpart B but that have been tailored specifically for awards to for-profits organizations. If subpart D is promulgated as a final rule, for-profit organizations subject to subpart D would be relieved of obligations that would otherwise apply under subpart B. The provisions of subpart B would continue to apply to institutions of higher education, hospitals, and other nonprofit organizations.

II. Comments and Responses

This section presents a summary of the major comments and explains how DOE addressed the comments in drafting this proposed rule. DOE received one comment concerning intellectual property rights under Cooperative Research and Development Agreements (CRADAs). CRADAs are not financial assistance instruments and are not included in this rulemaking. This comment was provided to the Assistant General Counsel for Technology Transfer and Intellectual Property for his consideration. All other comments were considered in developing this proposed rule.

Comment: The **Federal Register** notice stated that the new subpart would allow DOE to apply less restrictive requirements to small awards. DOE should define small to include any award yielding less than $1 million a year to an individual company.

Response: The new subpart does not address less restrictive requirements for small awards, since subpart A, § 600.29, already contains less restrictive requirements for fixed obligation awards, which are small awards that may not exceed $100,000. These requirements apply to both nonprofit and for-profit organizations.

Comment: What is meant by certain minimum standards for financial management systems?

Response: Proposed § 600.311 would provide the minimum standards for financial management systems, which include: (1) Effective control of all funds; (2) accurate, current and complete records that document the source and application of funds; (3) to the extent that advance payments are authorized, procedures that minimize the time elapsing between the transfer of Federal funds to the recipient and the recipient's disbursement of these funds; and (4) a system to support charges for salaries and wages, whether treated as direct or indirect costs.

Comment: The Notice said that DOE would require a recipient that expended $300,000 or more in a year under a Federal award to have an audit. DOE should increase the trigger level for audit to $1 million per year.

Response: We agree that the trigger level should be increased. The proposed § 600.316, paragraph (a), would require that any recipient that expends $500,000 or more in a year under Federal awards have an audit made for that year by an independent auditor. DOE would consider raising the trigger level to $1 million, if comments to the proposed rule provide justification for such an increase.

Comment: Will audit costs be allowable?

Response: Yes. Proposed § 600.316, paragraph (f), states that audit costs (including a reasonable allocation of the costs of the audit of the recipient's

financial statement, based on the relative benefit to the Government and the recipient) are allowable costs of DOE awards.

Comment: Will the DOE cost principles remain a requirement?

Response: Yes. Proposed § 600.317 provides for the use of cost principles that are applicable to the type of entity incurring the costs.

Comment: The new subpart should clarify the property standards. Would ISO9000 certification be deemed adequate compliance in property management?

Response: Proposed § 600.323 would contain the requirements for the recipient's property management system. Even if the recipient has an ISO9000 certification, it would have to comply with all the requirements in § 600.323.

Comment: DOE should not eliminate certain Intellectual Property clauses, namely FAR 52.227–1 Authorization and Consent, with its Alternate I, and FAR 52.227–2 Notice of Assistance Regarding Patent and Copyright Infringement. Immunity from a claim of patent infringement actually eliminates a barrier preventing for-profit organizations from participating in the DOE's financial assistance programs.

Response: This proposed rule would eliminate the routine use of these clauses in for-profit and nonprofit research and development (R&D) financial assistance agreements because the work performed by the recipient is undertaken to carry out a public purpose of support or stimulation to an essentially private R&D program rather than to acquire property or services for the direct benefit or use of the Government. DOE is currently the only agency that routinely includes these FAR clauses in its R&D financial assistance agreements. However, if the circumstances warrant, the proposed rule would permit DOE to determine, on a case-by-case basis, that it would be advantageous to the public and the DOE mission to include these clauses.

Comment: Will the revisions to Rights in Data and Patent Rights provisions eliminate DOE's requirement for both background data and patent rights of commercial organizations? What certain circumstances would prevail for DOE to require recipients to license data or patents to third parties?

Response: Proposed § 600.325 would eliminate DOE's routine use of background data and patent provisions, which could, in very rare, limited circumstances, require a recipient to license its background patents or data to third parties on reasonable terms. DOE would include a provision that may require such third party licensing rights only if it is necessary to provide heightened assurance of commercialization to satisfy the needs of the program.

Comment: What is DOE's intent regarding U.S. competitiveness dealing with substantial manufacturing in the U.S.?

Response: This rule does not change DOE's policy regarding U.S. competitiveness, which is primarily effected through application of the patent waiver regulations contained in 10 CFR part 784.

Comment: DOE should clarify the applicability of ''procurement procedures'' and define ''effective competition techniques.''

Response: Proposed § 600.331 would contain the requirements for procurements. Recipients would be obliged to use best commercial practices to ensure reasonable cost. The standard is reasonable cost. Proposed subpart D does not use the term ''effective competition techniques.''

III. Discussion of Rule Provisions

Proposed subpart D establishes separate administrative requirements for grants and cooperative agreements with for-profit organizations. In drafting proposed subpart D, DOE reviewed subpart B and tailored its requirements by eliminating those applicable to nonprofit organizations that are not necessary for financial assistance to for-profit organizations. These requirements were not imposed on for-profit organizations by Federal statutes, government-wide regulations, or executive orders and are not required for proper stewardship of Federal funds or accomplishment of DOE mission involving for-profit organizations. Proposed subpart D is similar to the Department of Defense Grant and Agreements Regulations, 32 CFR part 34, Administrative Requirements for Grants and Agreements with For-Profit Organizations.

1. Proposed § 600.302 of subpart D would tailor the definitions in subpart B for the specific requirements of subpart D. In some cases, the terms are defined differently than they are in other parts of the DOE Financial Assistance Rules.

2. Proposed subpart D would simplify the financial and program management requirements as compared to existing requirements under subpart B. These requirements would differ from the subpart B requirements in that they:

a. Encourage recipients to use existing financial management systems established for doing business in the commercial marketplace to the extent that the systems comply with Generally Accepted Accounting Principles (GAAP) and certain minimum standards that are contained in § 600.311;

b. Establish a preference for the reimbursement method of payment (§ 600.312); and

c. Require recipients that expend $500,000 or more in a year under Federal awards to have an audit for that year by an independent auditor (§ 600.316). The audit generally would be made a part of the regularly scheduled, annual audit of the recipient's financial statements. DOE selected the $500,000 threshold because OMB is considering raising the single audit threshold from $300,000 to $500,000. DOE would consider further increasing this threshold up to $1 million if comments received in response to this proposed rule provided adequate justification for such an increase.

3. Proposed subpart D would clarify and simplify the property requirements. The revised property standards would encourage recipients to use existing property management systems to the extent that the systems meet certain minimum standards contained in §§ 600.321 through 600.325.

4. Proposed subpart D would simplify and clarify the patent and data requirements. Proposed § 600.325 would contain the requirements for intellectual property developed or produced under an award with a for-profit organization. When title to inventions made by recipients under DOE awards would normally vest in the United States, such as arrangements with for-profit organizations other than small business firms, proposed subpart D would maintain the statutorily-based policy that DOE may waive all or any part of the invention rights of the United States. In accordance with the policies and procedures in 10 CFR part 784, virtually all such waiver requests are granted if there is sufficient cost-sharing and agreement on appropriate terms and conditions.

Currently, DOE uses the Federal Acquisition Regulation (FAR) and the Department of Energy Acquisition Regulation (DEAR) patent and data clauses in its financial assistance agreements. These clauses were developed primarily for contracts that provide property or services for the direct benefit or use by the Government. In proposed subpart D, the existing FAR and DEAR patent and data clauses have been tailored specifically for financial assistance awards with for-profit organizations and are contained in Appendix A to subpart D.

Proposed § 600.325 and the standard patent and data provisions in Appendix A would eliminate the following requirements that may be appropriate for contracts, but are not generally needed in financial assistance awards:

a. DOE's routine use of background data and patent provisions that, for example, grant to DOE the right to require recipients, under certain circumstances, to license background data and patents to third parties to assure commercialization (see DEAR 952.227–13(k) and 952.227–14). DOE would require such third party licensing rights only when it is necessary to provide heightened assurance of commercialization to satisfy the needs of the program.

b. The requirement that the recipient always obtain the Contracting Officer's approval prior to copyrighting computer software developed under the assistance award. DOE would require such prior approval only in special circumstances, for example, when software is a required deliverable under an award. In addition, in order to satisfy DOE programmatic needs, DOE may specify in certain circumstances, such as the human genome project, that copyrighted software developed under DOE sponsorship be treated as ''open-source'' software. DOE specifically invites public comment on the treatment of copyrighted software as ''open-source'' software.

c. DOE's routine use of a provision authorizing and consenting to the use of a patented invention in the performance of the award, since the work performed by a recipient is undertaken to carry out a public purpose of support or stimulation to an essentially private research and development program rather than to acquire property or services for the direct benefit or use of the Government. However, if the circumstances warrant, such as awards for research relating to homeland security, DOE may determine, on a case-by-case basis, that it would be advantageous to the public and the DOE mission to include this clause. The public is specifically invited to comment on whether an authorization and consent provision should be included in an assistance award and to provide justification for this recommendation.

5. Proposed subpart D would significantly reduce requirements imposed on recipient procurement activities. The rule eliminates the existing requirements for codes of conduct, written procurement procedures that provide for certain requirements, and procurement records that would otherwise apply under subpart B. Instead, proposed § 600.331 requires:

a. Recipients' procurement procedures use best commercial practices to ensure reasonable cost for procured goods and services. Recipients are also encouraged to buy commercial items, when practicable.

b. Pre-award review of procurements only in exceptional cases where the contracting officer determines that there is a compelling need to perform such a review and a provision in the award states the requirement.

c. Contracts in excess of the simplified acquisition threshold (currently $100,000) contain certain contractual provisions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates the contract terms.

d. All contracts contain the provisions of Appendix B to subpart D, as applicable. This appendix is similar to Appendix A of subpart B in all substantive aspects.

The following table will assist you in locating and comparing the requirements applicable to for-profit organizations in the existing subpart B and the proposed subpart D.

Existing 10 CFR part 600 subpart B applicable to for-profit organizations	Corresponding proposed 10 CFR part 600 subpart D applicable to for-profit organizations
Sec.	Sec.
600.100 Purpose	600.301 Purpose.
600.101 Definitions	600.302 Definitions.
600.102 Effect on other issuances	No corresponding section.
600.103 Deviations	600.303 Deviations.
600.104 Subawards	600.301 Purpose.
Pre-Award Requirements	
600.110 Purpose	No corresponding section.
600.111 Pre-award Policies	No corresponding section.
600.112 Forms for applying for Federal assistance	No corresponding section.
600.113 Debarment and suspension	600.305 Debarment and suspension.
600.114 Special award/conditions	600.304 Special award conditions.
600.115 Metric system of measurement	600.306 Metric system of measurement.
600.116 Conservation and Recovery Act	No corresponding section.
600.117 Certifications and representations	No corresponding section.
Financial and Program Management	**Financial and Program Management**
600.120 Purpose of financial and program management	600.310 Purpose of financial and program management.
600.121 Standards for financial management systems	600.311 Standards for financial management systems.
600.122 Payment	600.312 Payment.
600.123 Cost sharing or matching	600.313 Cost sharing or matching.
600.124 Program income	600.314 Program income.
600.125 Revision of budget and program plans	600.315 Revision of budget and program plans.
600.126 Non-Federal Audits	600.316 Audits.
600.127 Allowable costs	600.317 Allowable costs and 600.318 Fee and profit.
600.128 Period of availability of funds	No corresponding section.
Property Standards	**Property Standards**
600.130 Purpose of property standards	600.320 Purpose of property standards.
600.131 Insurance coverage	No corresponding section.
600.131 Real property	600.321 Real property and equipment.
600.133 Federally-owned and exempt property	600.322 Federally owned property.
600.134 Equipment	600.321 Real property and equipment and 600.323 Property management system.
600.135 Supplies and other expendable property	600.324 Supplies.
600.136 Intangible property	600.325 Intellectual property.

Existing 10 CFR part 600 subpart B applicable to for-profit organizations	Corresponding proposed 10 CFR part 600 subpart D applicable to for-profit organizations
Sec.	Sec.
600.137 Property trust relationship	No corresponding section.
Procurement Standards	**Procurement Standards**
600.140 Purpose of procurement standards	600.330 Purpose of procurement standards.
600.141 Recipient responsibilities	600.331 Requirements.
600.142 Codes of conduct	No corresponding section.
600.143 Competition	No corresponding section.
600.144 Procurement Procedures	600.331 Requirements.
600.145 Cost and price analysis	No corresponding section.
600.146 Procurement records	No corresponding section.
600.147 Contract administration	No corresponding section.
600.148 Contract provisions	600.331 Requirements.
600.149 Resources Conservation and Recovery Act (RCRA)	No corresponding section.
Reports and Records	**Reports and Records**
600.150 Purpose of reports and records	600.340 Purpose of reports and records.
600.151 Monitoring and reporting program performance	600.341 Monitoring and reporting program performance and financial performance.
600.152 Financial reporting	600.341 Monitoring and reporting program and financial performance.
600.153 Retention and access requirements for records	600.342 Retention and access requirements for records.
Termination and Enforcement	**Termination and Enforcement**
600.160 Purpose of termination and enforcement	600.350 Purpose of termination and enforcement.
600.161 Termination	600.351 Termination.
600.162 Enforcement	600.352 Enforcement.
After-the-Award Requirements	**After-the-Award Requirements**
600.170 Purpose	600.360 Purpose.
600.171 Closeout procedures	600.361 Closeout procedures.
600.172 Subsequent adjustments and continuing responsibilities	600.362 Subsequent adjustments and continuing responsibilities.
600.173 Collection of amounts due	600.363 Collection of amounts due.
Additional Provisions	**Additional Provisions**
600.180 Purpose	600.380 Purpose.
600.181 Special provisions for Small Business Innovation Research Grants.	600.381 Special provisions for Small Business Innovation Research Grants.
APPENDIX A TO SUBPART B TO PART 600—CONTRACT PROVISIONS.	APPENDIX B TO SUBPART D TO PART 600—CONTRACT PROVISIONS.
No corresponding section	APPENDIX A TO SUBPART D TO PART 600—PATENT AND DATA RIGHTS PROVISIONS.

The proposed rule also would make the following amendments to existing subparts A and B:

1. In § 600.15, we would delete paragraphs (b)(4) and (5) as part of our effort to eliminate unnecessary patent and data requirements in financial assistance awards.

2. Section 600.27 *Patent and data provisions* would be removed because the provisions are obsolete or contain internal procedures that are more appropriately addressed in internal guidance. Patent and data requirements are contained in the appropriate administrative requirements subpart. References to § 600.27 would also be removed in §§ 600.3, 600.4, and 600.136.

3. In subpart B, we would revise the subpart title to delete ''and Commercial Organizations''. Subpart B would contain requirements applicable only to institutions of higher education, hospitals, and other nonprofit organizations.

4. In § 600.100, we would delete the references to commercial organizations, since administrative requirements for awards with for-profit organizations will be contained in subpart D.

5. In § 600.104, we would delete the reference to commercial organizations and add a new subaward requirement for subrecipients that are for-profit organizations to reflect the new subpart D requirements.

6. In § 600.126, we would revise paragraph (c) to reflect the new audit requirements in subpart D and delete paragraphs (d) and (e).

7. In § 600.127, we would amend paragraph (c) to delete the reference to Small Business Innovation Research (SBIR) recipients, since SBIR recipients are for-profit organizations.

8. In § 600.136 *Intangible property,* we would revise paragraphs (a) and (e) to delete ''that are institutions of higher education, hospitals, and other nonprofit organizations'', delete paragraph (c) (3), and make paragraph (b) read the same as § ____.36 in OMB Circular A–110, since this section applies only to institutions of higher education, hospitals, and other nonprofit organizations.

9. Sections 600.180 and 600.181 would be removed from subpart B. Recipients of Small Business Innovation Research grants are for-profit organizations and would be covered by subpart D. Sections 600.180 and 600.181 have been revised to conform to subpart D and today are proposed as §§ 600.380 and 600.381.

IV. 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 action 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 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 by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant

economic impact on a substantial number of small entities. Because DOE is not required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to propose financial assistance rules for public comment, DOE did not prepare a regulatory flexibility analysis for this rule.

C. Review Under the Paperwork Reduction Act

This regulatory action will not impose any new reporting or record keeping requirements under the Paperwork Reduction Act. Reporting and record keeping requirements in subpart D have been previously cleared under Office of Management and Budget Paperwork Clearance Package Numbers 1910–0400 and 1910–0800 or are those promulgated by OMB Circular A–110, which the Office of Management and Budget proposed in August 1992 (57 FR 39018), asking for public comments, and finalized in November 1993 (58 FR 62992). No new collection of information is imposed by this proposed rule.

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule deals only with agency procedures, and, therefore, is covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's proposed rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

F. 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 Federal 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. 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 proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

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 that may affect family well-being. This rulemaking does not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

V. Approval of the Office of the Secretary of Energy

The Office of the Secretary has approved the issuance of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure.

Issued in Washington, DC, on August 9, 2002.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management, Department of Energy.

For the reasons set out in the preamble, Part 600 of Chapter II, Title 10 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for part 600 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq;* 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.* unless otherwise noted.

2. Section 600.3 is amended by revising the definition of nonprofit organization to read as follows:

§ 600.3 Definitions

* * * * *

Nonprofit organization means any corporation, trust, foundation, or institution which is entitled to exemption under section 501(c)(3) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual (except that the definition of ''nonprofit organization'' at 48 CFR 27.301 shall apply for patent matters set forth at §§ 600.136 and 600.325).

* * * * *

§ 600.4 [Amended]

3. Section 600.4 is amended as follows:

a. Paragraph (a)(1), the last sentence is amended by removing ''or the patent requirements of § 600.27.''

b. Paragraph (c)(2)(i), the last sentence is removed.

c. Paragraph (c)(2)(ii), the last sentence is removed.

§ 600.15 [Amended]

4. Section 600.15 is amended by removing paragraphs (b)(4) and (5).

§ 600.27 [Removed and Reserved]

5. Section 600.27 is removed and reserved.

6. The title of subpart B is revised to read as follows:

Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations

§ 600.100 [Amended]

7. Section 600.100 is amended by removing ''and commercial'' in the first and second sentences.

§ 600.104 [Amended]

8. Section 600.104 is amended by removing ''or commercial'' in the first sentence and by adding a sentence at the end of the paragraph to read as follows:

§ 600.104 Subawards.

* * * For-profit subrecipients are subject to the provisions of 10 CFR part 600, subpart D, Administrative Requirements for Grants and Cooperative Agreements with For-Profit Organizations.

9. Section 600.126 is amended by removing paragraphs (d) and (e) and revising paragraph (c) to read as follows:

§ 600.126 Non-Federal audits.

* * * * *

(c) For-profit organizations that are subrecipients are subject to the audit requirements specified in 10 CFR 600.316.

§ 600.127 [Amended]

10. Section 600.127 is amended in paragraph (c) by removing ''except for SBIR recipients as provided in § 600.181(d)(3).''

11. Section 600.136 is amended as follows:

a. Paragraph (a), the first sentence is amended by removing ''that are institutions of higher education, hospitals, and other nonprofit organizations,''.

b. Paragraph (b) is revised.

c. Paragraph (d)(3) is removed.

d. Paragraph (e), the first sentence is amended by removing ''For recipients that are institutions of higher education, hospitals, and other nonprofit organizations.''

The revisions read as follows:

§ 600.136 Intangible property.

* * * * *

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

* * * * *

§§ 600.180–600.181 [Removed and Reserved]

12. Sections 600.180 and 600.181 are removed.

13. Subpart D is added in part 600 to read as follows:

Subpart D—Uniform Administrative Requirements for Grants and Cooperative Agreements With For-Profit Organizations.

Sec.

General

600.301 Purpose.
600.302 Definitions.
600.303 Deviations.
600.304 Special award conditions.
600.305 Debarment and suspension.
600.306 Metric system of measurement.

Post-Award Requirements

Financial and Program Management

600.310 Purpose of financial and program management.
600.311 Standards for financial management systems.
600.312 Payment.
600.313 Cost sharing or matching.
600.314 Program income.
600.315 Revision of budget and program plans.
600.316 Audits.
600.317 Allowable costs.
600.318 Fee and profit.

Property Standards

600.320 Purpose of property standards.
600.321 Real property and equipment.
600.322 Federally owned property.
600.323 Property management system.
600.324 Supplies.
600.325 Intellectual property.

Procurement Standards

600.330 Purpose of procurement standards.
600.331 Requirements.

Reports and Records

600.340 Purpose of reports and records.
600.341 Monitoring and reporting program and financial performance.
600.342 Retention and access requirements for records.

Termination and Enforcement

600.350 Purpose of termination and enforcement.
600.351 Termination.
600.352 Enforcement.
600.353 Disputes and appeals.

After-the-Award Requirements

600.360 Purpose.
600.361 Closeout procedures.
600.362 Subsequent adjustments and continuing responsibilities.
600.363 Collection of amounts due.

Additional Provisions

600.380 Purpose.
600.381 Special provisions for Small Business Innovation Research Grants.

Appendix A to Subpart D to Part 600—Patent and Data Rights Provisions

Appendix B to Subpart D to Part 600—Contract Provisions

Subpart D—Administrative Requirements for Grants and Cooperative Agreements With For-Profit Organizations

General

§ 600.301 Purpose.

(a) This subpart prescribes administrative requirements for awards to for-profit organizations.

(b) Applicability to prime awards and subawards is as follows:

(1) *Prime awards.* DOE contracting officers must apply the provisions of this part to awards to for-profit organizations. Contracting officers must not impose requirements that are in addition to, or inconsistent with, the requirements provided in this part, except:

(i) In accordance with the deviation procedures or special award conditions

in § 600.303 or § 600.304, respectively; or

(ii) As required by Federal statute, Executive order, or Federal regulation implementing a statute or Executive order.

(2) *Subawards.* (i) Any legal entity (including any State, local government, university or other nonprofit organization, as well as any for-profit entity) that receives an award from DOE must apply the provisions of this part to subawards with for-profit organizations.

(ii) For-profit organizations that receive prime awards covered by this part must apply to each subaward the administrative requirements that are applicable to the particular type of subrecipient (*e.g.*, 10 CFR part 600, subpart B, contains requirements for institutions of higher education, hospitals, or other nonprofit organizations and 10 CFR part 600, subpart C, specifies requirements for subrecipients that are States or local governments).

§ 600.302 Definitions.

In addition to the definitions used in subpart A of this part, the following are definitions of terms as used in this part:

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Applied research means efforts that seek to determine and exploit the potential of scientific discoveries or improvements in technology, and is directed toward the development of new materials, devices, methods, and processes.

Basic research means efforts directed solely toward increasing knowledge or understanding in science and engineering.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout means the process by which DOE determines that all applicable administrative actions and all required work of the award have been completed by the recipient and DOE.

Cost sharing or matching means that portion of project or program costs not borne by the Federal Government.

Demonstration means a project designed to determine the technical feasibility and economic potential of a technology on either a pilot plant or a prototype scale.

Development means efforts to create or advance new technology or demonstrate the viability of applying existing technology to new products and processes.

Disallowed costs means those charges to an award that the DOE contracting officer determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

DOE means the Department of Energy, including the National Nuclear Security Administration (NNSA).

Equipment means tangible, nonexpendable personal property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Excess property means property under the control of any DOE Headquarters or field office that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

Federal funds authorized means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods.

Federally owned property means property in the possession of, or directly acquired by, the Government and subsequently made available to the recipient.

Funding period means the period of time when Federal funding is available for obligation by the recipient.

Incremental Funding means a method of funding a grant or cooperative agreement where the funds initially obligated to the award are less than the total amount of the award, and DOE anticipates making additional obligations of funds when appropriated funds become available.

Obligations means the amount of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

Outlays or expenditures means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied, and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees, and for other amounts becoming owed under programs for which no current services or performance are required.

Personal property means property of any kind except real property. It may be:

(1) Tangible, having physical existence (*i.e.*, equipment and supplies); or

(2) Intangible, having no physical existence, such as patents, copyrights, data, and software.

Prior approval means written or electronic approval by an authorized official evidencing prior consent.

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in program regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Property means real property and personal property (equipment, supplies, and intellectual property), unless otherwise stated.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Small award means an award not exceeding the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently $100,000).

Small business concern means a small business as defined at section 2 of Public Law 85–536 (16 U.S.C. 632) and the implementing regulations of the Administrator of the Small Business Administration. The criteria and size standards for small business concerns are contained in 13 CFR part 121.

Subaward means financial assistance in the form of money, or property in lieu

of money, provided under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but the term does not include procurement of goods and services or any form of assistance which is not included in the definition of ''award'' in this part.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds or property provided.

Supplies means tangible, expendable personal property that is charged directly to the award and that has a useful life of less than one year or an acquisition cost of less than $5,000 per unit.

Suspension means an action by DOE that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by DOE. Suspension of an award is a separate action from suspension of a recipient under 10 CFR part 1036.

Termination means the cancellation of an award, in whole or in part, under an agreement at any time prior to either:

(1) The date on which all work under an award is completed; or

(2) The date on which Federal sponsorship ends, as provided in the award document or any supplement or amendment thereto.

Third party in-kind contributions means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unobligated balance means the portion of the funds authorized by DOE that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 600.303 Deviations.

(a) *Individual deviations.* Individual deviations affecting only one award are subject to the procedures stated in 10 CFR 600.4.

(b) *Class deviations.* Class deviations affecting more than one financial assistance transaction are subject to the procedures stated in 10 CFR 600.4.

§ 600.304 Special award conditions.

(a) Contracting officers may impose additional requirements as needed, over and above those provided in this subpart, if an applicant or recipient:

(1) Has a history of poor performance;

(2) Is not financially stable;

(3) Has a management system that does not meet the standards prescribed in this part;

(4) Has not conformed to the terms and conditions of a previous award; or

(5) Is not otherwise responsible.

(b) Before imposing additional requirements, DOE must notify the applicant or recipient in writing as to:

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the corrective action needed;

(4) The time allowed for completing the corrective actions; and

(5) The method for requesting reconsideration of the additional requirements imposed.

(c) The contracting officer must remove any special conditions if the circumstances that prompted them have been corrected.

§ 600.305 Debarment and suspension.

Recipients must comply with the nonprocurement debarment and suspension common rule implemented in 10 CFR part 1036. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 600.306 Metric system of measurement.

(a) The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205) and implemented by Executive Order 12770, states that:

(1) The metric system is the preferred measurement system for U.S. trade and commerce.

(2) The metric system of measurement will be used, to the extent economically feasible, in federal agencies' procurements, grants, and other business-related activities.

(3) Metric implementation is not required if such use is likely to cause significant inefficiencies or loss of markets to United States firms.

(b) Recipients are encouraged to use the metric system to the maximum extent practicable in measurement-sensitive activities and in measurement-sensitive outputs resulting from DOE funded programs.

Post-Award Requirements

Financial and Program Management

§ 600.310 Purpose of financial and program management.

Sections 600.311 through 600.318 prescribe standards for financial management systems; methods for making payments; and rules for cost sharing and matching, program income, revisions to budgets and program plans, audits, allowable costs, and fee and profit.

§ 600.311 Standards for financial management systems.

(a) Recipients are encouraged to use existing financial management systems established for doing business in the commercial marketplace to the extent that the systems comply with Generally Accepted Accounting Principles (GAAP) and the minimum standards in this section. At a minimum, a recipient's financial management system must provide:

(1) Effective control of all funds. Control systems must be adequate to ensure that costs charged to Federal funds and those counted as the recipient's cost share or match are consistent with requirements for cost reasonableness, allowability, and allocability in the applicable cost principles (see § 600.317) and in the terms and conditions of the award.

(2) Accurate, current and complete records that document, for each project funded wholly or in part with Federal funds, the source and application of the Federal funds and the recipient's required cost share or match. These records must:

(i) Contain information about receipts, authorizations, assets, expenditures, program income, and interest.

(ii) Be adequate to make comparisons of outlays with amounts budgeted for each award (as required for programmatic and financial reporting under § 600.341). Where appropriate, financial information should be related to performance and unit cost data.

(3) To the extent that advance payments are authorized under § 600.312, procedures that minimize the time elapsing between the transfer of funds to the recipient from the Government and the recipient's disbursement of the funds for program purposes.

(4) A system to support charges to Federal awards for salaries and wages, whether treated as direct or indirect costs. If employees work on multiple activities or cost objectives, a distribution of their salaries and wages must be supported by personnel activity reports which:

(i) Reflect an after the fact distribution of the actual activity of each employee.

(ii) Account for the total activity for which each employee is compensated.

(iii) Are prepared at least monthly, and coincide with one or more pay periods.

(b) If the Federal Government guarantees or insures the repayment of money borrowed by the recipient, DOE, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(c) DOE may require adequate fidelity bond coverage if the recipient lacks sufficient coverage to protect the Federal Government's interest.

(d) If bonds are required in the situations described in paragraphs (b) and (c) of this section, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

§ 600.312 Payment.

(a) *Methods available.* Payment methods for awards with for-profit organizations are:

(1) *Reimbursement.* Under this method, the recipient requests reimbursement for costs incurred during a particular time period. In cases where the recipient submits requests for payment to the contracting officer, the DOE payment office reimburses the recipient by electronic funds transfer after approval of the request by the designated contracting officer.

(2) *Advance payments.* Under this method, DOE makes a payment to a recipient based upon projections of the recipient's cash needs. The payment generally is made upon the recipient's request, although predetermined payment schedules may be used when the timing of the recipient's needs to disburse funds can be predicted in advance with sufficient accuracy to ensure compliance with paragraph (b)(2)(iii) of this section.

(b) *Selecting a method.* (1) The preferred payment method is the reimbursement method, as described in paragraph (a)(1) of this section.

(2) Advance payments, as described in paragraph (a)(2) of this section, may be used in exceptional circumstances, subject to the following conditions:

(i) The contracting officer, in consultation with the program official, determines in writing that advance payments are necessary or will materially contribute to the probability of success of the project contemplated under the award (*e.g.*, as startup funds for a project performed by a newly formed company).

(ii) Cash advances must be limited to the minimum amounts needed to carry out the program.

(iii) Recipients and DOE must maintain procedures to ensure that the timing of cash advances is as close as is administratively feasible to the recipients' disbursements of the funds for program purposes, including direct program or project costs and the proportionate share of any allowable indirect costs.

(iv) Recipients must maintain advance payments of Federal funds in interest-bearing accounts, and remit annually the interest earned to the contracting officer for return to the Department of Treasury's miscellaneous receipts account, unless one of the following applies:

(A) The recipient receives less than $120,000 in Federal awards per year.

(B) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(C) The depository would require an average or minimum balance so high that establishing an interest bearing account would not be feasible, given the expected Federal and non-Federal cash resources.

(c) *Frequency of payments.* For either reimbursements or advance payments, recipients may submit requests for payment monthly, or more often if authorized by the contracting officer.

(d) *Forms for requesting payment.* DOE may authorize recipients to use the SF–270, ''Request for Advance or Reimbursement;'' the SF–271, ''Outlay Report and Request for Reimbursement for Construction Programs;'' or prescribe other forms or formats as necessary.

(e) *Timeliness of payments.* Payments normally will be made within 30 calendar days of the receipt of a recipient's request for reimbursement or advance by the office designated to receive the request, unless the billing is improper.

(f) *Precedence of other available funds.* Recipients must disburse funds available from program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on such funds before requesting additional cash payments.

(g) *Withholding of payments.* Unless otherwise required by statute, contracting officers may not withhold payments for proper charges made by recipients during the project period for reasons other than the following:

(1) A recipient failed to comply with project objectives, the terms and conditions of the award, or Federal reporting requirements, in which case the contracting officer may suspend payments in accordance with § 600.352.

(2) The recipient is delinquent on a debt to the United States (see definitions of ''debt'' and ''delinquent debt'' in 32 CFR 22.105). In that case, the contracting officer may, upon reasonable notice, withhold payments to the recipient until the debt owed is resolved.

§ 600.313 Cost sharing or matching.

(a) *Acceptable contributions.* All contributions, including cash contributions and third party in-kind contributions, must be accepted as part of the recipient's cost sharing or matching if such contributions meet all of the following criteria:

(1) They are verifiable from the recipient's records.

(2) They are not included as contributions for any other federally-assisted project or program.

(3) They are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) They are allowable under § 600.317.

(5) They are not paid by the Federal Government under another award unless authorized by Federal statute to be used for cost sharing or matching.

(6) They are provided for in the approved budget.

(7) They conform to other provisions of this part, as applicable.

(b) *Valuing and documenting contributions.* (1) *Valuing recipient's property or services of recipient's employees.* Values are established in accordance with the applicable cost principles in § 600.317, which means that amounts chargeable to the project are determined on the basis of costs incurred. For real property or equipment used on the project, the cost principles authorize depreciation or use charges. The full value of the item may be applied when the item will be consumed in the performance of the award or fully depreciated by the end of the award. In cases where the full value of a donated capital asset is to be applied as cost sharing or matching, that full value must be the lesser of the following:

(i) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation; or

(ii) The current fair market value. If there is sufficient justification, the contracting officer may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project. The contracting officer may accept the use of any reasonable basis for determining the fair market value of the property.

(2) *Valuing services of others' employees.* If an employer other than

the recipient furnishes the services of an employee, those services are valued at the employee's regular rate of pay plus an amount of fringe benefits and overhead (at an overhead rate appropriate for the location where the services are performed), provided these services are in the same skill for which the employee is normally paid.

(3) *Valuing volunteer services.* Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services must be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates must be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(4) *Valuing property donated by third parties.* (i) Donated supplies may include such items as office supplies or laboratory supplies. Value assessed to donated supplies included in the cost sharing or matching share must be reasonable and must not exceed the fair market value of the property at the time of the donation.

(ii) Normally only depreciation or use charges for equipment and buildings may be applied. However, the fair rental charges for land and the full value of equipment or other capital assets may be allowed, when they will be consumed in the performance of the award or fully depreciated by the end of the award, provided that the contracting officer has approved the charges. When use charges are applied, values must be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:

(A) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(B) The value of loaned equipment must not exceed its fair rental value.

(5) *Documentation.* The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(i) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal services and property must be documented.

§ 600.314 Program income.

(a) DOE must apply the standards in this section to the disposition of program income from projects financed in whole or in part with Federal funds.

(b) Unless program regulations or the terms and conditions of the award provide otherwise, recipients, without any further accounting to DOE, may retain program income earned:

(1) From license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award.

(2) After the end of the project period.

(c) Unless program regulations or the terms and conditions of the award provide otherwise, costs incident to the generation of program income for which there is some obligation to the Government may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(d) Other than any program income excluded pursuant to paragraphs (b) and (c) of this section, program income earned during the project period must be retained by the recipient and used in one or more of the following ways, as specified in program regulations or the terms and conditions of the award:

(1) Added to funds committed to the project by DOE and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(e) If the program regulation or terms and conditions of an award authorize the disposition of program income as described in paragraph (d)(1) or (d)(2) of this section, and stipulate a limit on the amounts that may be used in those ways, program income in excess of the stipulated limits must be used in accordance with paragraph (d)(3) of this section.

(f) In the event that the program regulation or terms and conditions of the award do not specify how program income is to be used, paragraph (d)(3) of this section applies automatically to all projects or programs except research. For awards that support basic or applied research, paragraph (d)(1) of this section applies automatically unless the terms and conditions specify another alternative or the recipient is subject to special award conditions, as indicated in § 600.304.

(g) Proceeds from the sale of property that is acquired, rather than fabricated, under an award are not program income and must be handled in accordance with the requirements of §§ 600.320 through 600.325 of this part.

§ 600.315 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It includes the sum of the Federal and non-Federal shares when there are cost sharing requirements. The budget plan must be related to performance for program evaluation purposes, whenever appropriate.

(b) The recipient must obtain the contracting officer's prior approval if a revision is necessary for either of the following two reasons:

(1) A change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) A need for additional Federal funding.

(c) The recipient must obtain the contracting officer's prior approval if a revision is necessary for any of the following six reasons, unless the requirement for prior approval is specifically waived in the program regulation or terms and conditions of the award:

(1) A change in the approved project director, principal investigator, or other key person specified in the application or award document.

(2) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(3) The inclusion of any additional costs that require prior approval in accordance with the applicable cost principles for Federal funds and the requirements applicable to the recipient's cost share or match, as provided in § 600.313 and § 600.317, respectively.

(4) The inclusion of pre-award costs for periods greater than the 90 calendar days immediately preceding the effective date of the award.

(5) A ''no-cost'' extension of the project period.

(6) Any subaward, transfer, or contracting out of substantive program performance under an award, unless described in the application and funded in the approved awards.

(d) If specifically required in the program regulation or the terms and conditions of the award, the recipient

must obtain the contracting officer's prior approval for the following revisions:

(1) The transfer of funds among direct cost categories, functions, and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by DOE.

(2) For awards that provide support for both construction and nonconstruction work, any fund or budget transfers between the two types of work supported.

(e) Within 30 calendar days from the date of receipt of the recipient's request for budget revisions, the contracting officer must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the contracting officer must inform the recipient in writing of the date when the recipient may expect the decision.

§ 600.316 Audits.

(a) Any recipient that expends $500,000 or more in a year under Federal awards must have an audit made for that year by an independent auditor, in accordance with paragraph (b) of this section. The audit generally should be made a part of the regularly scheduled, annual audit of the recipient's financial statements. However, it may be more economical in some cases to have Federal awards separately audited, and a recipient may elect to do so, unless that option is precluded by award terms and conditions or by Federal laws or regulations applicable to the program(s) under which the awards were made.

(b) The auditor must determine and report on whether:

(1) The recipient has an internal control structure that provides reasonable assurance that it is managing Federal awards in compliance with Federal laws and regulations and the terms and conditions of the awards.

(2) Based on a sampling of Federal award expenditures, the recipient has complied with laws, regulations, and award terms that may have a direct and material effect on Federal awards.

(c) The recipient must make the auditor's report available to the DOE contracting officers whose awards are affected.

(d) Before requesting an audit in addition to the independent audit, the contracting officer must:

(1) Consider whether the independent audit satisfies his or her requirements;

(2) Limit the scope of such additional audit to areas not adequately addressed by the independent audit; and

(3) If DOE is not the Federal agency with the predominant fiscal interest in the recipient, coordinate with the agency that has the predominant fiscal interest.

(e) The recipient and its Federal cognizant agency for audit should develop a coordinated audit approach to minimize duplication of audit work.

(f) Audit costs (including a reasonable allocation of the costs of the audit of the recipient's financial statement, based on the relative benefit to the Government and the recipient) are allowable costs of DOE awards.

§ 600.317 Allowable costs.

(a) DOE determines allowability of costs in accordance with the cost principles applicable to the type of entity incurring the cost as follows:

(1) *For-profit organizations.* Allowability of costs incurred by for-profit organizations and those nonprofit organizations listed in Attachment C to OMB Circular A–122 is determined in accordance with the for-profit cost principles in 48 CFR part 31 in the Federal Acquisition Regulation, except that patent prosecution costs are not allowable unless specifically authorized in the award document.

(2) *Other types of organizations.* Allowability of costs incurred by other types of organizations that may be subrecipients under a prime award to a for-profit organization is determined as follows:

(i) *Institutions of higher education.* Allowability is determined in accordance with OMB Circular A–21, ''Cost Principles for Educational Institutions.''

(ii) *Other nonprofit organizations.* Allowability is determined in accordance with OMB Circular A–122, ''Cost Principles for Nonprofit Organizations.''

(iii) *Hospitals.* Allowability is determined in accordance with the provisions of 45 CFR part 74, Appendix E, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.''

(iv) *Governmental organizations.* Allowability for State, local, or federally recognized Indian tribal governments is determined in accordance with OMB Circular A–87, ''Cost Principles for State and Local Governments.''

(b) *Pre-award costs.* If a recipient incurs pre-award costs without the prior approval of the contracting officer, DOE may pay those costs incurred within the ninety calendar day period immediately preceding the effective date of the award, if such costs are:

(1) Necessary for the effective and economical conduct of the project;

(2) Otherwise allowable in accordance with the applicable cost principles; and

(3) Less than the total value of the award.

§ 600.318 Fee and profit.

(a) Grants and cooperative agreements may not provide for the payment of fee or profit to recipients or subrecipients, except for awards made pursuant to the Small Business Innovation Research or Small Business Technology Transfer Research programs.

(b) A recipient or subrecipient may pay a fee or profit to a contractor providing goods or services under a contract.

Property Standards

§ 600.320 Purpose of property standards.

Sections 600.321 through 600.325 set forth uniform standards for management, use, and disposition of property. DOE encourages recipients to use existing property-management systems to the extent that the systems meet these minimum requirements.

§ 600.321 Real property and equipment.

(a) *Prior approval for acquisition with Federal funds.* Recipients may purchase real property or equipment in whole or in part with Federal funds under an award only with the prior approval of the contracting officer.

(b) *Title.* Unless a statute specifically authorizes and the award specifies that title to property vests unconditionally in the recipient, title to real property or equipment vests in the recipient subject to the conditions that the recipient:

(1) Use the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the property is no longer needed for the purposes of the project;

(2) Not encumber the property without approval of the contracting officer; and

(3) Use and dispose of the property in accordance with paragraphs (d) and (e) of this section.

(c) *Federal interest in real property or equipment offered as cost-share.* A recipient may offer the full value of real property or equipment that is purchased with recipient's funds or that is donated by a third party to meet a portion of any required cost sharing or matching, subject to the requirements in § 600.313. If a resulting award includes such property as a portion of the recipient's cost share, the Government has a financial interest in the property, (*i.e.*, a share of the property value equal to the

Federal participation in the project). The property is considered as if it had been acquired in part with Federal funds, and is subject to the provisions of paragraphs (b)(1), (b)(2), and (b)(3) of this section and to the provisions of § 600.323.

(d) *Insurance.* Recipients must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with DOE funds as provided to property owned by the recipient.

(e) *Use.* If real property or equipment is acquired in whole or in part with Federal funds under an award and the award does not specify that title vests unconditionally in the recipient, the real property or equipment is subject to the following:

(1) During the time that the real property or equipment is used on the project or program for which it was acquired, the recipient must make it available for use on other projects or programs, if such other use does not interfere with the work on the project or program for which the real property or equipment was originally acquired. Use of the real property or equipment on other projects is subject to the following order of priority:

(i) Activities sponsored by DOE grants, cooperative agreements, or other assistance awards;

(ii) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;

(iii) Activities under Federal procurement contracts or activities not sponsored by any Federal agency. If so used, use charges must be assessed to those activities. For real property or equipment, the use charges must be at rates equivalent to those for which comparable real property or equipment may be leased.

(2) After Federal funding for the project ceases or if the real property or equipment is no longer needed for the purposes of the project, the recipient may use the real property or equipment for other projects, insofar as:

(i) There are Federally sponsored projects for which the real property or equipment may be used. If the only use for the real property or equipment is for projects that have no Federal sponsorship, the recipient must proceed with disposition of the real property or equipment, in accordance with paragraph (f) of this section.

(ii) The recipient obtains written approval from the contracting officer to do so. The contracting officer must ensure that there is a formal change of accountability for the real property or equipment to a currently funded, Federal award.

(iii) The recipient's use of the real property or equipment for other projects is in the same order of priority as described in paragraph (e)(1) of this section.

(f) *Disposition.* (1) If an item of real property or equipment is no longer needed for Federally sponsored projects, the recipient has the following options:

(i) If the property is equipment with a current per unit fair market value of less than $5,000, it may be retained, sold, or otherwise disposed of with no further obligation to DOE.

(ii) If the property that is no longer needed is equipment (rather than real property), the recipient may wish to replace it with an item that is needed currently for the project by trading in or selling to offset the costs of the replacement equipment, subject to the approval of the contracting officer.

(iii) The recipient may elect to retain title, without further obligation to the Federal Government, by compensating the Federal Government for that percentage of the current fair market value of the real property or equipment that is attributable to the Federal participation in the project.

(iv) If the recipient does not elect to retain title to real property or equipment or does not request approval to use equipment as trade-in or offset for replacement equipment, the recipient must request disposition instructions from the responsible agency.

(2) If a recipient requests disposition instructions, the contracting officer must:

(i) For equipment (but not real property), consult with the DOE Project Director to determine whether the condition and nature of the equipment warrant excess screening within DOE. If screening is warranted, the equipment will be made available for reutilization within DOE through the Energy Asset Disposal System (EADS). If no DOE requirement is identified within a 30-day period, EADS automatically reports the availability of the equipment to the General Services Administration, to determine whether a requirement for the equipment exists in other Federal agencies.

(ii) For either real property or equipment, issue instructions to the recipient for disposition of the property no later than 120 calendar days after the recipient's request. The contracting officer's options for disposition are to direct the recipient to:

(A) Transfer title to the real property or equipment to the Federal Government or to an eligible third party provided that, in such cases, the recipient is entitled to compensation for its attributable percentage of the current fair market value of the real property or equipment, plus any reasonable shipping or interim storage costs incurred.

(B) Sell the real property or equipment and pay the Federal Government for that percentage of the current fair market value of the property that is attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). If the recipient is authorized or required to sell the real property or equipment, the recipient must use competitive procedures that result in the highest practicable return.

(3) If the responsible agency fails to issue disposition instructions within 120 calendar days of the recipient's request, the recipient must dispose of the real property or equipment through the option described in paragraph (f)(2)(ii)(B) of this section.

§ 600.322 Federally owned property.

(a) *Annual inventory.* The recipient must submit annually to the contracting officer an inventory listing of all Federally owned property in its custody, *i.e.*, property furnished by the Federal Government, rather than acquired by the recipient with Federal funds under the award.

(b) *Insurance.* The recipient may not insure Federally owned property unless required by the terms and conditions of the award.

(c) *Use on other activities.* (1) Use of federally owned property on other activities is permissible, if authorized by the contracting officer responsible for administering the award to which the property currently is charged.

(2) Use on other activities must be in the following order of priority:

(i) Activities sponsored by DOE grants, cooperative agreements, or other assistance awards;

(ii) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;

(iii) Activities under Federal procurement contracts or activities not sponsored by any Federal agency. If so used, use charges must be assessed to those activities. For real property or equipment, the use charges must be at rates equivalent to those for which comparable real property or equipment may be leased.

(d) *Disposition of property.* Upon completion of the award, the recipient must submit to the contracting officer a final inventory of Federally owned property. DOE may:

(1) Use the property to meet another Federal Government need (*e.g.*, by transferring accountability for the

property to another Federal award to the same recipient, or by directing the recipient to transfer the property to a Federal agency that needs the property or to another recipient with a currently funded award).

(2) Declare the property to be excess property and either:

(i) Report the property to the General Services Administration through EADS, in accordance with the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2)), as implemented by General Services Administration regulations at 41 CFR 101–47.202; or

(ii) Dispose of the property by alternative methods, if there is authority under law, such as the Federal Technology Transfer Act, 15 U.S.C. 3710(i).

§ 600.323 Property management system.

The recipient's property management system must include the following:

(a) Property records must be maintained, to include the following information for property that is Federally owned, equipment that is acquired in whole or in part with Federal funds, or property or equipment that is used as cost sharing or matching:

(1) A description of the property.

(2) Manufacturer's serial number, model number, Federal stock number, national stock number, or any other identification number.

(3) Source of the property, including the award number.

(4) Whether title vests in the recipient or the Federal Government.

(5) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(6) Information from which one can calculate the percentage of Federal participation in the cost of the property (not applicable to property furnished by the Federal Government).

(7) The location and condition of the property and the date the information was reported.

(8) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal Government for its share.

(b) Federally owned equipment must be marked to indicate Federal ownership.

(c) A physical inventory must be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records must be investigated to determine the causes of the difference. The recipient must, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(d) A control system must be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of property must be investigated and fully documented. If the property is owned by the Federal Government, the recipient must promptly notify the Federal agency responsible for administering the property.

(e) Adequate maintenance procedures must be implemented to keep the property in good condition.

§ 600.324 Supplies.

(a) Title vests in the recipient upon acquisition of supplies acquired with Federal funds under an award.

(b) Upon termination or completion of the project or program, the recipient may retain any unused supplies. If the inventory of unused supplies exceeds $5,000 in total aggregate value and the items are not needed for any other Federally sponsored project or program, the recipient may retain the items for use on non-Federal sponsored activities or sell them, but must, in either case, compensate the Federal Government for its share.

§ 600.325 Intellectual property.

(a) *Scope.* This section sets forth the policies with regard to disposition of rights to data and to inventions conceived or first actually reduced to practice in the course of, or under, a grant or cooperative agreement with DOE.

(b) *Patent rights—small business concerns and nonprofit organizations.* In accordance with 35 U.S.C. 202, if you are a small business concern or a nonprofit organization and you receive a grant, cooperative agreement, subaward, or contract for research, developmental, or demonstration activities, then, unless there are ''exceptional circumstances'' as described in 35 U.S.C. 202(e), your award must contain the standard clause in Appendix A to this subpart, entitled ''Patents Rights (Small Business Firms and Nonprofit Organizations)'' which provides you the right to elect ownership of inventions made under your award.

(c) *Patent rights—other than small business concerns, e.g., large businesses.*

(1) *No patent waiver.* Except as provided by paragraph (d)(2) of this section, if you are a large business and you receive an award or a subaward for research, development, and demonstration activities, then your award must contain the standard clause in Appendix A to this subpart, entitled ''Patent Rights (Large Business Firms)—No Waiver'' which provides that DOE owns the patent rights to inventions made under your award.

(2) *Patent waiver granted.* Paragraph (c)(1) of this section does not apply if:

(i) DOE grants a class waiver for a particular program under 10 CFR part 784;

(ii) You request and receive an advance patent waiver under 10 CFR part 784; or

(iii) Your subaward is covered by a waiver granted under the prime award.

(3) *Special provision.* Normally, your agreement will not include a background patent and data provision. However, in order to provide heightened assurance of commercialization, a provision providing for a right to require licensing of background inventions under special circumstances may be included.

(d) *Rights in data—general rule.*

(1) Subject to paragraphs (d)(2) and (3) of this section, and except as otherwise provided by paragraphs (e), (f), and (g) of this section or other law, any award under this subpart must contain the standard clause in Appendix A to this subpart, entitled ''Rights in Data—General.''

(2) Normally, your agreement will not require the delivery of limited rights data or restricted computer software. However, if the contracting officer, in consultation with DOE patent counsel and the DOE program official, determines that delivery of limited rights data or restricted computer software is necessary, the contracting officer, after negotiation with you, may insert in the award the standard clause as modified by Alternates I and/or II set forth in Appendix A to this subpart.

(3) If software is specified for delivery to DOE or if other special circumstances exist, *e.g.*, DOE specifying ''open-source'' treatment of software, then the contracting officer, after negotiation with the recipient, may include in the award special provisions requiring the recipient to obtain written approval of the contracting officer prior to asserting copyright in the software and/or modifications to the retained Government license.

(e) *Rights in data—programs covered under special protected data statutes.*

(1) If a statute, other than those providing for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer Research (STTR) programs, provides for a period of time, typically up to five years, during which data produced under an award for research, development, and demonstration may be protected from

public disclosure, then the contracting officer must insert in the award the standard clause in Appendix A to this subpart entitled ''Rights in Data—Programs Covered Under Special Protected Data Statutes'' or, as determined in consultation with DOE patent counsel and the DOE program official, a modified version of such clause which may identify data or categories of data that the recipient must make available to the public.

(2) An award under paragraph (e)(1) of this section is subject to the provisions of paragraphs (d)(2) and (3).

(f) *Rights in data—SBIR/STTR programs.*

(1) If you receive an award under the SBIR or STTR program, then the contracting officer must insert in the award the standard clause in the General Terms and Conditions for SBIR Grants, entitled ''Rights in Data—SBIR Program.''

(2) The data rights provisions for SBIR/STTR grants are contained in the award terms and conditions for SBIR grants located at *http://www.pr.doe.gov* on the Professionals Homepage under Financial Assistance, Regulations and Guidance.

(g) *Authorization and consent.* (1) Except as provided in paragraph (g)(2) of this section, work performed by a recipient under a financial assistance award is not subject to authorization and consent to the use of a patented invention, and the Government assumes no liability for patent infringement by the recipient under 28 U.S.C. 1498.

(2) To avoid the risk that project work is enjoined by reason of patent infringement, in appropriate circumstances, such as a cooperative agreement for research related to homeland security or the clean up of a DOE facility, DOE may provide authorization and consent consistent with the principles set forth in 48 CFR 27.201–1.

(3) The contracting officer, in consultation with patent counsel, may also include clauses in the award addressing patent indemnification of the Government by recipient and notice and assistance regarding patent and copyright infringement.

Procurement Standards

§ 600.330 Purpose of procurement standards.

Section 600.331 sets forth requirements necessary to ensure:

(a) Recipients' procurements that use Federal funds comply with applicable Federal statutes, regulations, and executive orders.

(b) Proper stewardship of Federal funds used in recipients' procurements.

§ 600.331 Requirements.

The following requirements pertain to recipients' procurements funded in whole or in part with Federal funds or with recipients' cost-share or match:

(a) *Reasonable cost.* Recipients' procurement procedures must use best commercial practices to ensure reasonable cost for procured goods and services. Recipients are encouraged to buy commercial items, if practicable.

(b) *Pre-award review of certain procurements.* If the contracting officer determines that there is a compelling need to perform a pre-award review of a specific transaction and the terms of the award identify the specific transaction and provide for such a review, then the recipient must obtain the contracting officer's approval prior to awarding the transaction and must provide the contracting officer the following documents to review:

(1) Request for proposals or invitation to bid, if any;

(2) Cost estimate;

(3) Proposal/bid;

(4) Proposed award document; and

(5) Summary of negotiations or justification for award.

(c) *Contract provisions.* (1) Contracts in excess of the simplified acquisition threshold must contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of the simplified acquisition threshold must contain suitable provisions for termination for default by the recipient and for termination due to circumstances beyond the control of the contractor.

(3) All negotiated contracts in excess of the simplified acquisition threshold must include a provision permitting access of DOE, the Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the contractor that are directly pertinent to a specific program, for the purpose of making audits, examinations, excerpts, transcriptions, and copies of such documents.

(4) All contracts, including those for amounts less than the simplified acquisition threshold, awarded by recipients and their contractors must contain the procurement provisions of Appendix B to this subpart, as applicable.

(d) *Recipient responsibilities.* The recipient is the responsible authority, without recourse to DOE, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. The recipient should refer matters concerning violations of statutes to such Federal, State or local authority as may have proper jurisdiction.

Reports and Records

§ 600.340 Purpose of reports and records.

Sections 600.341 and 600.342 prescribe requirements for monitoring and reporting financial and program performance and for records retention.

§ 600.341 Monitoring and reporting program and financial performance.

(a) The terms and conditions of the award prescribe the reporting requirements, the frequency, and the due dates for reports. At a minimum, requirements must include:

(1) Periodic progress reports (at least annually, but no more frequently than quarterly) addressing both program status and business status, as follows:

(i) The program portions of the reports must address progress toward achieving program performance goals and milestones, including current issues, problems, or developments.

(ii) The business portions of the reports must provide summarized details on the status of resources (federal funds and non-federal cost sharing or matching), including an accounting of expenditures for the period covered by the report. The report should compare the resource status with any payment and expenditure schedules or plans provided in the original award, explain any major deviations from those schedules, and discuss actions that will be taken to address the deviations.

(2) A final technical report if the award is for research and development.

(b) If the contracting officer previously authorized advance payments, pursuant to § 600.312(a)(2), he/she should consult with the DOE project director and consider whether program progress reported in the periodic progress report, in relation to reported expenditures, is sufficient to justify continued authorization of advance payments.

§ 600.342 Retention and access requirements for records.

(a) This section sets forth requirements for records retention and access to records for awards to recipients and subrecipients.

(b) Financial records, supporting documents, statistical records, and all

other records pertinent to an award must be retained for a period of three years from the date of submission of the final expenditure report. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(3) If records are transferred to or maintained by DOE, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocation plans, and related records must be retained in accordance with the requirements specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the contracting officer.

(d) The contracting officer may request that recipients transfer certain records to DOE custody if he or she determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a contracting officer may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) DOE, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but must last as long as records are retained.

(f) Unless required by statute, DOE must not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when DOE can demonstrate that such records would be kept confidential and would be exempt from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records belonged to DOE.

(g) Indirect cost proposals, cost allocation plans, and other cost accounting documents (such as documents related to computer usage chargeback rates), along with their supporting records, must be retained for a 3-year period, as follows:

(1) If the recipient or the subrecipient is required to submit an indirect-cost proposal, cost allocation plan, or other computation to the cognizant Federal agency for purposes of negotiating an indirect cost rate or other rates, the 3-year retention period starts on the date of the submission.

(2) If the recipient or the subrecipient is not required to submit the documents or supporting records for negotiating an indirect cost rate or other rates, the 3-year retention period for the documents and records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(h) If the information described in this section is maintained on a computer, recipients must retain the computer data on a reliable medium for the time periods prescribed. Recipients may transfer computer data in machine readable form from one reliable computer medium to another. Recipients' computer data retention and transfer procedures must maintain the integrity, reliability, and security of the original computer data. Recipients must also maintain an audit trail describing the data transfer. For the record retention time periods prescribed in this section, recipients must not destroy, discard, delete, or write over such computer data.

Termination and Enforcement

§ 600.350 Purpose of termination and enforcement.

Sections 600.351 through 600.353 set forth uniform procedures for suspension, termination, enforcement, and disputes.

§ 600.351 Termination.

(a) Awards may be terminated in whole or in part only in accordance with one of the following:

(1) By the contracting officer, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the contracting officer with the consent of the recipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the contracting officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. The recipient must provide such notice at least 30 calendar days prior to the effective date of the termination. However, if the contracting officer determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, he or she may terminate the award in its entirety.

(4) For cooperative agreements only, by the contracting officer whenever DOE determines, for any reason, that a termination, in whole or in part, is in the best interest of the Government. Such termination is subject to the conditions specified in § 600.25(e).

(b) If the recipient incurred allowable costs prior to the termination, the responsibilities of the recipient referred to in § 600.361(b), including those related to property, apply to the termination of the award, and provision must be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 600.352 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the contracting officer may, in addition to imposing any of the special conditions outlined in § 600.304, take one or more of the following actions, as appropriate:

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the contracting officer.

(2) Disallow (that is, deny both the use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Apply other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, DOE must provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable, unless the contracting officer expressly authorizes them in the notice of suspension or termination or subsequently authorizes such costs. Other recipient costs during suspension

or after termination, which are necessary and not reasonably avoidable, are allowable if the costs:

(1) Result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable; and

(2) Would be allowable if the award expired normally at the end of the funding period.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under 10 CFR part 1036.

§ 600.353 Disputes and appeals.

Consistent with 10 CFR 600.22 and part 1024, recipients have the right to appeal certain decisions by contracting officers.

After-the-Award Requirements

§ 600.360 Purpose.

Sections 600.361 through 600.363 contain procedures for closeout and for subsequent disallowances and adjustments.

§ 600.361 Closeout procedures.

(a) Recipients must submit, within 90 calendar days after the date of completion of the award, all reports required by the terms and conditions of the award. DOE may approve extensions when requested by the recipient.

(b) The following provisions must apply to the closeout:

(1) Unless DOE authorizes an extension, a recipient must liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion of the award as specified in the terms and conditions of the award or in agency implementing instructions.

(2) DOE must make prompt, final payments to a recipient for allowable reimbursable costs under the award being closed out.

(3) The recipient must promptly refund any unobligated balances of cash that DOE has advanced or paid and that are not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(4) When authorized by the terms and conditions of the award, the contracting officer must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(5) The recipient must account for any real property and equipment acquired with Federal funds or received from the Federal Government in accordance with §§ 600.321 through 600.325.

(6) If a final audit is required and has not been performed prior to the closeout of an award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 600.362 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of DOE to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 600.316.

(4) Property management requirements in §§ 600.321 through 600.325.

(5) Records retention requirements in § 600.342.

(b) After closeout of an award, the continuing responsibilities under an award may be modified or ended in whole or in part with the consent of the contracting officer and the recipient, provided property management requirements are considered and provisions made for the continuing responsibilities of the recipient, as appropriate.

§ 600.363 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within 30 days after the demand for payment, DOE may reduce the debt in accordance with the procedures and techniques described in 10 CFR part 1015 and OMB Circular A–129, including:

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute or regulation.

(b) Except as otherwise provided by law, DOE may charge interest and administrative fees on an overdue debt in accordance with 31 CFR Chapter IX, parts 900–904, ''Federal Claims Collection Standards.''

Additional Provisions

§ 600.380 Purpose.

The purpose of ''Additional Provisions'' is to provide alternative requirements for recipients otherwise covered by this subpart D, when they are performing under Small Business Innovation Research grants.

§ 600.381 Special provisions for Small Business Innovation Research Grants.

(a) *General.* This section contains provisions applicable to the Small Business Innovation Research (SBIR) Program. This codifies six class deviations pertaining to the SBIR program.

(b) *Provisions Applicable to Phase I SBIR Awards.* Phase I SBIR awards may be made on a fixed obligation basis, subject to the following requirements:

(1) While proposed costs must be analyzed in detail to ensure consistency with applicable cost principles, incurred costs are not subject to review under the standards of cost allowability;

(2) Although detailed budgets are submitted by a recipient and reviewed by DOE for purposes of establishing the amount to be awarded, budget categories are not stipulated in making an award;

(3) Prior approval from the DOE for rebudgeting among categories by the recipient is not required. Prior approval from DOE is required for any variation from the requirement that no more than one-third of Phase I work can be done by subcontractors or consortium partners;

(4) Pre-award expenditure approval is not required;

(5) Payments are to be made in the same manner as other financial assistance (see § 600.312), except that, when determined appropriate by the cognizant program official and contracting officer, a lump sum payment may be made. If a lump sum payment is made, the award must contain a condition that requires the recipient to return to DOE amounts remaining unexpended at the end of the project if those amounts exceed $500;

(6) Recipients will certify in writing to the Contracting Officer at the end of the project that the activity was completed or the level of effort was expended. Should the activity or effort not be carried out, the recipient would be expected to make appropriate reimbursements;

(7) Requirements for periodic reports may be established for each award so long as they are consistent with § 600.341;

(8) Changes in principal investigator or project leader, scope of effort, or institution, require the prior approval of DOE.

(c) *Provision applicable to Phase II SBIR awards.* Phase II SBIR awards may

be made for a single budget period of 24 months.

(d) *Provisions applicable to Phase I and Phase II SBIR awards.* (1) The prior approval of the cognizant DOE Contracting Officer is required before the final budget period of the project period may be extended without additional funds.

(2) A fee or profit may be paid to SBIR recipients.

Appendix A to Subpart D Part 600

Patent and Data Provisions

1. Patent Rights (Small Business Firms and Nonprofit Organizations)
2. Patent Rights (Large Business Firms)—No Waiver
3. Rights in Data—General
4. Rights in Data—Programs Covered Under Special Protected Data Statutes

Patent Rights (Small Business Firms and Nonprofit Organizations)

(a) Definitions.

Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C., or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

Nonprofit organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

Small business firm means a small business concern as defined at section 2 of Public Law 85–536 (16 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3 through 121.8 and 13 CFR 121.3 through 121.12 respectively, will be used.

Subject invention means any invention of the Recipient conceived or first actually reduced to practice in the performance of work under this award, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of award performance.

(b) Allocation of Principal Rights.

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Patent Rights clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Applications by Recipient.

(1) The Recipient will disclose each subject invention to DOE within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the award under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient will promptly notify DOE of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying DOE within two years of disclosure to DOE. However, in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the U.S., the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient will file its initial patent application on an invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the U.S. after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to DOE, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of DOE, be granted.

(d) Conditions When the Government May Obtain Title.

The Recipient will convey to DOE, upon written request, title to any subject invention:

(1) If the Recipient fails to disclose or elect the subject invention within the times specified in paragraph (c) of this Patent Rights clause, or elects not to retain title; provided that DOE may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times;

(2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this Patent Rights clause; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this Patent Rights clause, but prior to its receipt of the written request of DOE, the Recipient shall continue to retain title in that country; or

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Recipient and Protection of the Recipient Right To File.

(1) The Recipient will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the subject invention within the times specified in paragraph (c) of this Patent Rights clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the award was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and the agency's licensing regulation, if any. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at discretion of the funding Federal agency to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and the agency's licensing

regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Recipient Action to Protect Government's Interest.

(1) The Recipient agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to:

(i) establish or confirm the rights the Government has throughout the world in those subject inventions for which the Recipient retains title; and

(ii) convey title to DOE when requested under paragraph (d) of this Patent Rights clause, and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under this award in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this Patent Rights clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by paragraph (c)(1) of this Patent Rights clause. The Recipient shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Recipient will notify DOE of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any U.S. patent application and any patent issuing thereon covering a subject invention, the following statement: ''This invention was made with Government support under (identify the award) awarded by (identify DOE). The Government has certain rights in this invention.''

(g) Subaward/contract.

(1) The Recipient will include this Patent Rights clause, suitably modified to identify the parties, in all subawards/contracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or nonprofit organization. The subrecipient/contractor will retain all rights provided for the Recipient in this Patent Rights clause, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractors' subject inventions.

(2) The Recipient will include in all other subawards/contracts, regardless of tier, for experimental, developmental or research work, the patent rights clause required by DOE implementing regulations.

(h) Reporting on Utilization of Subject Inventions.

The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient and such other data and information as DOE may reasonably specify. The Recipient also agrees to provide additional reports in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this Patent Rights clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without the permission of the Recipient.

(i) Preference for United States Industry.

Notwithstanding any other provision of this Patent Rights clause, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the U.S. unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the U.S. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the U.S. or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights.

The Recipient agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with procedures at 37 CFR 401.6 and any supplemental regulations of the agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances and if the Recipient, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the Recipient or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensee; or

(4) Such action is necessary because the agreement required by paragraph (i) of this Patent Rights clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the U.S. is in breach of such agreement.

(k) Special Provisions for Awards with Nonprofit Organizations.

If the Recipient is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the U.S. may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;

(2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific or engineering research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give preference to a small business firm if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Secretary of Commerce may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures or practices with the Secretary when the Secretary's review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4)(l).

(l) Communications.

All communications required by this Patent Rights clause should be sent to the DOE Patent Counsel address listed in the Award Document.

(m) Electronic Filing.

Unless otherwise specified in the award, the information identified in paragraphs (f)(2) and (f)(3) may be electronically filed. [End of Clause]

Patent Rights (Large Business Firms)—No Waiver:

(a) Definitions.

DOE patent waiver regulations, as used in this clause, means the Department of Energy patent waiver regulations in effect on the date of award. See 10 CFR part 784.

Invention, as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Patent Counsel, as used in this clause, means the Department of Energy Patent Counsel assisting the awarding activity.

Subject invention, as used in this clause, means any invention of the Recipient conceived or first actually reduced to practice in the course of or under this agreement.

(b) Allocations of principal rights.

(1) Assignment to the Government. The Recipient agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Recipient under subparagraph (b)(2) and paragraph (d) of this clause.

(2) Greater rights determinations. The Recipient, or an employee-inventor after consultation with the Recipient, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulations. Each determination of greater rights under this agreement shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(c) Minimum rights acquired by the Government.

With respect to each subject invention to which the Department of Energy grants the Recipient principal or exclusive rights, the Recipient agrees to grant to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency); to ''march-in rights'' as set forth in 37 CFR 401.14(a)(J)); to preference for U.S. industry as set forth in 37 CFR 401.14(a)(I); to submit on request periodic reports no more frequently than annually on the utilization or intent of utilization of a subject invention in a manner consistent with 35 U.S.C. 202(c)(5); and agrees to provide for such Government rights in any instrument transferring rights in a subject invention.

(d) Minimum rights to the Recipient.

(1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Recipient fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a part and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the minimum rights acquired by the Government similar to paragraph (c) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(e) Invention identification, disclosures, and reports.

(1) The Recipient shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Recipient personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this agreement. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Recipient shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Recipient shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Recipient personnel responsible for patent matters or, if earlier, within 6 months after the Recipient becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to DOE shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Recipient contends in writing at the time the invention is disclosed that is was not so made.

(3) The Recipient shall furnish the Contracting Officer a final report, within 3 months after completion of the work listing all subject inventions or containing a statement that there were no such inventions, and listing all subawards/contracts at any tier containing a patent rights clause or containing a statement that there were no such subawards/contracts.

(4) The Recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under subaward/contract in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

(5) The Recipient agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions.

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this agreement to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Recipient has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause;

(iii) The Recipient and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Recipient invention which the Contracting Officer believes may be a subject invention, the Recipient may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Subaward/contract.

(1) The Recipient shall include the clause PATENT RIGHTS (SMALL BUSINESS FIRMS AND NONPROFIT ORGANIZATIONS) (suitably modified to identify the parties) in all subawards/contracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization,

except where the work of the subaward/contract is subject to an Exceptional Circumstances Determination by DOE. In all other subawards/contracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Recipient shall include this clause (suitably modified to identify the parties), or an alternate clause as directed by the contracting officer. The Recipient shall not, as part of the consideration for awarding the subaward/contract, obtain rights in the subrecipient's/contractor's subject inventions.

(2) In the event of a refusal by a prospective subrecipient/contractor to accept such a clause the Recipient:

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subrecipient/contractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subaward/contract without the written authorization of the Contracting Officer.

(3) In the case of subawards/contracts at any tier, DOE, the subrecipient/contractor, and Recipient agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by this clause.

(4) The Recipient shall promptly notify the Contracting Officer in writing upon the award of any subaward/contract at any tier containing a patent rights clause by identifying the subrecipient/contractor, the applicable patent rights clause, the work to be performed under the subaward/contract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Recipient shall furnish a copy of such subaward/contract, and, no more frequently than annually, a listing of the subawards/contracts that have been awarded.

(5) The Recipient shall identify all subject inventions of a subrecipient/contractor of which it acquires knowledge in the performance of this agreement and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

(h) Atomic energy.

(1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this agreement.

(2) Except as otherwise authorized in writing by the Contracting Officer, the Recipient will obtain patent agreements to effectuate the provisions of subparagraph (h)(1) of this clause from all persons who perform any part of the work under this agreement, except nontechnical personnel, such as clerical employees and manual laborers.

(i) Publication. It is recognized that during the course of the work under this agreement, the Recipient or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this agreement. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Recipient, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(j) Forfeiture of rights in unreported subject inventions.

(1) The Recipient shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Recipient fails to report to Patent Counsel within six months after the time the Recipient:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by subparagraph (e)(3) of this clause, whichever is later.

(2) However, the Recipient shall not forfeit rights in a subject invention if, within the time specified in subparagraph (e)(2) of this clause, the Recipient:

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the agreement and delivers the decision to Patent Counsel, with a copy to the Contracting Officer; or

(ii) Contending that the invention is not a subject invention, the Recipient nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer; or

(iii) Establishes that the failure to disclose did not result from the Recipient's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this agreement), the Recipient shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (j) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions. (End of clause)

Rights in Data—General

(a) Definitions.

Computer Data Bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created or compiled. The term does not include computer data bases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights, as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

Limited rights data, as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data, as used in this clause, means data (other than computer software) which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocations of rights.

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this agreement:

(ii) Form, fit, and function data delivered under this agreement;

(iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and

(iv) All other data delivered under this agreement unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Recipient shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, unless provided otherwise in paragraph (d) of this clause;

(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright.

(1) Data first produced in the performance of this agreement. Unless provided otherwise in paragraph (d) of this clause, the Recipient may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in data first produced in the performance of this agreement. When claim to copyright is made, the Recipient shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including computer software, the Recipient grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data not first produced in the performance of this agreement and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated in or made part of this agreement.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, publication and use of data.

(1) The Recipient shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this agreement.

(2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this award, which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient:

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also:

(i) Permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or

(ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and qualify as either limited rights data or restricted computer software, if the Recipient desires to continue protection of such data, the Recipient shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding, the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(h) Subaward/contract.

The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor refuses to accept terms affording the Government such rights, the Recipient shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with the subaward/contract award without further authorization.

(i) Additional data requirements.

In addition to the data specified elsewhere in this agreement to be delivered, the Contracting Officer may, at anytime during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause, or data which are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(j) The recipient agrees, except as may be otherwise specified in this award for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this award, inspect at the Recipient's facility any data withheld pursuant to paragraph (g) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

As prescribed in 600.325(d)(1), the following Alternate I and/or II may be inserted in the clause in the award instrument.

Alternate I

(g)(2) Notwithstanding subparagraph (g)(1) of this clause, the agreement may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Recipient may affix the following ''Limited Rights Notice'' to the data and the Government will thereafter treat the data, in accordance with such Notice:

LIMITED RIGHTS NOTICE

(a) These data are submitted with limited rights under Government agreement No. _____ (and subaward/contract No. _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Recipient, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use (except for manufacture) by Federal support services contractors within the scope of their contracts;

(2) This ''limited rights data'' may be disclosed for evaluation purposes under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(3) This ''limited rights data'' may be disclosed to other contractors participating in the Government's program of which this Recipient is a part for information or use (except for manufacture) in connection with the work performed under their awards and under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(4) This ''limited rights data'' may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed; and

(5) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part. (End of notice)

Alternate II

(g)(3)(i) Notwithstanding subparagraph (g)(1) of this clause, the agreement may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Recipient may affix the following ''Restricted Rights Notice'' to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

(a) This computer software is submitted with restricted rights under Government Agreement No. _____ (and subaward/contract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the agreement.

(b) This computer software may be—

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Recipients in accordance with subparagraphs (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copied for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the agreement.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part. (End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE

Use, reproduction, or disclosure is subject to restrictions set forth in Agreement No. _____ (and subaward/contract _____, if appropriate) with _____ (name of Recipient and subrecipient/contractor).'' (End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Recipient includes the following statement with such copyright notice: ''Unpublished—rights reserved under the Copyright Laws of the United States.'' (End of clause)

Rights in Data—Programs Covered Under Special Data Protected Statutes

(a) Definitions.

Computer Data Bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the computer program to be produced, created or compiled. The term does not include computer data bases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to administration, such as financial, administrative, cost or pricing or management information.

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability as well as data identifying

source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights data, as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted computer software; including modifications of such computer software.

Protected data, as used in this clause, means technical data or commercial or financial data first produced in the performance of the award which, if it had been obtained from and first produced by a non-federal party, would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of Title 5, United States Code Section 552(b)(4), (5 U.S.C. 552(b)(4)), and which data is marked as being protected data by a party to the award.

Protected rights, as used in this clause, mean the rights in protected data set forth in the Protected Rights Notice of paragraph (g) of this clause.

Technical data, as used in this clause, means that data which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this agreement as data to be delivered without restriction;

(ii) Form, fit, and function data delivered under this agreement;

(iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and

(iv) All other data delivered under this agreement unless provided otherwise for protected data in accordance with paragraph (g) of this clause or for limited rights data or restricted computer software in accordance with paragraph (h) of this clause.

(2) The Recipient shall have the right to—

(i) Protect rights in protected data delivered under this agreement in the manner and to the extent provided in paragraph (g) of this clause;

(ii) Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (h) of this clause;

(iii) Substantiate use of, add, or correct protected rights or copyrights notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright.

(1) Data first produced in the performance of this agreement. Except as otherwise specifically provided in this agreement, the Recipient may establish, without the prior approval of the Contracting Officer, claim to copyright subsisting in any data first produced in the performance of this agreement. If claim to copyright is made, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including computer software, the Recipient grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data that are not first produced in the performance of this agreement and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software, the Government shall acquire a copyright license as set forth in subparagraph (h)(3) of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated or made a part of this agreement.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, publication and use of data.

(1) The Recipient shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this agreement which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without either the limited rights or restricted

rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also—

(i) permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or

(ii) correct any incorrect notices.

(g) Rights to protected data.

(1) The Recipient may, with the concurrence of DOE, claim and mark as protected data, any data first produced in the performance of this award. Any such claimed ''protected data'' will be clearly marked with the following Protected Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraphs (e) and (f) of this clause.

PROTECTED RIGHTS NOTICE

These protected data were produced under agreement no. _____ with the U.S. Department of Energy and may not be published, disseminated, or disclosed to others outside the Government until (**Note:** The period of protection of such data is fully negotiable, but cannot exceed the applicable statutorily authorized maximum), unless express written authorization is obtained from the recipient. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part. (End of notice)

(2) Any such marked Protected Data may be disclosed under obligations of confidentiality for the following purposes: (a) For evaluation purposes under the restriction that the ''Protected Data'' be retained in confidence and not be further disclosed; or (b) To subcontractors or other team members performing work under the Government's (insert name of program or other applicable activity) program of which this award is a part, for information or use in connection with the work performed under their activity, and under the restriction that the Protected Data be retained in confidence and not be further disclosed.

(3) The obligations of confidentiality and restrictions on publication and dissemination shall end for any Protected Data: (a) At the end of the protected period; (b) If the data becomes publicly known or available from other sources without a breach of the obligation of confidentiality with respect to the Protected Data; (c) If the same data is independently developed by someone who did not have access to the Protected Data and such data is made available without obligations of confidentiality; or (d) If the Recipient disseminates or authorizes another to disseminate such data without obligations of confidentiality.

(4) However, the Recipient agrees that the following types of data are not considered to be protected and shall be provided to the Government when required by this award without any claim that the data are Protected Data. The parties agree that notwithstanding the following lists of types of data, nothing precludes the Government from seeking delivery of additional data in accordance with this award, or from making publicly available additional non-protected data, nor does the following list constitute any admission by the Government that technical data not on the list is Protected Data. (**Note:** It is expected that this paragraph will specify certain types of mutually agreed upon data that will be available to the public and will not be asserted by the recipient/contractor as limited rights or protected data).

(5) The Government's sole obligation with respect to any protected data shall be as set forth in this paragraph (g).

(h) Protection of limited rights data.

When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and such data qualify as either limited rights data or restricted computer software, the Recipient, if the Recipient desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(i) Subaward/contract.

The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor refuses to accept terms affording the Government such rights, the Recipient shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subaward/contract award without further authorization.

(j) Additional data requirements.

In addition to the data specified elsewhere in this agreement to be delivered, the Contracting Officer may, at anytime during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause, or data which are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(k) The Recipient agrees, except as may be otherwise specified in this agreement for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Recipient's facility any data withheld pursuant to paragraph (h) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

As prescribed in 600.325(e)(2), the following Alternate I and/or II may be inserted in the clause in the award instrument.

Alternate I

(h)(2) Notwithstanding subparagraph (h)(1) of this clause, the agreement may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Recipient may affix the following ''Limited Rights Notice'' to the data and the Government will thereafter treat the data, in accordance with such Notice:

LIMITED RIGHTS NOTICE

(a) These data are submitted with limited rights under Government agreement No. _____ (and subaward/contract No. _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Recipient, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use (except for manufacture) by Federal support services contractors within the scope of their contracts;

(2) This ''limited rights data'' may be disclosed for evaluation purposes under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(3) This ''limited rights data'' may be disclosed to other contractors participating in the Government's program of which this Recipient is a part for information or use (except for manufacture) in connection with the work performed under their awards and under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(4) This ''limited rights data'' may be used by the Government or others on its behalf for

emergency repair or overhaul work under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed; and

(5) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part. (End of notice)

Alternate II

(h)(3)(i) Notwithstanding subparagraph (h)(1) of this clause, the agreement may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Recipient may affix the following ''Restricted Rights Notice'' to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (d) and (e) of this clause, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

(a) This computer software is submitted with restricted rights under Government Agreement No. _____ (and subaward/contract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (c) of this Notice or as otherwise expressly stated in the agreement.

(b) This computer software may be—

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by Federal support service Contractors in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copied for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the agreement.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part. (End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE

Use, reproduction, or disclosure is subject to restrictions set forth in Agreement No. _____ (and subaward/contract _____, if appropriate) with _____ (name of Recipient and subrecipient/contractor).'' (End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Recipient includes the following statement with such copyright notice: ''Unpublished—rights reserved under the Copyright Laws of the United States.'' (End of clause)

Appendix B to Subpart D—Contract Provisions

All contracts awarded by a recipient, including those for amounts less than the simplified acquisition threshold, must contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts must contain a provision requiring compliance with E.O. 11246 (3 CFR, 1964–1965 Comp., p. 339), ''Equal Employment Opportunity,'' as amended by E.O. 11375 (3 CFR, 1966–1970 Comp., p. 684), ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR chapter 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. *Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subawards in excess of $2000 for construction or repair awarded by recipients and subrecipients must include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient must report all suspected or reported violations to the responsible DOE contracting officer.

3. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. *Rights to Inventions and Data Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 10 CFR 600.325 and Appendix A—Patent and Data Rights to Subpart D, Part 600.

5. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subawards of amounts in excess of $100,000 must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations must be reported to the responsible DOE contracting officer and the Regional Office of the Environmental Protection Agency (EPA).

6. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

7. *Debarment and Suspension* (E.O.s 12549 and 12689)—Contract awards that exceed the simplified acquisition threshold and certain other contract awards must not be made to parties listed on nonprocurement portion of the General Services Administration's Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs in accordance with E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise

excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold must provide the required certification regarding its exclusion status and that of its principals.

8. *Davis-Bacon Act (40 U.S.C. 276a)*—As a general rule, it is unlikely that the Davis-Bacon Act, which among other thing requires payment of prevailing wages on projects for the construction of public works, would apply to financial assistance awards. However, the presence of certain factors (*e.g.*, requirement of particular program statues; title to a construction facility resting in the Government) might necessitate a closer analysis of the award, to determine if the Davis-Bacon Act would apply in the particular factual situation presented.

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August 26, 2002

Part III

Department of Justice

Immigration and Naturalization Service

8 CFR Part 3

Board of Immigration Appeals; Procedural Reforms To Improve Case Management; Final Rule

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 3

[EOIR No. 131; AG Order No. 2609–2002]

RIN 1125–AA36

Board of Immigration Appeals: Procedural Reforms To Improve Case Management

AGENCY: Executive Office for Immigration Review, Immigration and Naturalization Service, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule revises the structure and procedures of the Board of Immigration Appeals (Board), provides for an enhanced case management procedure, and expands the number of cases referred to a single Board member for disposition. These procedures are intended to reduce delays in the review process, enable the Board to keep up with its caseload and reduce the existing backlog of cases, and allow the Board to focus more attention on those cases presenting significant issues for resolution by a three-member panel. After a transition period to implement the new procedures in order to reduce the Board's backlog of pending cases, the size of the Board will be reduced to eleven.

DATES: This final rule is effective September 25, 2002.

FOR FURTHER INFORMATION CONTACT: Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470.

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I. Introduction

The Attorney General has delegated to the Board of Immigration Appeals (Board) broad jurisdiction over appeals from decisions of the immigration judges in exclusion, deportation, and removal proceedings, bond appeals, asylum-only cases, and other specific matters, and also the authority to review certain final decisions by district directors and other officials of the Immigration and Naturalization Service (Service).[1] *See* 8 CFR part 3, subpart A. Decisions of the Board are subject to review by the Attorney General as provided in 8 CFR 3.1(h).

The Executive Office for Immigration Review (EOIR) was created by the Attorney General in 1983 to consolidate the adjudicatory process by placing the immigration judges and the Board in a single administrative unit separate and apart from the Service. 52 FR 2931 (Jan. 29, 1987). In 1987, the Attorney General also established the Office of the Chief Administrative Hearing Officer (OCAHO) within EOIR to adjudicate certain civil penalty issues. EOIR is an administrative component under the direction of the Attorney General, not a separate agency of the United States. It is, however, wholly separate from, and independent of, the Service.

A. The Problem Presented

The Attorney General is promulgating this rule to improve the adjudicatory process for the Board because, under the current process, the Board has been unable to adjudicate immigration appeals in removal proceedings effectively and efficiently. In 1992, the Board received 12,823 cases and decided 11,720 cases, including appeals from the immigration judges or the Service, and motions to reopen proceedings. At the end of FY1992, the Board had 18,054 pending cases. By 1997, the number of new cases rose to 29,913, dispositions rose to 23,099, and the pending caseload had grown to 47,295 cases. Most recently, in FY2001, the Board received 27,505 cases and decided 31,789 cases. The pending caseload on September 30, 2001, totaled 57,597 cases.

To meet this demand, the number of Board members was increased from 5 positions to 12 positions in 1995, with further incremental increases in subsequent years to a total of 23 authorized Board member positions (with 19 members and four vacancies at

[1] In this **SUPPLEMENTARY INFORMATION**, the Department uses the term ''removal,'' and appropriate variations, to encompass all forms of proceedings before the Board. Similarly, the Department refers to all aliens in proceedings as ''respondents,'' whether they would be respondents or applicants. The use of these simplified terms is for the ease of the reader and should not be construed to imply any limitations on the scope of the final rule as it applies to matters within the jurisdiction of the Board.

present). It is now apparent that this substantial enlargement—more than quadrupling the size of the Board in less than seven years—has not succeeded in addressing the problem of effective and efficient administrative adjudication, and the Department declines to continue committing more resources to support the existing process. Rather, the Department believes that amendment of the adjudicatory process is a more effective approach to facilitate the ability of the Board to adjudicate the case backlog, as well as to provide meaningful guidance for immigration judges, the Service, attorneys and accredited representatives, and respondents.

Until recently, three-member panels reviewed all cases, even cases that presented no colorable basis for appeal. However, beginning in 1999, the Attorney General instituted a mechanism for streamlining cases. *See* 64 FR 56135 (Oct. 18, 1999). The streamlining process permits a single Board member to summarily affirm the immigration judge's decision without opinion; the Chairman is authorized to designate the type of cases that could be ''streamlined.''

The streamlining process undertaken by the Board has provided the best opportunity to manage the Board's backlog. Over 58% of all new cases in 2001 were sent to be summarily decided by single Board member review through streamlining. Testimony of Kevin Rooney, Director, EOIR, Hearing before the Committee on the Judiciary, Subcommittee on Immigration and Claims, United States House of Representatives, *Operations of the Executive Office for Immigration Review (EOIR)*, 107th Cong., 2nd Sess. 23 (Feb. 6, 2002) (hereinafter ''House Judiciary Subcommittee Hearing''). That initiative, allowing certain categories of appeals to be adjudicated by a single member, was recently assessed favorably by an external auditor. Arthur Andersen & Company, *Board of Immigration Appeals (BIA) Streamlining Pilot Project Assessment Report* (Dec. 13, 2001) (hereinafter ''Streamlining Study''). Streamlining was the first disengagement from a ''one size fits all'' philosophy of using three member panels for all cases. The final rule continues that process.

The Department agrees with the fundamental assessment that the Board's use of the streamlining process has been successful, and, in this rule, expands the single-member process to be the dominant method of adjudication for the large majority of cases before the Board. In particular, this rule removes the restriction that a single Board member is limited to affirming an immigration judge's decision ''without opinion'' in those cases where an affirmance is appropriate. While such dispositions are proper in a substantial number of cases, as the Board's experience to date with the streamlining process has demonstrated, there are many other cases that may require some explanation of the Board's rationale, for example, as to why the immigration judge's decision was the proper result, or why any asserted errors were harmless or immaterial.

Under the existing streamlining procedures, any case that is not appropriate for summary affirmance without opinion must be referred to a three-member panel for disposition, even if the issues are not novel or complex. That process can be, and has been, cumbersome and time-consuming, and expends an excessive amount of resources. Where single Board members can resolve such appeals through issuance of a brief written opinion, the Board will be able to concentrate greater resources on the more complex cases that are appropriate for review by a three-member panel, and will also be able to focus greater attention on the issuance of precedent decisions that provide guidance to the immigration judges, the Service, attorneys and accredited representatives, and respondents.

Finally, under the Board's existing processes, decisions have all too often been issued long after the Notice of Appeal. Cases have routinely remained pending before the Board for more than two years, and some cases have taken more than five years to resolve. There is reason for concern that many appeals have been filed precisely to take advantage of this delay. Moreover, the quality of precedent decisions has not improved and the number of precedent decisions has remained relatively constant despite substantial changes in the law.

B. History of the Rulemaking

The Department published a proposed rule in the **Federal Register** on February 19, 2002, 67 FR 7309, proposing procedural reforms to improve case management at the Board. A 30-day public comment period ended on March 21, 2002.

In response to the proposed rulemaking, the Department received numerous comments from various nongovernmental organizations (NGOs), members of Congress, private attorneys, and other interested individuals. The Department received a total of 68 separate, timely submissions (with several NGOs submitting separate comments with attachments that were identical, and one set of NGO comments that attached lists of signatures totaling in excess of 900 individuals). Since many of the comments are similar and endorse the submissions of other commenters, the Department addresses the responses by topic rather than by referencing each specific commenter and comment. In addition, five comments were either postmarked and/or received by EOIR after the closing date for the comment period. None of the untimely submissions presented any comment that was not already addressed by an earlier commenter.

In addition, the Department has considered the record of the House Judiciary Subcommittee Hearing, *supra*, because that hearing dealt with the same subject as the rule and because of the perceptive discussion before the Subcommittee. The Department also considered the evaluation of the streamlining project in the Streamlining Study.

C. 30-Day Notice and Comment Period

Several commenters objected to the 30-day comment period for the proposed rule and requested an extension. Some of the NGOs also requested a meeting with the Department.

Notwithstanding the length of the comment period, 68 commenters submitted a variety of comments, many of which were thoughtful and extensive. The Department has reviewed and carefully considered all of the comments submitted and believes that the 30-day comment period has been sufficient. Additionally, the Department has decided against engaging in meetings with particular commenters since the written comments of all commenters as submitted are sufficient. The Department also notes that the Administrative Procedure Act (APA) provides that procedural rules may be issued without notice and opportunity for prior comment and may be effective upon publication. Rules which are arguably ''substantive'' require at least 30 days prior notice subject to certain exceptions. *See* 5 U.S.C. 553(b)(A), (d). Accordingly, the Department has fully complied with the APA, and no additional opportunity for comment is required or necessary considering the written comments already submitted. Furthermore, the 30-day comment period is in keeping with the Department's objectives, including eliminating unwarranted delay.

II. Summary of the Revised Review System

A. Description of the Department's Goals

At the time this rule was proposed, the Attorney General laid out four important objectives in the disposition of administrative immigration appeals: (1) Eliminating the current backlog of cases pending before the Board; (2) eliminating unwarranted delays in the adjudication of administrative appeals; (3) utilizing the resources of the Board more efficiently; and (4) allowing more resources to be allocated to the resolution of those cases that present difficult or controversial legal questions—cases that are most appropriate for searching appellate review and that may be appropriate for the issuance of precedent decisions. This rule reflects a variety of necessary reforms to achieve these various objectives, in order to strengthen the review process, enhance the function of the Board in resolving issues, provide effective guidance regarding the implementation of the immigration laws, and improve the timeliness of the Board's review.

The Board's decisions focus, for the most part, on the issue of whether a respondent has established eligibility for relief from removal from the United States and whether the Attorney General should affirmatively exercise discretion in the respondent's favor. Although the nature of the Board's caseload appears to be changing somewhat in light of changes in the law, the Board's caseload continues to focus heavily on relief from removal. Most respondents either concede removability before the immigration judge, or do not appeal the immigration judge's determination that the respondent is removable. Therefore, the dominant number of the Board's cases relate to the application of specific portions of the Act relating to relief from removal.

Moreover, the Department agrees with the assessment of former Board member Michael Heilman, based on his review of over 100,000 appeals over some 15 years of service on the Board, that the ''overwhelming percentage of immigration judge decisions * * * [are] legally and factually correct.'' House Judiciary Subcommittee Hearing, *supra*, at 15. The Department disagrees with a view that suggests that ''the factual records made in the majority of hearings * * * [are not] fully considered and assessed by either the Immigration Judge or the Board.'' *See Matter of A–S–*, 21 I&N Dec. 1106, 1122 (BIA 1998) (Rosenberg, dissenting). Accordingly, the final rule continues to focus on the primacy of immigration judges as factfinders and determiners of the cases before them. The role of the Board is to identify clear errors of fact or errors of law in decisions under review, to provide guidance and direction to the immigration judges, and to issue precedential interpretations as an appellate body, not to serve as a second-tier trier of fact.

In this adjudicatory process, the Department employs Board members to decide the merits of cases brought before the Board. That decisional process includes not only the individual case, but also the function of setting precedent to guide the immigration judges, the Service, attorneys and accredited representatives, and respondents. Historically, as the Attorney General's delegate, the Board's precedent decisions have been accorded appropriate deference under the Supreme Court's decisions in *Chevron* v. *NRDC*, 467 U.S. 837 (1984) (deference due agency interpretation of statutes within delegated authority); *INS* v. *Aguirre-Aguirre*, 526 U.S. 415, 425 (1999) (Attorney General, and hence the Board, accorded *Chevron* deference); *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 448–449 (1987) (same), as the primary interpreter of the Immigration and Nationality Act. The Attorney General's ultimate authority to decide the cases presented to the Board through his delegation has not changed over the years, although it has been exercised with varying frequency at different times of the Board's history.

This precedent setting function recognizes that novel issues arise each and every time that the Act, or the regulations, change; complex issues arise because of the interrelationship of multiple provisions of law; and repetitive issues arise before different immigration judges because of the national nature of the immigration process. All of the participants in the immigration adjudication process deserve concise and useful guidance on how these novel, complex, and repetitive issues are best resolved. The rule of law guides Board members' adjudications; the Act and regulations provide the context for that adjudication.

B. Summary of the Provisions of the Rule

The Attorney General has determined that the rights of all respondents are better protected by restructuring the appeals process so that three-member panels may focus their attention on writing quality precedent-setting decisions, correcting clear errors of fact and interpreting the law, and providing guidance regarding the standards for the exercise of discretion, rather than reviewing appeals that involve routine questions of law or fact or that present no substantial basis for reversing the decision under appeal. In this regard, the Board is delegated authority to review questions of fact to determine whether they are clearly erroneous; all other questions, whether of law or discretion, may be reviewed by the Board *de novo*. A key element of this reform is that the Chairman will establish, and be responsible for, a case management screening system to review all incoming appeals and to provide for prompt and appropriate disposition—by a three-member panel in those instances where the merits of the case presented to the Board call for review by a three-member panel under § 3.1(e)(6) of the rule, and by a single Board member in every other case that does not meet those standards.

The final rule establishes the primacy of the streamlining system for the majority of cases. These do not present novel or complex issues. A single Board member may issue a brief order where appropriate to affirm the decision of the immigration judge or dismiss the appeal on procedural grounds. A single Board member may issue a short order that explicates the reasons, for example, why an immigration judge's findings of fact are not clearly erroneous, or why the immigration judge's exercise of discretion was appropriate, or why the record should be remanded to the immigration judge for further proceedings.

Under specific circumstances, the single Board member may refer the record for decision by a three-member panel. These more complex cases deserve closer attention. The Board's *en banc* process remains as currently devised to provide interpretation of the Act through precedent decisions, whether through affirmation of a decision of a three-member panel or through review by the entire Board. Both the three-member panel and the *en banc* Board should be used to develop concise interpretive guidance on the meaning of the Act and regulations. Thus, the Department expects the Board to be able to provide more precedential guidance to the immigration judges, the Service, attorneys and accredited representatives, and respondents.

This process will resolve simple cases efficiently while reserving the Board's limited resources for more complex cases and the development of precedent to guide the immigration judges and the Service. The Department believes that this allocation of resources will better serve the respondents, the Service, the

public, and the administration of justice.

The final rule establishes the primacy of the immigration judges as factfinders by utilizing a clearly erroneous standard of review for all determinations of fact. The Board's historic rule, explained below, of not considering new evidence on appeal, is codified in this rule. Factfinding that may be required will be conducted by the immigration judge on remand.

However, the rule retains *de novo* review both for questions of law and for questions of judgment (concerning whether to favorably exercise discretion in light of the facts and the applicable standards governing the exercise of such discretion).

The rule contains a number of the time limits of the proposed rule. However, recognizing the concern of a number of commenters, the Department has decided to retain the current sequential briefing schedule for non-detained cases, but with shorter time limits. Under the final rule, detained cases will be briefed concurrently on a 21-day calendar and non-detained cases will be briefed consecutively on a 21-day calendar. Moreover, the Chairman is directed to undertake improvements in the transcription process to assist in the briefing process.

Finally, the rule retains the reduction to 11 Board members after a transition period. The Department is unpersuaded by the arguments received, particularly in light of the objective evidence, that the reduction to 11 Board members should be changed. The Board should, under this rule, be able to reduce its backlog and keep current, as well as conduct the *en banc* proceedings necessary to provide precedent guidance to the immigration community. Given the scope of these changes to the Board's structure and revisions to current procedures, the Department will continuously review the effectiveness of the rule in achieving the aforementioned Departmental goals.

III. Comments on the Proposed Rule

The comments received on the proposed rule can generally be grouped into broad categories. In this analysis, we divide the comments and further discussion of the rule into specific subparts in order to provide a cohesive overview of the comments, the changes made in light of the comments, and the final rule. Many of the issues overlap and commenters treated the same issues in different ways. Accordingly, while all comments have been carefully reviewed, it may not be apparent from this discussion that a particular version of a comment has been directly addressed. To the extent practical, the Department has attempted to address the comments received as specifically as possible, but the duplication of comments, either by filing the same comment multiple times, or making minor adjustments in different submissions, makes it impossible to address each specific comment in a structured response.

The Department received widely divergent comments that both supported and opposed the proposed rule. The Department appreciates the contributions of all the individuals and groups who submitted comments. The Department has given careful consideration to all of the comments received on the proposed rule, as indicated in the following discussion. The thoughtfulness of the public comments has contributed greatly to improvement in the final rule. As discussed below, the comments also included ideas and specific proposals that were beyond the scope of the proposed rule.

Overall, most of the commenters supported at least some of the Department's objectives, especially the elimination of unwarranted delays and the current backlog of cases pending before the Board. As numerous commenters noted, languishing appeals do not serve the interests of justice. There are divergent views, though, regarding how these objectives should be accomplished. Some commenters generally supported the proposed rule, while many other commenters strongly opposed many or most of the specific provisions of the proposed rule.

A. General Due Process Issues

Some commenters argued in a general way that the proposed rule violates due process or that it is otherwise bad procedure.

Initially, the Department notes that the due process clause of the Constitution does not confer a right to appeal, even in criminal prosecutions. *See Ross* v. *Moffitt,* 417 U.S. 600, 611 (1974) (''[W]hile no one would agree that the State may simply dispense with the trial stage of proceedings without a criminal defendant's consent, it is clear that the State need not provide any appeal at all.''); *Griffin* v. *Illinois*, 351 U.S. 12, 18 (1956) (plurality opinion) (noting that ''a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all'') (citation omitted). Much as the Congress may dispense with the inferior federal courts by the same legislative stroke that created them, the Attorney General could dispense with the appellate review process in immigration proceedings, *i.e.*, the Board of Immigration Appeals.

Some of the commenters argued specifically that the proposed rule violates a respondent's right to due process under the Supreme Court's balancing in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976). The Department agrees that some form of hearing is appropriate and beneficial under the circumstances. *See Wolff* v. *McDonnell*, 418 U.S. 539, 557–58 (1974). However, due process is not ''a technical conception with a fixed content unrelated to time, place and circumstances,'' *Cafeteria and Restaurant Workers* v. *McElroy*, 367 U.S. 886, 895 (1961), but is ''flexible and calls for such procedural protections as the particular situation demands.'' *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972).

Assuming that *Mathews* is the appropriate touchstone, the process that is due is determined by balancing the nature of the individual's interest, the fairness and reliability of the procedures, and the nature of the governmental interest. Many of the commenters focused on the nature of the interest of the individual, particularly in asylum and related cases where the respondents assert that the respondent will be persecuted, his or her life or freedom will be threatened, or that he or she will be tortured, if returned to his or her country of origin.

1. The Respondent's Interest in the Individual Proceeding

First, and foremost, the vast majority of issues presented on appeal to the Board involve applications for relief from removal, not removal itself. Accordingly, the process that is due is not a process related to the government's efforts to remove the respondent from the United States. The process that is due is process relating to the respondent's request for amelioration of removal.

Those cases where the respondent has a basis to contest a finding of removability would appear to be more amenable to review by a three-member panel under § 3.1(e)(6). Removability, and whether the Service has established clear and convincing evidence to support the charge, when disputed, may be more likely to involve novel or complex factual or legal issues because of the multitude of governing statutory provisions, such as divisible State criminal laws. Whether a single-member or three-member review is more efficacious is a question best decided by the Board under the standards of this rule.

In most cases, the issues before the Board relate to whether the respondent

has established eligibility for an application for relief from removal, or whether the Attorney General should exercise discretion in the respondent's favor. In these cases, the Service has established the government's interest in removal of the respondent. The burden of proof in these cases shifts to the respondent to establish eligibility for relief from removal and, in most cases, that the respondent deserves a favorable exercise of the Attorney General's discretion. The process due under the Constitution in determining removability is substantially higher than the process required by the Constitution in determining whether to grant relief from such an order of removal.

2. The Government's Interest in the Immigration Adjudication Process

The interest of the government in effective and efficient adjudication of immigration matters, moreover, is substantially higher than an individual respondent's interest in his or her own proceeding. Congress is granted plenary authority under the Constitution in immigration matters and Congress has delegated broad authority to the Attorney General to administer the immigration laws. The authority is not merely one involving a discrete set of benefits and penalties, but implicates, in conjunction with the Secretary of State, the vast external realm of foreign relations. Not only does the removal process utilize reports and profiles of country conditions provided by the Department of State, the actual removal process implicates the relationships of the United States with other countries. *INS* v. *Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *INS* v. *Abudu*, 485 U.S. 94, 110 (1988). In this context, the Attorney General has substantially more authority to structure the administrative adjudicatory process than most administrative processes. Indeed, the Department questions whether *Mathews* is the appropriate touchstone in light of the unique nature of the Act as the tool for managing the intersection of foreign and domestic interests regarding aliens. Congress has provided almost no parameters for the exercise of the Attorney General's broad authority to manage immigration adjudications, and to the extent it has done so, has limited discretionary procedure available to respondents. *See, e.g., INS* v. *Rios-Pineda*, 471 U.S. 444, 446 (1985) (Attorney General's creation of motion to reopen, and delegation to the Board, by regulation), 8 U.S.C. 1229(c)(6) (motions to reopen in statutory removal proceedings specified by statute in 1996). Accordingly, more deference to the Attorney General is appropriate. *Cf. Weiss* v. *United States*, 510 U.S. 163, 176–79 (1994).

3. Balancing of Interests in the Adjudicatory Process

Some commenters expressed concern that the expansion of the streamlining initiative, with its emphasis on single-member review of cases, will result in violations of the due process rights of respondents-appellants. Some commenters contended that three-member reviews of appeals provide more protection for due process rights than single-member reviews. The primary concern of the comments is a perceived inadequacy in the ability of a single Board member to decide an appeal in a way that protects the due process rights of appellants while maintaining administrative efficiency.

The Department finds that single-member review under the final rule is both fair and reliable as a means of resolving the vast majority of non-controversial cases, while reserving three-member review for the much smaller number of cases in which there is a substantial factual or legal basis for contesting removability or in which an application for relief presents complex issues of law or fact. In this context, the Attorney General is free to tailor the scope and procedures of administrative review of immigration matters as a matter of discretion. *Maka* v. *INS*, 904 F.2d 1351 (9th Cir. 1990); *see also Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 524–25 (1978), *quoting FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 143 (1940) (''administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties' ''). *See generally* J. McKenna, L. Hooper & M. Clark, Federal Judicial Center, *Case Management Procedures in the Federal Courts of Appeals* (2000) (comparative compendium of innovations in circuit court case management systems).

Each case varies according to the needs presented by the respondent and the issues.[2] In the typical case that reaches the appeal stage, the respondent makes an initial appearance and is advised of his or her rights, including the right to be represented by counsel or an accredited representative at no cost to the government, the right to inspect all evidence presented, and the right to present evidence and testimony, by the respondent and other witnesses, in the language the respondent understands. Pleadings are usually taken after a continuance, with a further hearing being held to determine whether the alien is deportable or inadmissible, if the respondent contests removability. If the immigration judge finds that the respondent is removable, the immigration judge informs the respondent of possible forms of relief, and further continuances may be granted to allow time for the respondent to prepare applications for relief and acquire additional evidence. A call-up date is established for filing the application and a deadline is set for filing additional evidence. Only then is the respondent expected to present his case for relief from removal. All of these proceedings are on the record and recorded verbatim. A transcript of proceedings has been prepared in all appeals, including any oral decision by the immigration judge. *See, e.g.*, 8 CFR 240.3–240.13 (procedure in removal cases). Accordingly, by the time a case reaches the Board on appeal, many, if not most, respondents have already had several hearings on the record before the immigration judge, been explained their rights, and been given more than one opportunity to ask questions and raise issues.

On appeal, the respondent is required under existing regulations to file a statement indicating the grounds for appeal, and has the right to file a more detailed brief. On this record, single Board members are well-equipped both to determine the legal quality and sufficiency of an immigration judge's decision and to determine if the appeal qualifies under 8 CFR 3.1(e)(6) for referral to a three-member panel. Each appeal will be fully reviewed and decided by the Board member within the law and regulations, precedent decisions, and federal court decisions. The Department is not persuaded that a single Board member review gives any less due process to an respondent's appeal that involves routine legal and factual bases than would a three-member panel considering the same appeal.

B. General Comments Relating to the Role and Independence of the Board

Some commenters argued that the provisions of this rule, either individually or in combination, would adversely affect the fairness or effectiveness of the Board's adjudications by limiting the independence and perceived impartiality of the Board. Some commenters criticized the provision in § 3.1(a)(1) of the proposed rule that the

[2] In recognition of the differences between appeals from the decision of an immigration judge and appeals from decisions by a district director or other Service official, this rule retains the *de novo* standard of review for appeals in the latter case, as discussed below.

Board members act as the ''delegates'' of the Attorney General in adjudicating appeals, as well as the language in § 3.1(d)(1) of the proposed rule making clear that, in exercising their independent judgment and discretion in cases coming before them, the Board members are subject to the Act and the implementing regulations, and the direction of the Attorney General.

1. The Attorney General's Authority

These arguments misapprehend the nature of the Board and the rule. The Board is an administrative body within the Department, and it is well within the Attorney General's discretion to develop the management and procedural reforms provided in this rule.[3] As one court has noted, the Attorney General could dispense with Board review entirely and delegate his power to the immigration judges, or could give the Board discretion to choose which cases to review. *See Guentchev* v. *INS,* 77 F.3d 1036, 1037 (7th Cir. 1996).

In *Nash* v. *Bowen,* 869 F.2d 675 (2nd Cir. 1989), the court of appeals addressed similar concerns by an administrative law judge (ALJ) challenging efforts by the Social Security Administration (SSA) to improve the ALJ's quality and efficiency. In an effort to reduce a backlog of 100,000 cases, the SSA instituted a series of reforms that included a monthly production quota, an appellate system or peer review program, and a reversal rate policy. The court rejected challenges to each of these reforms, explaining that ''those concerns are more appropriately addressed by Congress or by courts through the usual channels of judicial review in Social Security cases. The bottom line in this case is that it was entirely within the Secretary's discretion to adopt reasonable administrative measures in order to improve the decision making process.'' *Id.* at 681 (citations omitted). Similarly, the Attorney General has promulgated a final rule within his discretion intended to reduce delays in the review process, enable the Board to keep up with its caseload and reduce the existing backlog of cases, and allow the Board to focus more attention on those cases presenting significant issues for resolution by a three-member panel. The Department, in this final rule, does not go so far as did the SSA, nor does it intend to impinge on the intellectual independence of its adjudicators.

2. Independence of Administrative Adjudicators

Several commenters argued that the independence and impartiality of immigration judges and immigration adjudicators must be affirmed. They asserted that the proposed rule would adversely affect the independence of the Board. Some of these same commenters expressed the view that immigration courts should be independent from the Department.

These comments misapprehend the distinction between ''independence'' and ''fundamental fairness.'' The Constitution requires fundamental fairness, not that the adjudicator be ''independent'' of policy direction or management by the Executive. The Department agrees with the principle of independence of adjudicators within the individual adjudications, but notes that freedom to decide cases under the law and regulations should not be confused with managing the caseload and setting standards for review. The case management process that is established and delegated by the Attorney General to the Director of EOIR and the Chairman deals with management of the workload, not professional judgment in adjudicating any individual case. Similarly, establishing standards for review by rule is well within the Attorney General's authority to oversee and manage the Board; again, it is not related to the Board's professional judgment in adjudicating any individual case. The key to understanding here is that the Department employs Board members to make professional adjudicatory judgments in individual cases and to establish precedent subject to further review, but it is within the Attorney General's authority to manage the caseload and to set policy.

The authority of the Attorney General to establish standards for the Board's adjudications, and to review the decisions of the Board, is well established. ''[T]he Board acts on the Attorney General's behalf rather than as an independent body. The relationship between the Board and the Attorney General thus is analogous to an employee and his superior rather than to the relationship between an administrative agency and a reviewing court.'' *Matter of Hernandez-Casillas,* 20 I&N Dec. 262, 289 n.9 (BIA 1990, A.G. 1991).

The final rule does not obstruct the Board's judgment. As the Supreme Court has noted, ''The Board is appointed by the Attorney General, serves at his pleasure, and operates under regulations [that provided] that ''in considering and determining * * * appeals, the Board * * * shall exercise such discretion and power conferred upon the Attorney General by law as is appropriate and necessary for the disposition of the case. The decision of the Board * * * shall be final except in those cases reviewed by the Attorney General.'' *United States ex rel. Accardi* v. *Shaughnessy,* 347 U.S. 260, 266 (1954). In that case, the Court initially found sufficient cause for a further hearing on whether the Attorney General had interfered with the authority that he had delegated to the Board, and concluded: ''[A]s long as the regulations remain operative, the Attorney General denies himself the right to sidestep the Board or dictate its decision in any manner.'' *Id.,* at 267. However, after a formal hearing on the petition for habeas corpus and further review by the court of appeals, the Court ultimately concluded that no such violation of the regulation, adversely affecting the respondent, had occurred. *Shaughnessy* v. *United States ex rel. Accardi,* 349 U.S. 280 (1955).

This case is important to understanding the final rule for two distinct reasons. First, the final rule amends the very rule under consideration by the Supreme Court in *Accardi* to structure the Board's procedures and scope of review in all cases. This is precisely the manner by which the law requires such changes to be made: amendment of the Board's regulations. Second, no portion of the final rule relates to any specific case or alien, or decides any such case, or implicates any alien. The actions here taken are those prescribed by the Court in *Accardi.*

3. Attorney General Opinions and Written Orders

Several commenters objected to the new language in § 3.1(d)(3)(i) of the proposed rule that the Board is subject to legal opinions and written orders issued by the Attorney General, in addition to the Attorney General's review of individual Board decisions. The Department notes that the proposed rule, in this respect, is virtually identical to the proposed rule published by former Attorney General Janet Reno, and retains this provision without change. 65 FR 81435, 81437 (Dec. 26, 2000).

The Attorney General is the principal legal advisor to the President and the Executive Branch. In particular, section 103(a) of the Immigration and Nationality Act (''Act''), 8 U.S.C.

[3] The Board was created by the Attorney General in 1940, after a transfer of functions from the Department of Labor. Reorg. Plan V (May 22, 1940); 3 CFR Comp. 1940, Supp. tit.3, 336. The Board is not a statutory body; it was created wholly by the Attorney General from the functions transferred. A.G. Order 3888, 5 FR 2454 (July 1, 1940); *see Matter of L-,* 1 I&N Dec. 1 (BIA; A.G. 1940).

1103(a), provides that the opinion of the Attorney General on legal issues is controlling. In addition, the role of the Department's Office of Legal Counsel in issuing legal opinions, on behalf of the Attorney General, that are binding on the Executive Branch, is well established. *See e.g., Secretary of the Interior* v. *California,* 464 U.S. 312, 320–21 n.6 (1984); *Sea-Land Service, Inc.* v. *Department of Transportation,* 137 F.3d 640, 643 (D.C. Cir. 1998).

This rule makes clear that the Attorney General need not be strictly limited to the issuance of legal opinions and the direct review of individual Board opinions, and that the Attorney General may provide direction to the Board through written orders.[4] It may be appropriate for the Board to take account of the policy goals or priorities established by the Attorney General. Such actions by the Attorney General do not encroach on the decisional independence of Board members in particular cases before them.

4. The Effect of Regulations

Although not specifically raised in the public comments, the Department also notes that the language of § 3.1(d)(1) of the proposed rule states that the Board will resolve the issues before it in a manner that is ''consistent with the Act and the regulations.'' This language clarifies the role of regulations in administrative adjudications under the Act.

The Board has long recognized that it is bound by the provisions of the Act, as well as by regulations adopted by the Attorney General. *See Matter of Ponce de Leon-Ruiz,* 21 I&N Dec. 154, 158 (BIA 1996) (''The Board is bound to uphold agency regulations * * * A regulation promulgated by the Attorney General has the force and effect of law as to this Board and Immigration Judges. Regulations in effect have the force and effect of law.'') (citations omitted).

The immigration regulations, however, include not only those rules adopted personally by the Attorney General, but also substantive and procedural rules duly promulgated by the Commissioner of the Service, under an express delegation of rulemaking authority from Congress to the Attorney General and, in turn, from the Attorney General to the Commissioner. *See* 8 U.S.C. 1103; 8 CFR 2.1. The Department fully recognizes and reiterates, of course, that the Board and the immigration judges are independent of the Service (although some court opinions contain language that appears to blur this key distinction). For this reason, the Attorney General, and not the Commissioner, has consistently promulgated the regulations that govern the organization, procedures, or powers of the Board and the immigration judges and the conduct of immigration proceedings. *See, e.g.*, 8 CFR parts 3, 236, 240. Thus, for example, standards governing the availability of discretionary relief in immigration proceedings are properly adopted by the Attorney General, either by rule, *e.g.*, 8 CFR 240.58, or by written decision, *e.g.*, *Matter of Jean*, 23 I&N Dec. 373, 383–85 (A.G. 2002). *See generally, Lopez* v. *Davis,* 531 U.S. 230, 238–42 (2001).

The authority delegated to the Commissioner to promulgate substantive or ''legislative'' rules does properly extend, however, to the interpretation of the general provisions of the Act. A regulation adopted pursuant to delegated statutory authority and pursuant to applicable rulemaking requirements under the Administrative Procedure Act has the ''force and effect of law'' as a substantive or legislative rule. The existing language in section 3.1(d)(1), which defines the broad general powers of the Board, specifies that the Board's authority in cases before it is ''[s]ubject to any specific limitation prescribed by this chapter [constituting 8 CFR parts 1–499].'' Necessarily, such limitations would include a regulatory provision that has given a specific legal interpretation to a provision of the Act. The language of this rule makes explicit what was implicit in the current version of § 3.1.

A fundamental premise of the immigration enforcement process must be that the substantive regulations codified in title 8 of the Code of Federal Regulations are binding in all administrative settings, and this specifically includes substantive regulations interpreting and applying the provisions of the Act. Of course, the Service and the Board are bound by the decisions of the federal courts, *see, e.g., Matter of Anselmo,* 20 I&N Dec. 25 (BIA 1989), but even the federal courts owe deference to authoritative agency interpretations of the substantive provisions of the Act, within the limits recognized by the Supreme Court. *Chevron* v. *NRDC, supra* (deference due agency's interpretation of statutes delegated for administration); *INS* v. *Aguirre-Aguirre, supra* (deference due administrative interpretations of the Act); *cf., Fisher* v. *INS,* 79 F.3d 955, 961 (9th Cir. 1996) (*en banc*) (same; different standard). In the absence of such controlling judicial interpretations, the respondents, the immigration judges, the Service, and the public at large should not be left to wonder whether the regulations interpreting and applying the substantive provisions of the Act will be binding in administrative proceedings under the Act. *Cf. Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153, 156 (BIA 2001).

Such regulations themselves, of course, are susceptible to interpretation and application of their regulatory language by the immigration judges and the Board. However, if a substantive rule clearly defines a statutory term, or reflects a legal interpretation of the statutory provisions, then the position set forth in the rule will govern both the actions of the Service and the adjudication of immigration proceedings before the immigration judges and the Board. The Department recognizes that the Board members, under § 3.1(a)(1) in the current regulations and under § 3.1(d)(1)(ii) as revised, ''shall exercise their independent judgment and discretion in considering and determining the cases coming before the Board.'' But such judgment and discretion must necessarily be exercised subject to the applicable standards. In turn, legislative rules that interpret and apply the provisions of the Act, and that are promulgated under rulemaking authority expressly delegated by the Attorney General have the ''force and effect of law'' and accordingly are part of the governing law. Accordingly, the Board members properly have decisional independence and discretion in interpreting and applying the law to the facts of particular cases and in exercising judgment in matters of discretionary action, but they are not independent from the governing regulatory standards that are otherwise binding and effective.[5]

[4] The Board has expressly acknowledged, for example, that the Attorney General's determination of a legal issue in interpreting the Act is binding on the Board and the immigration judges, even if that determination is reflected in the **SUPPLEMENTARY INFORMATION** to a rule rather than in the text of a rule or in an Attorney General or OLC Opinion. *See Matter of A–A–,* 20 I&N Dec. 492, 502 (BIA 1992): 'In the supplementary information published with the regulation, the Attorney General made clear that ''under the prevailing intrepretation, the phrase ''shall apply to admissions'' as used in section 511(b) of the [1990 Act] refers to all applications for relief pursuant to section 212(c) of the Act submitted after November 29, 1990, whether at a port of entry or in subsequent proceedings before a district director or Immigration Judge.'' 56 FR 50,033–34 (1991) (**SUPPLEMENTARY INFORMATION**). The Attorney General has thereby determined that the statutory bar to section 212(c) relief shall apply only to those applications submitted after November 29, 1990. We are therefore bound by his determination in this regard.''

[5] In any case where the Board believes that a particular regulation may conflict with the language of the Act, the Board can proceed as it did in *Matter*

C. Expanded Single-Member Review

Many of the key features of the final rule are codified in the new provisions of 8 CFR 3.1(e), which directs the Chairman to establish a case management system with specific new standards for the efficient and expeditious resolution of all appeals coming before the Board. One of the primary components of the case management system is expanded single-member review. The current streamlining process permits a single Board member to affirm the decision of the immigration judge without opinion. 8 CFR 3.1(a)(7). The final rule retains this current practice intact, but expands upon this authority to permit a single Board member to affirm, modify, or remand the immigration judge's decision with a short explanation. The final rule also provides that the reviewing Board member may refer a case for disposition by a three-member panel only if the Board member determines, after a review of the case on the merits, that it satisfies one of the standards prescribed in § 3.1(e)(6).

1. General Comments on the Adequacy of Single-Member Review

Many of the comments expressed the concern that single-member review of decisions by the immigration judges will mean that procedural failures in the record will be overlooked—that a single Board member's review will somehow be ''cursory'' or will give a ''boilerplate stamp of approval'' to the decision on appeal. Some commenters asserted that the single-member decisions that will be issued under this rule will be poorly considered and will not provide a sufficient basis for further review by district and circuit courts.

The Department believes that the Board's experience with the streamlining initiative has proven that fears of procedural failures or substantive errors being overlooked are not well founded. Even single-member review is a multi-stage process involving review by Board staff and by a Board member assigned to the screening panel. Individual Board members are well-equipped to determine both the legal quality and sufficiency of an immigration judge's decision, and to determine if the appeal qualifies for referral to a three-member panel under § 3.1(e)(6). Each appeal will be fully reviewed and decided by the Board member, within the guidelines of current Board practice and legal precedent. Under the standards of § 3.1(e)(4) and (5) of this rule, it is only if the Board member finds that the record is complete and legally adequate, and the Board member agrees that the decision below is legally correct, that the Board member may affirm the decision of the immigration judge, either as a summary affirmance without opinion or in a short opinion.

2. Summary Dismissals

The proposed rule included a provision that the screening panel, in those cases not summarily dismissed, would order the preparation of a transcript and set a briefing schedule. This provision presumed a review by the screening panel at the outset of the process based solely on the immigration judge's order and the Notice of Appeal to determine such fundamental matters as whether the appeal was timely filed, whether the Board had jurisdiction, or whether the Notice of Appeal facially provided sufficient reasons for an appeal to be lodged. Some commenters did not seem to grasp the distinction between these core ''adjudicability'' issues that could be dismissed without the preparation of the transcript and briefs, and those issues, such as whether a brief was filed, that inevitably must be decided only upon the completed record. Although this lack of understanding appears to the Department to require this further explanation, it does not appear to warrant any change in the rule.

3. Summary Affirmances Under Streamlining

Many commenters expressed concerns about the general idea of authorizing a single Board member to issue a summary affirmance of an immigration judge's decision. A few commenters argued that decisions affirming an immigration judge's decision without further elaboration would not be considered by the public to be as legitimate as a more fully developed written decision. Other commenters suggested that such an affirmance would hinder a respondent's understanding of the rationale behind the decision. Some commenters also suggested that courts of appeals will return many of the single-member and summary affirmance decisions for a fuller written decision, thus negating any advances made in diminishing the Board's backlog and arriving at decisions more quickly.

These concerns fail to consider the Board's experience under the existing streamlining process, which, since 1999, has authorized single Board members to summarily affirm a decision without opinion, in appropriate cases. Similar objections were raised regarding summary affirmance when the Department first proposed the ''streamlining'' initiative in 1998, *see* 64 FR 56135, 56137 (Oct. 18, 1999), but have not been borne out by the Board's experience since then.

The streamlining initiative allowed for summary decisions by a single Board member in certain limited situations. In FY2001, the Board issued 15,372 decisions under the streamlining initiative, or approximately one-half of all decisions. The Streamlining Study has not noted an appreciable difference in the quality of the decisionmaking based on the experience of the participants. Although a complex study of the results of streamlining, by following a specific set of streamlined cases through judicial review, has been proposed, such a theoretically ''objective'' evaluation could take years. The Department may or may not undertake such a study, but the demands for fair, effective, and efficient adjudication of present cases do not permit the luxury of waiting for the results of such a study. Streamlining Study, 10–11 and Appendix C. Summary affirmances have not yet resulted in an overwhelming number of remands from Federal district and appeals courts. *See* 64 FR at 56138 (Oct. 18, 1999). Of the 23,224 streamlined decisions between 1999 and 2001, only 0.7% have resulted in judicial remands or reversals. Although this is not the full study envisioned by the Streamlining Report, cited above, it is, together with anecdotal evidence, sufficient evidence for the Department to proceed with an expansion of the single-member review process. The Department has concluded that streamlining has proven to be an effective procedure for managing an ever-increasing caseload and will significantly assist and promote fair and expeditious review of all pending and incoming appeals while maintaining a respondent's rights to a reasoned administrative decision.

Furthermore, the Department has determined that, because a summary affirmance without opinion concludes that any error in the immigration judge's decision was harmless or immaterial, there is no basis for the contention that a respondent will be unable to discern the rationale behind a decision. The immigration judge's order provides the rationale, and thus the legitimacy, for the Board's summary affirmance. The Department, in this rule, agrees with the succinct summary of one court of appeals that, ''if the Board's view is that

of Ponce de Leon by certifying the case to the Attorney General for consideration. In that case, the Attorney General ultimately dismissed the certification in light of an intervening amendment to the regulation at issue, 8 CFR 212.3(f)(2). *See Ponce de Leon,* 21 I&N Dec. at 184 (A.G. 1997); 61 FR 59824 (Nov. 25, 1996).

the [immigration judge] 'got it right,' the law does not demand that the Board go through the idle motions of dressing the [immigration judge's] findings in its own prose.'' *Chen* v. *INS,* 87 F.3d 5, 7 (1st Cir. 1996). The Department does not believe that there is any basis for believing that providing a regurgitation of the same facts and legal reasoning, albeit with citation to more legal precedent, will be beneficial to the respondent or the reviewing courts in most cases. Section 3.1(e)(4) of the final rule therefore continues to authorize a single Board member to issue an order with the same effect, an order affirming the immigration judge without opinion.

Moreover, Service appeals are equally subject to summary affirmance. Although the Service appeals few immigration judge decisions terminating proceedings or granting relief from removal, there is no distinction between those appeals and appeals filed by respondents.

4. Other Dispositions by a Single Board Member—Affirmances, Modifications, and Remands

Some commenters took the position that single Board members should not be permitted to affirm, modify, or remand the decision of an immigration judge in a short opinion. They argue that, if there are factual errors, a three-member panel should consider the entire record. This rule retains the existing ''summary affirmance without opinion'' process intact, but also authorizes single Board members to resolve other cases by issuance of a short order explaining the relevant issues in the case.

At the outset, it should be noted that the Board has been allowed to summarily affirm decisions of the immigration judge ''for the reasons stated therein'' for many years before the streamlining initiative was begun. The Board was never prohibited from doing so. In reality, some panels of the Board have done so in the past with great success.

However, there may be a number of instances where the reviewing Board member believes that the result of the case under review is essentially correct, but requires some further explanation or discussion in the disposition of the appeal. For example, an immigration judge may not have explained his or her evaluation of the facts or the law in the manner in which the respondent believes was appropriate. However, in those instances where there is no error that affects the outcome of the proceedings, there is also no point in expending substantial time and effort to ''correct'' such a record. Rather, a single Board member is authorized to issue a short order affirming the immigration judge's decision, but adding an additional explanation of discussion of the case in that Board member's view.[6]

As discussed below, § 3.1(e)(5) also authorizes a single Board member to enter a decision that modifies the immigration judge's decision or remands the case to the immigration judge in any case that does not meet the standards for three-member panel review under § 3.1(e)(6). Such an opinion may properly begin with the opinion of the immigration judge and make specific modifications to that opinion. For example, a single-member opinion may state that the Board member ''adopts the opinion of the immigration judge, except to note that'' a particular issue is governed by intervening precedent, and to explain that the immigration judge's opinion would still be correct in light of the intervening precedent. Accordingly, such an opinion would conclude that the ''immigration judge's opinion is affirmed for the reasons set forth therein and as set forth in this opinion.'' In this instance, the parties and any reviewing court would be able to look to the combination of the immigration judge's opinion and the single-member decision to understand the conclusions reached in the adjudication.

Similarly, the single-member review may result in a determination that the immigration judge clearly erred over a specific fact, but that the error did not prejudice the appealing party and was harmless. For example, an immigration judge might determine that the respondent had entered on a specific date based on conflicting evidence, but fail to note in the oral decision that a specific official government document indicated a slightly different date, such as a traffic violation in the United States some days prior to the date determined by the immigration judge. In this case, if neither date would satisfy a requirement for a period of continuous physical presence in the United States, the finding of fact might be both clearly erroneous and harmless. However, if the existence of the documented infraction, presented by the respondent, convinced the Board member that the respondent was being candid and warranted a favorable exercise of discretion in voluntary departure, which the immigration judge had also denied as a matter of discretion, the single Board member would have the option of modifying the order to grant voluntary departure.

Finally, a single Board member would be authorized to grant a motion to remand the record for specific factfinding if the respondent provided new evidence that was not previously available under the standards of the regulations. Whether agreed upon by all of the parties or contested, this single member review process permits the more expeditious disposition of cases than a full three-member panel review. In each of these cases, the Department has no reason to believe that such decisions would be any less efficacious than the current decisions of the Board resulting from three-member panel review.

The Department has noted that some language in this section and § 3.1(d)(2)(ii) could cause confusion over the finality of a decision by a single member. Accordingly, the language in these two provisions has been revised for clarity, and the provisions relating to finality of the Board's decisions have been consolidated in § 3.1(d)(6), as discussed in part I below.

However, the provision authorizing a single Board member to affirm, modify, or remand a decision must be understood in light of the standards for three-member panel review. That is, this authority will apply only if the Board member has already determined, based on a review of the appeal on the merits, that the case should not be referred to

[6] Individual panels at the Board have differed on the content of Board decisions in non-precedent cases over time. Some panels have included an introduction, a statement of issues present in the record, a full restatement of the proceedings before the immigration judge, a complete recitation of the established and controverted facts presented in the record, analysis of the applicable law, and the panel's conclusions and order. This is, in effect, *de novo* review of every case, notwithstanding the complexity of the issues presented. For cases in which there are no substantial factual or legal issues, this commitment of resources cannot be justified in light of the Board's current situation.

Other panels, more recently, have developed orders that include an adoption of the immigration judge's decision, only a short statement of the issues presented on appeal, with a statement of relevant facts and controlling precedent, and the order. Typically, these decisions are to be read in conjunction with the immigration judge's decision. The Department believes that this more limited appellate review process, to determine whether the immigration judge has erred, is more appropriate for the majority of cases.

The different approaches can also be understood on the basis of the way in which the decisions are reviewed. In the first example, a full *de novo* review results in a court of appeals review of the Board decision and does not extend to the immigration judge's decision. In the second example, a ''clearly erroneous'' standards will allow the courts of appeals to review the immigration judge's fact findings in conjunction with the Board's legal findings, thereby obviating the need for lengthy Board decisions that do little more than reiterate facts. The short orders of the Board already effectively utilize this methodology. This process adds nothing to the burden of the court of appeals on review and is a substantially more efficient allocation of resources within the administrative adjudicatory process.

a three-member panel—for example, because of factual determinations by the immigration judge that appear to be clearly erroneous, because the decision is not in conformity with applicable precedents, or because of the need to review the dispositions of similar issues by various immigration judges or to establish precedential guidance on matters of law or procedure.

5. Reversals and Terminations of Proceedings

Several commenters raised issues regarding the propriety of a summary decision by a single Board member that reverses the decision of the immigration judge, with some suggesting that a single Board member should not be able to reverse a decision granting relief or terminating proceedings, while others suggested that a single Board member should not be able to reverse a decision denying relief.

In general, if the single Board member believes that the decision of an immigration judge should be reversed because of a clearly erroneous factual determination or an error in law, or one of the other reasons specified in § 3.1(e)(6), the Board member should refer the case to a three-member panel. Under the terms of the proposed rule, it is reasonable to expect that most reversals would likely have been handled by a three-member panel rather than by single Board members. However, in order to avoid uncertainties as to how to proceed, this final rule adds an additional provision under the standards of § 3.1(e)(6) providing for referral of a case to a three-member panel where there is a need to reverse the decision of an immigration judge or the Service.

However, the Department also recognizes that there may be cases where reversals may be required as a nondiscretionary matter. This would be particularly true where there has been an intervening change in the law, such as the publication of a Board precedent decision interpreting a statutory provision relating to eligibility or ineligibility for a form of relief, that mandates the reversal of immigration judge decisions in pending cases that were inconsistent. If the Board determines that relief should be granted in particular circumstances, and an immigration judge had denied relief in a case where the facts are indistinguishable, there is no reason why a single Board member cannot summarily vacate the immigration judge's order denying relief. On the other hand, if the factual record does not compel reversal under the precedent as applied to that case, the single Board member may then refer the case to a three-member panel or remand the record for further proceedings. This is typical of the implementation of precedent.

6. Quality Assurance of Decisions

Other commenters questioned whether the Board would be able to assure that single Board members did not act arbitrarily or institute a mechanical, rather than thoughtful, approach to disposing of cases themselves or forwarding cases to three-member panels. In essence, these comments focus on both the individual thoroughness of review and the integrity of the review process among decisionmakers.

The Department has carefully considered the argument that there are inadequate safeguards to protect the system and its participants from divergent decisions by single Board members, but has concluded that the provisions of this rule as written are adequate. As mentioned previously, concerns regarding the adequacy of summary affirmances were addressed in the streamlining regulations. This rule builds upon the streamlining process by providing for a case management screening process to review all cases coming before the Board initially, thus allowing the members of the screening panel to become familiar with the broad range of issues coming before the Board, and the processes for both single-member and panel dispositions of cases decided by the Board. The existing checks of three-member review of complex issues and other cases under the standards of § 3.1(d)(6), and of *en banc* Board review, remain in effect. Accordingly, the Department believes that a shift to predominantly single-member adjudication in the substantial majority of cases is a legitimate exercise of agency discretion and will not significantly increase judicial remands.

However, the Department recognizes that any tribunal must be concerned with whether its members are adjudicating factually and legally similar claims in a similar fashion, a concern that is particularly apt given the large volume of cases being decided by the Board. *See generally* House Judiciary Subcommittee Hearing, at 10. These general concerns relating to this aspect of the Board's operation are important to the Department, to the immigration judges, to aliens in proceedings, and to the general public. These concerns are relevant whether applied to several different individual members' decisions in single-member cases, or to the results of the various three-member panel reviews that have been used in the past and will continue to be used in the future.

The Board recently has taken further steps to review the disposition of Board decisions in light of the need to resolve issues and provide guidance through the issuance of precedent decisions. Exercising its authority under the existing rules and the revisions made by this rule, the Department expects the Board will be able to determine whether issues are developing appropriately and whether referral of similar cases to a three-member panel, or further adjudication of those issues by issuance of a precedent decision, may be appropriate. *See generally* J. McKenna, L. Hooper & M. Clark, Federal Judicial Center, *Case Management Procedures in the Federal Courts of Appeals* 163 (2000) (case weighting and issue tracking in the Ninth Circuit); *see generally* B. White, *et al.*, *Commission on Structural Alternatives for the Federal Courts of Appeals: Final Report,* at 39–40 (1998).

7. Single Board Member Participation in Reopening and Reconsideration of Own Decision

One commenter suggested that a single Board member who made an initial decision should be recused from adjudication of the motion to reopen or reconsider. The Department disagrees that the single Board member who made the initial decision should be recused from adjudicating these types of motions. The long-standing practice of the Board has been to assign motions to reopen and reconsider to the original Board Members who considered the appeal if they are available. This permits some familiarity with the record and obviates the use of such a motion to merely seek a second panel review of a decision. Moreover, as with the initial notice of appeal, a party filing a motion to reopen or to reconsider can state in the motion any reasons why the motion should be referred to a three-member panel for adjudication, as provided in § 3.1(e)(6).

D. Standards for Referral of Cases to Three-Member Panels

1. In General

Some commenters suggested a modification to the rule to specify additional types of cases that would be referred to a three-member panel. This rule retains the basic provisions of the proposed rule, which provide for an initial review of each case by a single Board member, and allows for referral of cases to a three-member panel based upon the specific criteria of 8 CFR 3.1(e)(6). This review process for

adjudicating the cases is both fair and efficient in meeting the Department's goals. However, as discussed below, the Department has made certain clarifications to these provisions based on the public comments.

As noted above, an agency must have discretion to innovate and establish new procedures for administrative appeals. *See Vermont Yankee,* 435 U.S. at 525 (''[A]dministrative agencies and administrators will be familiar with the industries which they regulate and will be in a better position than federal courts * * * to design procedural rules adapted to the peculiarities of the industry and the tasks of the agency involved.'') (internal quotes omitted); *cf.* D. Meador & J. Bernstein, *Appellate Courts in the United States* 78–91 (1994) (differentiated internal decision tracks in federal courts of appeals, and other innovations).

The criteria used in the final rule are similar to those used by the federal courts of appeals in deciding whether to hold oral argument or to publish an opinion. The Department believes that these criteria strike the proper balance between cases that do not present novel or complicated issues that may be decided by a single Board member, and those issues that are appropriate for review by a three-member panel.

2. Particular Classes of Cases

Some commenters recommended that a full written decision by a three-member panel be required in cases denying asylum, withholding of removal, or Convention Against Torture relief.

The Department does not agree that certain classes of cases, such as those facially raising an asylum issue, should routinely be referred to a three-member panel. While asylum cases can include complex issues of law and fact, an objective review of those cases indicates that many do not. Moreover, cases involving asylum and asylum-related relief appear to make up a substantial portion of cases pending before the Board, although there are currently no statistics captured on forms of relief sought. The Department has not found evidence to support a view that every such case is profoundly complicated.

Of course, in those appeals that do raise novel or complex factual or legal issues in asylum or asylum-related cases, a respondent is permitted, even encouraged, under the provisions of this rule to state in the Notice of Appeal and elaborate in a brief, the reasons why the appeal merits review by a three-member panel under § 3.1(e)(6) of the rule. Such contentions will be reviewed in each case as part of the case management screening process.

3. Clarification of Standards for Panel Review

In the proposed rule, the Department stipulated in § 3.1(e)(6) that a Board member ''shall'' refer specific classes of cases for three-member panel review. It was not the Department's intent, however, that this language might lead to judicial enforcement of three-member panel review. Rather, the Department believes that it is appropriate for the decision to refer a case for panel review to be made on a case-by-case basis according to the judgment of the reviewing Board member under the standards of this rule. Accordingly, the mandatory ''shall'' has been changed to ''may only'' to avoid this possibility. This change does not broaden the authority of a single Board member to decide these cases, but rather provides discretion to refer the cases to a three-member panel if appropriate.

Section § 3.1(e)(6)(ii) of the proposed rule states that three-member panels have authority to review records if there is ''[t]he need to establish a precedent to clarify ambiguous laws, regulations, or procedures.'' The Department did not intend, by this language, to narrow the scope of panel review and decisionmaking to ''*Chevron* step II'' issues—*i.e.*, ''ambiguous'' questions of statutory or regulatory construction. *Chevron* v. *NRDC, supra.* On further review, the Department has revised this language to make clear that three-member panels should be able to decide all precedential questions of first impression as to the interpretation of the provisions of the Act and its implementing regulations, regardless of whether the parties or the immigration judge believe that the meaning is ''plain'' or ''ambiguous.'' Accordingly, the Department has altered this language to permit three-member panels to adjudicate cases where there is a ''need to establish precedent construing the meaning of laws, regulations, or procedure'' encompassing both the *Chevron* step II interpretive issues as well as the initial *Chevron* step I interpretation of the statute or regulation to determine the scope and implementation of clear and plain statutory language.

The Department has noted that § 3.1(e)(6)(iii) suggests that three-member review is appropriate if the error of law is ''plain[].'' This might give the impression that the Department is adopting the ''plain error'' standard of F.R. Crim. P., Rule 52(b), by which an appellate court may review errors of law that are ''plain'' even if not raised by a party. Under the context of this rule, such an interpretation would tend to limit the authority to refer cases to a three-member panel by suggesting that only ''plain error'' was referable. This was not the Department's intent and the word ''plainly'' has been deleted. If the single Board member believes that an error of law warrants three-member review, the single Board member may refer the case.

E. De novo Review and the Clearly Erroneous Standard

Many commenters expressed opposition to the provision in proposed § 3.1(d)(3), which provided that the Board would not engage in *de novo* review but would accept the factual findings of the immigration judges in decisions under review, including findings as to the credibility of testimony, unless the determinations are clearly erroneous. These commenters noted that the Board had asserted its authority to conduct *de novo* review of cases on appeal from the immigration judges in cases dating back to *Matter of B–*, 7 I&N Dec. 1 (BIA 1955; A.G. 1956), and as applied in many decisions since then. Several NGOs attached lists of case examples describing instances where the Board on appeal had rejected the factual determinations or the denial of relief from removal by an immigration judge.

The Department has considered these comments very carefully. The final rule adopts the approach of proposed § 3.1(d)(3) by eliminating the Board's *de novo* appellate review of factual issues before an immigration judge, but with certain modifications. Guidance has been added to the rule to clarify the standard of review in light of comments received indicating confusion over the application of the clearly erroneous standard with respect to factual determinations.

The Department is also concerned that some commenters did not have a clear understanding of the relationship between this change and the standard of review with respect to matters of law and discretionary determinations, and, accordingly, the final rule contains new language to clarify these important issues as well. Where the Board reviews what was previously called a mixed question of law and fact in the proposed rule, and is now referred to as a discretionary decision, the Board will defer to the factual findings of the immigration judge unless clearly erroneous, but the Board members will retain their ''independent judgment and discretion,'' subject to the applicable governing standards, regarding the review of pure questions of law and the

application of the standard of law to those facts. (However, when an appeal is taken from a decision of a Service officer, the standard of review will remain *de novo*.)

1. *De novo* and Clearly Erroneous Standards of Review of Factual Determinations by the Immigration Judges

The Department received a number of comments opposed to elimination of *de novo* appellate review of determinations of facts by the immigration judges and the substitution of a ''clearly erroneous'' standard of review. The commenters generally asserted that eliminating the Board's *de novo* appellate review of factual issues will result in an overall denial of due process. Commenters also expressed their opinions that, because immigration judges occasionally misstate or omit important facts, and country conditions change, substituting ''clearly erroneous'' review for *de novo* review of facts will compel the Board to perform a brief, cursory review of the record, resulting in decisions that do not accurately reflect the facts.

The Department has determined that the proposed rule eliminating *de novo* review of facts by the Board and replacing it with ''clearly erroneous'' review should remain intact, with appropriate clarifications. The Department does not accept the suggestions that a clearly erroneous standard of review, as provided in this rule, will lead to decisions by the Board that ''rubber stamp'' the decisions of the immigration judges without thoughtful review or analysis, or that retaining *de novo* review by the Board is necessary in order to deal with erroneous decisions by immigration judges who are ''antagonistic, biased and ignorant,'' in the words of one commenter.

A finding is ''clearly erroneous'' when, although there is evidence to support it, the reviewing Board member or panel is left with the definite and firm conviction that a mistake has been committed. A factfinding may not be overturned simply because the Board would have weighed the evidence differently or decided the facts differently had it been the factfinder. *Anderson* v. *City of Bessemer,* 470 U.S. 564, 573 (1985).

The ''clearly erroneous'' standard reflects the major role of immigration judges under the Act and implementing regulations as determiners of facts. In removal proceedings, it is the immigration judges, not the Board, who have been given authority to ''administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses.'' 8 U.S.C. 1229a(b)(1). Moreover, immigration judges are generally in the best position to make determinations as to the credibility of witnesses. *See Matter of A–S–*, 21 I&N Dec. 1106 (BIA 1998); *Matter of Burbano,* 20 I&N Dec. 872, 874 (BIA 1994). Immigration judges conducting the hearings are aware of variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said. *See Wainwright* v. *Witt,* 469 U.S. 412 (1985).

Accordingly, even under its present authority to conduct *de novo* review of the facts, the Board gives ''significant weight to the determinations of the immigration judge regarding the credibility of witnesses'' as well as to ''other findings of an immigration judge that are based upon his or her observance of witnesses.'' *Matter of Burbano,* 20 I&N Dec. at 874 (citations omitted); *see Matter of A–S–*, 21 I&N Dec. at 1108–1112. The Department believes that this deference is appropriate. Indeed, as we have discussed above, the Board has long engaged in the practice of adopting and affirming the immigration judges' factual determinations and decisions, for the reasons stated in the immigration judges' decisions, and this is ''not only common practice, but universally accepted.'' *Giday* v. *INS,* 113 F.3d 230, 234 (D.C. Cir. 1997); *see, e.g., Chen* v. *INS, supra; Prado-Gonzalez* v. *INS,* 75 F.3d 631, 632 (11th Cir. 1996); *Alaelue* v. *INS,* 45 F.3d 1379, 1382 (9th Cir. 1995).

Thus, for example, it is well established that, because the immigration judge has the advantage of observing the respondent as the respondent testifies, the Board already accords deference to the Immigration Judge's findings concerning credibility and credibility-related issues. *See Matter of A–S–*, 21 I&N Dec. at 1109–1112; *Matter of Burbano,* 20 I&N Dec. at 874; *Matter of Pula,* 19 I&N Dec. 467, 471–72 (BIA 1987); *Matter of Kulle,* 19 I&N Dec. 318, 331–32 (BIA 1985), *aff'd,* 825 F.2d 1188 (7th Cir. 1987), *cert. denied,* 484 U.S. 1042 (1988). Under certain circumstances, the Board may not accord deference to an immigration judge's credibility finding where that finding is not supported by the record. *See, e.g., Matter of B–*, 21 I&N Dec. 66, 70–71 (BIA 1995); *Matter of B–*, 7 I&N Dec. 1, 32 (BIA 1955; A.G. 1956). However, because an immigration judge has the ability to see and hear the respondent, which the Board and the courts of appeals do not, if the immigration judge's reasons for an adverse credibility finding are supported by specific and cogent reasons with respect to inconsistencies and omissions with respect to a respondent's claim, observations of the respondent's demeanor, and reasonable inferences from those indicia, the Board will not disturb an adverse credibility finding. *Matter of A–S–, supra.*

In *Matter of A–S–*, the Board concluded that it would defer to the credibility findings of an immigration judge, but only if (1) the record reveals that the discrepancies and omissions described by the immigration judge are actually present; (2) the discrepancies and omissions provide specific and cogent reasons to conclude that the alien provided incredible testimony; and (3) the alien has not supplied a convincing explanation for the discrepancies and omissions. 21 I&N Dec. at 1109–1111. The Department believes that these standards offer some appropriate guidance, but should be applied to the broader factfinding process. That is, under this rule, the Board should start from the premise that it will accept the findings of fact made by the immigration judge, unless the Board identifies specific reasons, including the inverse of those stated in *Matter of A–S–*, for forming a definite and firm conviction that a mistake has been made.

The rationale for changing to a ''clearly erroneous'' standard of review of fact findings is not limited to the consideration that immigration judges may be better positioned than the Board to decide factual issues, including issues of credibility. *See generally Anderson,* 470 U.S. at 574–75. As the Supreme Court has opined in another setting, the ''clearly erroneous'' standard rather than a *de novo* standard of review is appropriate for factfindings by trial courts because ''[d]uplication of the trial judge's efforts [by an appellate body] would very likely contribute only negligibly to the accuracy of fact determination at a huge cost in diversion of judicial resources.'' *Id.* ''[T]he parties to a case on appeal have already been forced to concentrate their energies and resources on persuading the trial judge that their account of the facts is the correct one'' and ''requiring them to persuade three more judges at the appellate level is requiring too much.'' *Id.* at 575. The ''clearly erroneous'' standard of review recognizes that an evidentiary hearing on the merits should be the '' 'main event' * * * rather than a 'tryout on the road.' '' *Wainwright* v. *Sykes,* 433 U.S. 72, 90 (1977).

Just as the Supreme Court has concluded that on balance the ''clearly erroneous'' standard is an effective, reasonable, and efficient standard of

appellate review of factual determinations by federal district courts, *see Anderson,* 470 U.S. at 574–75, and Fed. R. Civ. P. 52(a), the Department has concluded that the ''clearly erroneous'' standard is an effective, reasonable, and efficient standard for appellate administrative review of factual determinations by immigration judges. The ''clearly erroneous'' standard is duly protective of the Department's legitimate institutional interests in the effective adjudication of administrative appeals and eliminating the duplication of resources involved in successive *de novo* factual determinations, first by immigration judges and then the Board. At the same time, it allows for the correction of fact findings in the rare case where the Board is left with the definite and firm conviction that a mistake has been committed. *See generally United States* v. *United States Gypsum Co.,* 333 U.S. 364, 395 (1948). Therefore, in the administrative immigration system, the Department has determined that the ''clearly erroneous'' standard of review—with its deference to the initial factfinder—should be ''the rule, not the exception.'' *See generally Streamlining Study, supra.*

This is not a novel standard in the administrative process; rather, similar standards have been applied within agency review proceedings for many years. *See, e.g.*, 10 CFR 2.786 (Nuclear Regulatory Commission; domestic licensing proceedings; review of decisions of a presiding officer); 17 CFR 201.411 (Securities and Exchange Commission; consideration of initial decisions by hearing officers); 20 CFR 422.114 (Social Security Administration; annual wage reporting process); 29 CFR 1614.405 (EEOC; decisions on appeals); 40 CFR 124.19 (EPA; appeal of certain permits). The Department believes there is ample authority and experience to apply this standard to the agency review process in immigration proceedings.

2. ''Correction'' of Clearly Erroneous Factual Determinations

The Department's adoption of the ''clearly erroneous'' standard encompasses the standards now commonly used by the federal courts with respect to appellate court review of findings of fact made by a trial court. *See Dickinson* v. *Zurko,* 527 U.S. 150, 153 (1999). Under this standard, an appellate tribunal merely has authority to reverse erroneous fact findings and no authority to correct them. *See id.* However, it has been pointed out that the word ''correct'' in proposed § 3.1(e)(6) might appear to give three-member panels authority to go beyond the traditional ''clearly erroneous'' standard used in such review and to engage in de novo factfinding to ''correct'' clearly erroneous facts. This was not the Department's intent and § 3.1(e)(6) has been revised.

3. Clearly Erroneous Standard Applied

One of the more complicated contexts in which the clearly erroneous standard will be applied is in the area of asylum. For example, the Board has established standards for immigration judges to make credibility determinations. *Matter of A–S–*, supra. These standards involve several different types of findings: whether inconsistencies exist, whether omissions in an application indicate exaggeration in testimony, or whether a respondent has indicated through his or her demeanor that he or she is being less than truthful.

The ''clearly erroneous'' standard will apply only to the factual findings by an immigration judge, including determinations as to the credibility of testimony, that form the factual basis for the decision under review. The ''clearly erroneous'' standard does not apply to determinations of matters of law, nor to the application of legal standards, in the exercise of judgment or discretion. This includes judgments as to whether the facts established by a particular alien amount to ''past persecution'' or a ''well-founded fear of future persecution.''

The distinction requires a more refined analytical approach to deciding cases, but focuses on the qualities of adjudication that best suit the different decisionmakers. Immigration judges are better positioned to discern credibility and assess the facts with the witnesses before them; the Board is better positioned to review the decisions from the perspective of legal standards and the exercise of discretion.

For example, under section 208 of the Act, a respondent may establish eligibility for asylum by showing that he has been persecuted on account of a protected ground under section 101(a)(42) of the Act, *e.g.*, religion. *See generally Matter of Chen,* 20 I&N Dec. 16 (BIA 1989). The immigration judge's determination of ''what happened'' to the individual is a factual determination that will be reviewed under the clearly erroneous standard. The immigration judge's determinations of whether these facts demonstrate harm that rises to the level of ''persecution,'' and whether the harm inflicted was ''on account of'' a protected ground, are questions that will not be limited by the ''clearly erroneous'' standard.

Similarly, in cancellation of removal, those facts that a respondent claims make up ''exceptional and extremely unusual hardship'' to a respondent's putative qualifying relative under section 240A(b)(1)(D) of the Act, and whether the putative qualifying relative is actually a qualifying relative, will be reviewed by the Board only to determine if the immigration judge's determination was clearly erroneous. Whether those facts, as determined by the immigration judge and found not to be clearly erroneous, amount to ''exceptional and extremely unusual hardship'' under the Act may be reviewed by the Board *de novo. See, e.g., Matter of Andaloza-Rovas,* 23 I&N Dec. 319 (BIA 2002) (evaluation of legal standard; *de novo* review leading to reversal of immigration judge's grant of relief); & *id.* at 330–331 n.1 (Osuna, dissenting, suggesting reliance on immigration judge's factfinding leads to a different evaluation); *Matter of Monreal-Aguinaga,* 23 I&N Dec. 56 (BIA 2001) (evaluation of whether hardship to qualifying relatives is ''substantially different from, or beyond, that which would normally be expected'' from the removal of the respondent).

Third, in both of these two examples, the underlying statutes grant the Attorney General discretion to grant relief. This ''discretionary'' determination can likewise be considered under this dichotomy. What have historically been referred to as ''equities'' are facts that the respondent establishes in his or her case, and these factual determinations by an immigration judge may be reviewed by the Board only to determine if they are clearly erroneous. However, the ''discretion,'' or judgment, exercised based on those findings of fact, and the weight accorded to individual factors, may be reviewed by the Board *de novo.*

Thus, properly understood, the ''clearly erroneous'' standard will only apply to the specific findings of fact by the immigration judges, and will not limit the Board to reviewing discretionary determinations. Accordingly, in reviewing the various decisions of the immigration judges, the Board will still be able to consider and resolve instances where ''differing decisions may be reached based on essentially identical facts.'' *Matter of Burbano,* 20 I&N Dec. at 873. For these reasons, the Department does not agree with the comments suggesting that the ''clearly erroneous'' standard would ''severely reduce'' the Board's ability to act as a check against the wide disparities in discretionary decisions by the immigration judges to grant or deny relief in factually similar cases.

4. Harmless Error

Several commenters expressed the view, in essence, that there exists a gap between review of all facts *de novo* and a ''clearly erroneous'' threshold. They argue that the immigration judges frequently misstate facts that require further review.

The Department agrees that in some cases an immigration judge may misstate facts, but disagrees that in all such cases further adjudication of those facts is necessary. In many instances, such errors, or perceived errors, do not prejudice a respondent, and are, in effect, harmless errors. Section 3.1(e)(4) of the rule provides that summary affirmance is only appropriate if the single Board Member determines that ''any errors in the decision under review were harmless or nonmaterial'' and all other conditions apply. Thus, an affirmance without opinion signifies that any such error is considered to be harmless. Historically, many cases are appealed to the Board on the basis of perceived factual errors in an immigration judge's decision that are, in fact, harmless or immaterial. For example, an immigration judge's misstatement of a fact in evaluating whether a nonimmigrant respondent seeking cancellation of removal had established a particular element of ''exceptional and extremely unusual hardship'' under 8 U.S.C. 1229b(b)(1)(D) of the Act is not a harmful, prejudicial, or material error if the immigration judge also concluded that the respondent had not accrued the required 10 years of continuous physical presence under subsection (b)(1)(A). A single-member brief order may elaborate on why such an error is harmless and not prejudicial.

By contrast, where a material finding of fact is clearly erroneous, the Board may review the record before a three-member panel under § 3.1(e)(6)(v). This is precisely the function of a three-member panel.

5. Litigation Concerns

Some commenters were also of the opinion that if the Board reviews fact findings to determine if they are ''clearly erroneous,'' as opposed to deciding the facts *de novo,* courts will give less deference to the agency's decisions and more cases will be remanded to the immigration judges for further factfinding; they allege this to be true particularly in cases where an asylum applicant is alleging changed country conditions. Consequently, the commenters were of the opinion that by implementing a ''clearly erroneous'' standard of review for facts, the Board's appellate decisionmaking would become less, rather than more, timely and efficient.

The Department disagrees with this evaluation. Under the Act, courts of appeals must apply a highly deferential ''substantial evidence'' standard in reviewing administrative factfinding in removal orders, including the findings made regarding asylum and changed country conditions. *See INS* v. *Elias-Zacarias,* 502 U.S. 478, 481 (1992) (substantial evidence standard required for asylum determinations); 8 U.S.C. 1252(b)(4)(B) (''administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary''). Where the Act precludes direct review in the courts of appeals, district courts have limited jurisdiction to review removal orders by means of habeas corpus, encompassing only purely legal challenges to removal orders. *INS* v. *St. Cyr,* 533 U.S. 289, 306, 314 n.38 (2001). Habeas review does not permit review of administrative factfinding, except perhaps to determine whether such facts are ''unsupported by any evidence.'' *Id.* at 306 n.27.

Accordingly, the commenters' concerns that courts may choose to accord less deference to administrative factfinding and may reverse the Board more frequently if the Board reviews appeals under a ''clearly erroneous'' standard are not well founded. Such concerns overlook the courts' inability to alter the standard of review, and their obligation of deference to the Attorney General's factfinding (by whatever means such authority is exercised).

The Department recognizes that increasingly, and particularly in asylum cases, some courts have failed to defer to administrative factfinding. *See, e.g., Abovian* v. *INS,* 257 F.3d 971 (9th Cir. 2001) (Kozinski, O'Scannlain, T.G. Nelson, Kleinfeld, Graber, Tallman, Rawlinson, JJ., dissenting from denial of rehearing *en banc*); *Agbuya* v. *INS*, 219 F.3d 962, 967 (9th Cir. 2000) (Hall, J., dissenting); *Briones* v. *INS*, 175 F.3d 727, 730 (9th Cir. 1999) (*en banc*) (O'Scannlain, J., dissenting); *Borja* v. *INS*, 175 F.3d 732, 738 (9th Cir. 1999) (*en banc*) (O'Scannlain and Kleinfeld, JJ., dissenting); *Mgoian* v. *INS*, 184 F.3d 1029, 1037 (9th Cir. 1999) (Rymer, J., dissenting). The Department disagrees with such an approach, and therefore does not consider it appropriate to alter the nature of the Board's appellate review to conform to it.

6. *De novo* Review by the Attorney General

Some commenters suggested that it was inappropriate for the Attorney General to adopt a ''clearly erroneous'' standard for the Board, but use a *de novo* standard himself in reviewing the Board's determination, such as in *Matter of Y-L-,* 23 I&N Dec. 270 (A.G. 2002). This suggestion misapprehends the different roles of the Attorney General and the Board. As discussed above, the Attorney General is charged not merely with adjudicating immigration matters, but with establishing policy and managing the immigration process. The Board, on the other hand, is delegated authority by the Attorney General to adjudicate cases before it, not make policy or manage the immigration process. It is appropriate for the Attorney General to exercise broader authority than he delegates to the Board.

7. Review of Service Decisions

The comments on *de novo* review have raised an issue of the scope of review of factual determinations by officers of the Service in decisions under review by the Board. Review of decisions by the district director and other Service officers do not have the benefit of a full record of proceedings or, except in rare cases, a transcript of hearings before an independent adjudicating officer. Rather these decisions are made on applications and interviews, and other information available to the Service.

In light of this difference, the Department has clarified the language of the final rule to retain *de novo* review of Service officer decisions, either by a single Board member or by a three-member panel. Accordingly, § 3.1(d)(3) has been revised to retain the Board's authority to review decisions of the Service *de novo.* The process for initial single Board member review will be retained, but the scope of review is broadened. The same standards for referral to a three-member panel will be applied.

F. New Evidence and Taking Administrative Notice of Facts

Section 3.1(d)(3) of the proposed rule also generally prohibits the introduction and consideration of new evidence in proceedings before the Board, except for taking administrative notice of commonly known facts such as current events, or the contents of official documents such as country condition reports prepared by the Department of State.

Several commenters suggested that the rule would alter the Board's authority to administratively notice facts. Some commenters believed that a broadening of the authority to administratively notice facts was appropriate, while others argued that

the Board should, in essence, not be able to take administrative notice of facts without providing a hearing. Where it is established that an appeal cannot be properly resolved without further findings of fact, other than those established by administrative notice, the Board will remand the proceeding to the immigration judge.

The rule codifies existing Board precedent holding that new facts will not be considered on appeal. The ''clearly erroneous'' standard of review, in contrast to the *de novo* standard of review, is also consistent with the longstanding policy of the Board, now codified in § 3.1(d)(3), of not considering evidence filed on appeal. The Board reviews the record of proceedings made before the immigration judge. *Matter of Fedorenko,* 19 I&N Dec. 57, 73–4 & n.10 (BIA 1984); *Matter of Haim,* 19 I&N Dec. 641 (BIA 1988). Under existing practice, new evidence would be considered at the appeal stage through a motion to remand. *See generally* G. Hurwitz, *Motions Practice Before the Board of Immigration Appeals,* 20 *San Diego L. Rev.* 79, 91–2 (1982). *See Matter of Coelho,* 20 I&N Dec. 464, 471–2 (BIA 1992). *See also* 8 CFR 3.2(c) (2001).

Contrary to the assertions of several commenters, this rule does not disturb the Board's authority to take administrative notice of commonly known facts. The Board may, and does, take administrative notice of commonly known facts such as agency documents and current events. *See e.g. Matter of S–M–J–,* 21 I&N Dec. 722, 733 n.2 (BIA 1997), *disapproved on other grounds, Ladha* v. *INS,* 215 F.3d 889 (9th Cir. 2000); *Kaczmarczyk* v. *INS,* 933 F.2d 588, 593 (7th Cir. 1991). The language of the regulation explicitly uses the phrase ''commonly known facts'' to describe the kinds of facts or matters of which the Board may take administrative notice, giving by way of example ''current events'' or ''the contents of official documents.'' The Department intends by use of this language to make clear that the Board may take administrative notice not only of current events but also of the contents of official documents such as the country condition reports prepared by the Department of State, including its foreign policy expertise, analysis, and opinion.

The Department does note, however, that there is an intercircuit conflict over the degree to which the Board may take administrative notice of facts without first providing notice and an opportunity to respond.[7] After reviewing the comments, the Department agrees with those courts that have found post-decision motions to reconsider and reopen under 8 CFR 3.2, alleging a specific error of fact (the administratively noticed fact), to be sufficient to preserve a respondent's constitutional due process rights.

In immigration proceedings, the administrative notice of facts—usually relating to country conditions—revolves on issues that form the respondent's burden of proof for relief from removal. The most common facts about country conditions appropriate for administrative notice are those contained in country reports and profiles prepared by experienced foreign service officers in the Department of State who are experts on specific regions and countries. As the courts have recognized, they, the immigration judges, and the Board owe deference to the Department of State on such matters of foreign intelligence as assessments of conditions.[8] Some commenters relied upon the opinions expressed by NGOs in disputing the deference that should be given to Department of States reports and profiles, either directly or through administrative notice of facts and official documents. However, reports by NGOs are simply not as reliable as those of the Department of State because the mission of those organizations is to advocate specific ideas and views, their positions are often based on anecdotal experiences of identified and unidentified persons, and their opinions tend to lack the discernment and expertise of those provided by the Department of State.

The important, complicated, delicate, and manifold problems of assessing conditions in a foreign country warrant deference to those whose expertise the United States tasks with that duty. It is the respondent's responsibility to present facts on the record that refute those assessments. The Department believes that, given this required deference, *post hoc* rebuttal of administratively noticed facts is appropriate and sufficient for due process purposes. Accordingly, the Department has not altered the final rule in response to these comments. Nonetheless, the Board is mindful of the limitations on the use of administrative notice in those circuits that have contrary precedents.

In light of the intercircuit conflict and the deference that is due such Department of State reports and profiles, the Department believes that a compelling case is made for a liberal interpretation of the rule on reconsideration and reopening in cases in which the Board has administratively noticed facts such as a Department of State country report. Accordingly, the Department is of the view that in any case in which the Board takes administrative notice of a specific fact by reference to any documentary evidence, *e.g.*, a Department of State country report or profile published after the immigration judge's decision), not

[7] The First, Seventh, Ninth, and Tenth Circuits have held that it is a violation of due process for the board to take administrative notice of new facts on appeal without affording notice and an opportunity to respond. In the Ninth and Tenth Circuits the board must provide notice and an opportunity to respond before taking administrative notice. *Kowalczyk* v. *INS,* 245 F.3d 1143 (10th Cir. 2001); *de la Llana-Castellon* v. *INS,* 16 F.3d 1093, 1099–1100 (10th Cir. 1994); *Castellon-Villagra* v. *INS,* 972 F.2d 1017 (9th Cir. 1992) (motion to reopen does not provide adequate opportunity to rebut administrative notice of changed country conditions and due process requires BIA to give prior notice and opportunity to rebut). In other circuits a post-decision motion to reopen, or, more properly, a motion to reconsider, disputing the taking of administrative notice is a sufficient remedy. *Gonzalez* v. *INS,* 77 F.3d 1015, 1024 (7th Cir. 1996) (rejecting approach of 9th and 10th circuits and holding that ''mechanism of the motion to reopen * * * 'allows asylum petitioners an opportunity to introduce evidence rebutting officially noticed facts,' [and] provides a sufficient opportunity to be heard to satisfy the requirements of due process''). *Accord Gutierrez-Rogue* v. *INS,* 954 F.2d 769, 773 (D.C. Cir. 1992); *Rivera-Cruz* v. *INS,* 948 F.2d 962, 968–69 (5th Cir. 1991), rehearing denied, 954 F.2d 723 (1992). The First Circuit initially adopted the position that a post-decision motion to reopen is sufficient to satisfy due process but may not continue to hold that view. *Compare Gebremichael* v. *INS,* 10 F.3d 28 (1st Cir. 1993) (''We agree with the majority of those circuits which have addressed the question that [a post-decision] motion to reopen * * * can *ordinarily* satisfy the demands of due process.'') (emphasis added, citations omitted), *with Fergiste* v. *INS,* 138 F.3d 14, 19 n.4 (1st Cir. 1998) (declining to decide whether reliance on extra-record evidence of changed country conditions violated procedural due process without pre-decision notification, but reinterpreting *Gebremichael* to state that ''[o]ur holding in that case was not * * * that a motion to reopen is always necessary and sufficient to protect an alien's rights [but] [r]ather * * * that 'the demands of due process will, as always, ultimately depend on the circumstances' '').

[8] *See Sevoian* v. *Ashcroft,* 290 F.3d 166, 176 (3rd Cir. 2002), *quoting Kazlaukas* v. *INS,* 46 F.3d 902, 906 (9th Cir. 1995); *Gonahasa* v. *INS,* 181 F.3d 538, 542 (4th Cir. 1999) (describing these reports as ''highly probative evidence in a well-formed fear case''); *Marcu* v. *INS,* 147 F.3d 1078, 1081 (9th Cir. 1998) (reliance on reports ''makes sense because this inquiry is directly within the expertise of the Department of State''); *Gailius* v. *INS,* 147 F.3d 34, 46 (1st Cir. 1998) (Department of State opinions ''receive considerable weight in the courts because of the * * * Department's expertise''); *Rojas* v. *INS,* 937 F.2d 186, 190 n.1 (5th Cir. 1991) (Department of State a ''relatively impeccable source[]'' for information on political conditions in foreign countries); *Koliada* v. *INS,* 259 F.3d 482 (6th Cir. 2001) (deference due even though Department of State report reproduced for the Service in support of litigation); *Mitev* v. *INS,* 67 F.3d 1325, 1332 (7th Cir. 1995) (''we give great [deference] to [Department of State] opinions on matters within its area of expertise'').

theretofore in the record of proceedings, either party may file as part of a motion to reopen any contradictory documentary evidence (*e.g.*, a contradictory report by a third party such as Amnesty International), which shall be considered, for the purpose of this section, to have been not available and which could not have been discovered and presented at the former hearing. If administrative notice is taken of a fact, then the parties should have the opportunity to challenge that fact. The Department's interpretation is that the ''not available'' and ''could not have been discovered'' requirements of section 3.2(c) should not stand in the way of such a review and determination on the merits of the motion. If the motion has merit and additional factfinding is required, the Board may reconsider and vacate its decision, reopen proceedings, and remand the record to the immigration judge.

G. Reduction in Size of the Board

The proposed rule provided that, after the transition period of 180 days has elapsed, the final structural reform of the Board will occur. The number of Board members will be reduced to 11, with the Attorney General designating the membership of the Board. After reviewing the comments, the Department has determined to retain the reduction of the size of the Board to 11, as proposed.

We note at the outset that two individuals who understand the Board well from their previous experience as Board members, and who testified before the House Judiciary Subcommittee, both agreed that the size of the Board should be reduced but differed over the proper reduction—one arguing for a reduction to no more than 9 while the other suggested 16. Testimony of M. Heilman and L. Mathon, House Judiciary Subcommittee Hearing, 10, 13, 18.

The Department has determined that 11 Board members is the appropriate size for the Board based on judgments made about the historic capacity of appellate courts and administrative appellate bodies to adjudicate the law in a cohesive manner, the ability of individuals to reach consensus on legal issues, and the requirements of the existing and projected caseload. The Board is expected to function with two three-member panels and five Board members acting individually in deciding cases. The Department believes that this is a realistic evaluation of the resource needs, capacities and resources of the Board in adjudicating immigration issues. The Attorney General may reevaluate the staffing requirements of the Board in light of changing caseloads and legal requirements following implementation of the final rule.

1. Quality of Board Member Personnel

Several commenters questioned how this reduction would occur. Commenters objected to the reduction stating generally that it raises constitutional issues, but without significant elaboration. These commenters either supported maintaining the current number of Board members or supported an increase in the number of Board members, staff, and resources. Comments concerned the transition period, in which the backlog of cases will be eliminated and the Board size reduced.

A few commenters stated that the reduction could be perceived as part of a design to eliminate Board members with whom the Attorney General disagrees and noted that diverse Board member opinions are important. Several commenters asserted that, during the 180-day transition period, Board members would be ''auditioning'' to keep their jobs and that it would affect the perceived impartiality of current Board members given that it was announced before the backlog was reduced.

The Department has already addressed, in part III.B above, the general comments asserting that reducing the number of Board members would adversely affect the due process of respondents by affecting the independence and perceived impartiality of the Board.

The Department expects that the reduction in the number of Board member positions will be effectuated by the Attorney General from among the current Board Members, after consultation with the Director of the Executive Office for Immigration Review (EOIR) and the Board Chairman, but that determination remains one that is within the discretion of the Attorney General. As EOIR Director Rooney pointed out in testimony before a subcommittee of the House Judiciary Committee, the Attorney General generally looks to traditional factors that guide the selection of adjudicators, such as experience, judicial temperament, and efficiency, particularly in an experienced adjudicator. Testimony of K. Rooney, House Judiciary Subcommittee Hearing, 37–38. The Department expects that the final determinations will be made on factors including, but not limited to, integrity (including past adherence to professional standards), professional competence, and adjudicatorial temperament. *Cf.*, D. Meador, M. Rosenberg, & P. Carrington, eds., *Appellate Courts: Structures, Functions, Processes and Personnel* (1994), 671–681 (varying views on the qualifications of judges in the judicial setting rather than the administrative adjudication setting); D. Meador & J. Bernstein, *Appellate Courts in the United States* (1994), 94–99.

In the end, however, it is not possible to establish guidelines or specific factors that will be considered, nor should the Attorney General limit his decisionmaking process. The decision as to the relative values and the weights given to those values belongs to the Attorney General. Each Board member is a Department of Justice attorney who is appointed by, and may be removed or reassigned by, the Attorney General. All attorneys in the Department are excepted employees, subject to removal by the Attorney General, and may be transferred from and to assignments as necessary to fulfill the Department's mission. Moreover, and of critical importance, the Department has not indicated that any of the existing Board members will be adversely affected by the reduction in the number of Board members. Until the Attorney General makes these personnel decisions, such comments are, at best, speculative.

A few commenters supported reduction based solely on seniority. While seniority is an experience indicator, the Department does not believe that it should be considered a presumptive factor.

Several commenters have suggested that the Attorney General must appoint individuals to the Board who are expert in immigration law. The Department believes that this argument rests on the faulty premise that immigration law is the only area of the law where Board members must have expertise. Although immigration law is a unique blend of foreign and domestic concerns, it is not so discrete and insular in nature.

In reality, immigration law is part of the larger body, and requires a more global view, of federal law. The Board is no longer, and perhaps never has been, a body whose decisions relate only to the interpretation of the Act and regulations. More frequently now than ever before, the Board decides cases based on the criminal law, and expertise in that area of the law is also required of the Board.[9] Accordingly, it is not

[9] The Board has interpreted, since its inception, what constitutes a ''crime involving moral turpitude.'' *See Matter of G–*, 1 I&N Dec. 8 (BIA, A.G. 1940) (interpreting 1917 Act); 8 U.S.C. 1182(a)(2)(A)(i), 237(a)(2)(A)(i). An increasing

Continued

merely expertise in immigration law that must guide the Attorney General's decisions on immigration law and policy, or to whom to delegate authority to make immigration decisions, but also expertise in the inextricably interrelated criminal law. By the same token, the Board's determinations under the Refugee Act of 1980, 8 U.S.C. 1158, and implementing regulations, 8 CFR part 208, necessarily include both facts and inferences from the expertise of the Department of State on matters of foreign conditions. *INS* v. *Aguirre-Aguirre*, 526 U.S. 415, 425 (1999) (deference due Attorney General's, and hence Board's, role in foreign policy); *INS* v. *Abudu*, 485 U.S. 94, 110 (1988) (foreign policy considerations in immigration proceedings).

2. Resource Requirement Concerns

A number of commenters expressed the view that the current case backlog reflects the need for more resources. In their view, increased attorney and paralegal staffing, as well as filling all existing Board member positions, would be a preferable method of reducing the backlog.

As described above, beginning in 1995, the Department sought to aid the Board in reducing its burgeoning caseload by increasing its size from 5 to 23 Board members with increases in its attorney and support staff.[10] It is now evident that the Board does not face a ''personnel-budget'' problem but rather a fundamental systemic problem. The continued expansion of the Board has not effectively reduced the existing case backlog. The one element that has begun to help reduce the backlog—streamlining—is being expanded through this rule. By expanding the number of cases that can be resolved either through a summary affirmance without opinion, or by a short written order by a single Board member, this process will substantially free up the staff resources of the Board to focus on backlog reduction and the preparation of careful legal and factual analyses in cases meriting three-member panel review, including cases to be designated as precedent decisions.

3. Advantages of a Smaller Board

The Department believes that the continued expansion of the Board has, indeed, had significant institutional costs including effects on the cohesiveness and collegiality of the Board's decision making process, and the Department's perception of the uniformity of its decisions, and an administrative and supervisory strain on the Board's staff. *Cf.* Commission on Revision of the Federal Court Appellate System, *Structure and Internal Procedures: Recommendations for Change* 16–21 (1975). These costs have been magnified by substantial changes in the immigration laws and have resulted in unnecessary delays in issuing final agency decisions. This continued expansion has shifted the Board's attention away from providing nationwide guidance on those cases presenting difficult and repetitive or controversial legal questions. Testimony of M. Heilman, House Judiciary Subcommittee Hearings 13, 16. The institutional cost of unlimited expansion is not a new phenomenon, but one that has been experienced in the federal court system. *See generally Structural Alternatives*, at 29–57. At the same time, the Board's precedent decisions indicate an inability to reach consensus about even fundamental approaches to the law.

Accordingly, the Department agrees with certain comments that the reduction in the number of Board members should increase the coherence of Board decisions and facilitate the *en banc* process, thereby improving the value of Board precedents.[11] The Department believes that more and clearer precedent will be of greater assistance to the immigration judges, practitioners, and respondents.

Another commenter argued that reducing the number of Board members combined with increasing single-member review will save American taxpayers money. It is not clear to the Department that the cost of operating the Board will substantially be reduced, nor does the Department plan to propose a substantial reduction in budget outlays. However, by further expediting the disposition of cases for aliens currently held in detention, the Department expects to realize savings in the costs of detaining such aliens pending their removal from the United States. In addition, the Department believes that following implementation of the streamlining process and this rule, maintaining the current number of Board members will be unnecessary. With greater efficiency, fewer Board members will be needed to adjudicate the caseload. A reduction to 11 Board members will allow for the most efficient use of resources to adjudicate administrative appeals on a timely basis.

H. Case Processing Issues

Section 3.1(e)(8) of the proposed rule, as well as §§ 3.3 and 3.5, established new time limits for several elements of the appellate process while maintaining several aspects of current Board practice. Some commenters implied that these time limits could create justifiable rights. The Department disagrees. These internal management limitations are intended only to provide direction for the management of the Board, not establish any right or remedy in litigation. *See United States* v. *Caceres*, 440 U.S. 741 (1979).

In response to the public comments, the Department has changed the briefing process, establishing a distinction between detained and non-detained cases. For detained cases, the final rule establishes a simultaneous briefing process, with a time limit of 21 days for the filing of briefs by each party. For non-detained cases, the Department is retaining a sequential, but reduced, briefing schedule, allowing the appealing party 21 days in which to file a brief, and allowing the opposing party 21 days to respond. As in the proposed

number of recent Board decisions have focused on the interrelationship of provisions of the criminal Code, the United States Sentencing Guidelines, and the Act. For example, the term ''aggravated felony'' defined in section 101(a)(43) of the Act, 8 U.S.C. 1101(a)(43), is referenced in the United States Sentencing Guidelines as the controlling definition for certain sentencing enhancements. U.S.S.G. 2L1.2(b)(2). The definition of ''crime of violence'' that makes up one of the definitions of an aggravated felony is defined by 18 U.S.C. 16. ''Drug trafficking,'' another aggravated felony, is defined in 18 U.S.C. 924. The Board has, at times struggled with this panoply of legal provisions. *See, e.g., Matter of K–V–D–*, 22 I&N Dec. 1163 (BIA 1999), *overruled, Matter of Yanez*, 23 I&N Dec. 390 (BIA 2002) (whether conviction under state law constitutes drug trafficking under section 101(a)(43)(B) of the Act); *Matter of Vasquez-Muniz*, 22 I&N Dec. 1415 (BIA 2000), *rev'd* 23 I&N Dec. 207 (BIA 2002) (whether an offense defined by state or foreign law may be classified as an aggravated felony as an offense ''described in'' a federal statute enumerated in section 101(a)(43) of the Act even if it lacks the jurisdictional element of the federal statute); *Matter of Ramos*, 23 I&N Dec. 336 (BIA 2002), *overruling Matter of Puente-Salazar*, 22 I&N Dec. 1006 (BIA 1999), *and Matter of Magallanes-Garcia*, 22 I&N Dec. 1 (BIA 1998) (whether driving while intoxicated under various state criminal laws constitutes crime of violence under 18 U.S.C. 16(b) and an aggravated felony under section 101(a)(43)(F) of the Act). This complex interrelationship of the immigration law and the criminal law has also lead to recent precedent decisions by the Attorney General. *Matter of Y–L–* 23 I&N Dec. 270 (A.G. 2002), *overruling Matter of S–S–*, 22 I&N Dec. 458 (BIA 1999); *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002), *disapproving Matter of H–N–*, 22 I&N Dec. 1039 (BIA 1999).

[10] The Board currently has 19 members and 4 vacancies, which the Department has declined to fill in light of the fact that the expansion has not achieved the desired results based upon historical staffing levels.

[11] The Department notes that not all of the Board precedent decisions are issued *en banc*. Under 8 CFR 3.1(g), the Board designates particular decisions for publication as precedent decisions, but the Board can and frequently does designate a three-member panel decision as a precedent decision.

rule, an immigration judge will have 14 days to review the transcript and approve a decision (or 7 days after returning from an absence from the court).[12] Also as in the proposed rule, an appealing party asserting that a three-member review is warranted must do so in the Notice of Appeal within the period allowed for an appeal. Once the record is completed and ready for adjudication, single Board member decisions must generally be made within 90 days and three-member decisions must be made within 180 days. Provisions for discretionary extensions of time have been expanded. The Department has also retained the provisions of the proposed rule on rehearings *en banc*.

1. Simultaneous Briefing

Several commenters expressed concern that the practice of simultaneous briefing, coupled with a shorter time frame, raises due process concerns because it would be unfairly burdensome to immigration practitioners and pro se litigants. Some commenters believe that, as a consequence of the compressed time frame, pro bono representation would decrease because of the difficulties associated with the new rule. Many commenters asserted that pro se respondents who are unfamiliar with English and the immigration laws will be unable to effectively articulate their position on appeal or to anticipate and rebut arguments presented by the Service. Furthermore, a few commenters argued that detained respondents will not even have the benefit of the 21-day period due to systemic problems in receiving the transcripts and briefing schedules in a timely manner while they are either detained or being moved to other detention facilities. Finally, multiple commenters suggested that the reduced time frame would result in hastily drafted briefs that would be unhelpful to the Board in deciding appeals.

After reviewing the comments received, the Department has decided to change the proposed regulation with respect to the simultaneous briefing process but otherwise maintain the time limits as proposed. The final rule modifies the existing 8 CFR 3.3(c) by creating a distinction between detained and non-detained cases. In detained cases, the Department maintains its position that a 21-day simultaneous briefing schedule is sufficient. Simultaneous briefing is the common practice in detained cases. See, *e.g.*, *Matter of Jean*, 23 I&N Dec. 373, 380 (A.G. 2002) (addressing simultaneous briefing before the Board in detained cases).

In non-detained cases, the Department will retain the proposed 21-day briefing schedule, but agrees with the commenters that this should be a sequential briefing schedule, which is currently the common practice in non-detained cases. Under existing regulations, parties are allowed 30 days each in which to file briefs (for a total of up to 60 days). Under the final rule, for non-detained cases, after a transcript is made available, the Board will establish a 21-day sequential briefing schedule. The ability of either party to seek an extension of the period for filing a brief or reply brief up to 90 days for good cause shown remains from current Board practice. The Department approves of the Board's current practice of granting extensions of only 21 days. Beyond that, the Board retains its discretion to consider briefs and reply briefs that are filed out of time. Furthermore, the parties also retain their ability to file motions to reconsider after the Board has rendered a decision. 8 CFR 3.2(b).

2. Transcript Timing

Other commenters indicated that, because the availability of a transcript is beyond an appellant's control, an appellant might be unfairly surprised by its arrival and unable to prepare a brief within the time frame. Some commenters stated that, in their experience, it has sometimes taken a year or more for the preparation of transcripts after the filing of an appeal with the Board.

The Department agrees that substantial delay in the production of transcripts in many cases has been a serious problem. The earlier a transcript is available, closer in time to the actual hearing and decision of the immigration judge, the more readily the respondent and the Service will be able to utilize that transcript. The longer a transcript is delayed, the more the events memorialized in that transcript may fade from the memories of the respondent, respondent's counsel, and the Service's trial attorney. The Department believes that fairness requires that the transcript be made available to all of the parties at the earliest possible time.

The Department also recognizes that the Board has made substantial improvement in this area. For appeals filed in fiscal year 2001, the average time from the filing of the Notice of Appeal to setting the briefing schedule was 158 days. That statistic would appear to reflect the commenters' concerns. However, for fiscal year 2002 through June 2002, the average time was 97 days. The Department is not satisfied with this delay and believes that a 60-day time-frame is possible and should be implemented. If necessary, the Board and the immigration courts should alter their internal operating procedures to ensure that transcripts can be provided within this time-frame.

In response to this concern by the commenters, the Department has added a requirement in § 3.5(a) that the Chairman and the Chief Immigration Judge take such steps as necessary to ensure that transcripts are produced as soon as practical after the filing of the Notice of Appeal. This will also assist the immigration judges in reviewing any oral decision in the transcript. The Chairman and the Chief Immigration Judge are expected to report on progress in this area regularly.

3. Immigration Judge Time Limits To Review Decisions

Some commenters voiced a concern that the 14-day time limit for an immigration judge to review transcripts and any oral decision was unrealistic in high-volume jurisdictions. The Department disagrees. The Department recognizes that there will be some dislocation as the transcription process is accelerated and the immigration judges have a shorter period of time to review a number of transcripts to meet this deadline. However, once these processes are in place, that pressure will dissipate. The Department is confident that the immigration judges will be able to adjust their schedules to accommodate this implementation process.

4. 30-Day Notice of Appeal Filing Requirement

Some commenters felt that the 30-day period within which an appeal must be filed was too short a period within which a party can be expected to articulate reasons for contending that three-member review is warranted. The Department disagrees. The filing time for a Notice of Appeal has not been changed by the proposed or final rule. The existing 30-day period—a substantial increase in the 10-day limit

[12] The proposed rule provided that the immigration judge would have a set time to ''review and approve the transcript.'' This language may have given the impression that an immigration judge may alter a transcript when this authority clearly does not exist. An immigration judge should, of course, review the transcript of proceedings to ensure that it is complete, but there is no authority to ''amend'' the transcript. The immigration judge's oral decision, on the other hand, is subject to a small degree of modification and clarification necessitated by the fact that the decision is orally dictated and does not reflect inflection. An immigration judge may not, however, make substantive changes in the decision.

that formerly applied until recent years—appears to have worked well. As noted above, the parties are already familiar with the issues presented and should, in a short period of time, be able to articulate with some specificity the issues that they wish to raise on appeal. The transcript of hearings is not necessary for this process. The facts should be fresh in the parties' minds and the legal arguments should have been fleshed out before the immigration judge. The Department has found no reason to change this provision of the regulations.

5. Decisional Time Limits

Some commenters also argued that the 90- and 180-day time limits for adjudication were unrealistic and would result in rushed and erroneous decisions. Other commenters, however, supported the new time limits, and a few suggested that a 90-day limit be placed on deciding all detained cases.

The Department is not persuaded that the proposed time frames for deciding a case will hinder the quality of decisions made by either single Board members or three-member panels. The rule provides adequate time for the Board to decide the vast majority of cases before it, and in those rare cases where more time is needed, the rule provides a procedure for extending that time. The Department also believes that 8 CFR 3.1(e)(8) sufficiently directs the Board to assign priority to deciding case appeals involving detained respondents, or bond appeals, which procedure is consistent with existing practice, without the need for separate time limits for those matters.

6. Holding Cases Pending Significant Changes in Law and Precedent

A few commenters noted that proposed § 3.1(e)(8)(iii) permits the Chairman to hold a case or cases pending resolution of issues pending before the United States Supreme Court or the courts of appeals that will substantially affect the outcome of the cases to be held. These comments suggested that the Chairman should also be authorized to hold cases that are directly affected by pending legislation, pending regulatory changes, and pending *en banc* decisions.

The Department agrees with these comments in part, and has expanded 8 CFR 3.1(e)(8)(iii) to cover pending Department regulations and pending *en banc* decisions. Because some issues will arise rapidly and in multiple cases, the Department expects that the Chairman, as a matter of discretion in managing the caseload, will be able to utilize the authority granted under this provision to group cases to determine which record provides the clearest issue for precedent decisions by the Board *en banc.* To facilitate the management of these case and case-group holds with the legislative and regulatory programs of the Department, the Chairman is directed to inform the Director of EOIR and the Attorney General of all such holds.

I. Decisional Issues

1. Management of Decisions

Several commenters expressed the view that the regulation granted too much authority to the Attorney General, the Director of EOIR, and the Chairman of the Board to manage the decision-making of individual Board members. Some of these commenters generally challenged the Attorney General's authority over the Board.

These commenters misunderstand the nature of the Board. The Board is the creation of the Attorney General; it is not a statutory body. As discussed above, the Board's authority derives from a delegation of authority from the Attorney General. *See Guentchev* v. *INS, supra; Matter of Hernandez-Casillas, supra,* at 289 n.9. In this rule, the Department alters the process by which the caseload is managed, but does not dictate or determine the ultimate outcome in any case or group of cases. The Department expects the Board Members to continue to exercise independent judgment regarding the interpretation of the law, subject to applicable legal standards and review by the Attorney General, and in conformity with applicable judicial precedents.

2. Remand Motions

One commenter stated that under proposed § 3.1(e)(2), respondents should also be afforded the right to file a motion to remand on any substantive ground. The Department notes that this suggestion is outside the scope of the rulemaking and does not address that suggestion at this time. However, in the future, the Department may consider a more complete revision of the motions practice before the Board. At this time, the Department has changed § 3.1(e)(2) to more closely reflect the authority currently codified in § 3.1(a)(1) for a single Board member to make various procedural dispositions of cases. There is also no provision that bars a contested motion to remand the record; the Board has considered such motions for years.

3. Rehearing *en banc*

One commenter stated that rehearing *en banc* is almost never done, and suggested that revising the Board's rehearing *en banc* authority is effectively meaningless. The Department believes that *en banc* review is a valuable process in the establishment of precedential guidance for immigration judges, and one of the results of decreasing the size of the Board is to increase its ability to provide such guidance in a meaningful way. However, *en banc* proceedings are very resource intensive and should not be readily undertaken. The Department believes that the Board's electronic *en banc* process has been successful and should be continued. Moreover, the Board can and does designate panel decisions as precedent decisions without the need to convene a full *en banc* proceeding by using the electronic *en banc*, and should continue that practice whenever possible. The proposed rule added a sentence in 8 CFR 3.1(a)(5), taken from Federal Rules of Appellate Procedure Rule 35(a), with respect to rehearing *en banc* in the courts of appeals, providing that *en banc* proceedings are disfavored and shall ordinarily be ordered only for questions of exceptional importance or to secure or maintain the uniformity of the Board's decisions. However, to avoid concerns that this language might unintentionally inhibit the Board's use of the *en banc* process, the final rule uses the term ''particular importance'' rather than ''exceptional'' importance. The Department disagrees with the suggestion of some commenters that this provision is effectively meaningless.

4. Separate Opinions

One commenter suggested that the Department eliminate dissenting and concurring opinions for precedent decisions. This rule does not take a position on that suggestion. Dissenting and concurring opinions can serve a valuable purpose, within limits, in precedential decisions. Not all precedent decisions can resolve all aspects of an issue presented and there may be valuable disagreements that warrant further briefing in subsequent cases. The Department does not wish to limit the conversation that must occur to develop lines of precedent so long as the concurring and dissenting opinions are efficiently prepared.

On the other hand, there is substantial reason to question the number of lengthy written dissents in unpublished, non-precedential decisions. Although the percentage of separate opinions may be relatively low, there is a serious question of the merits of committing substantial time and effort to writing separate opinions in a non-precedential case. Accordingly, while the

Department recognizes that Board members may wish to file such opinions, the Department also believes that it is appropriate that such opinions not adversely affect the time and resources of the Board.

5. Changes in the Notice of Appeal

Several commenters recognized that the Notice of Appeal forms must be modified to conform with the changes under the new rule. The Department agrees, and has made changes to Form EOIR–26 and Form EOIR–29 to incorporate the final rule.

Form EOIR–26 has generally been revised to include the new basis for summary dismissal and requires the respondent to identify the legal and factual bases for appeal when requesting review by a three-member panel. Form EOIR–29 also provides that a party appealing a decision of a Service officer (therein referred to as an ''INS officer'' for ease of understanding by the applicants) must file an appeal within 30 days of receiving the decision. The Department expects that these forms will be used upon the effective date of this regulation. We have attempted to make the requirements of the Notice of Appeal as clear as possible, taking into account the concerns expressed in cases such as *Vargas-Garcia* v. *INS,* 287 F.3d 882 (9th Cir. 2002).

6. Barring Oral Argument Before a Single Board Member

One commenter stated that eliminating oral argument in cases assigned to a single Board member for decision is a further erosion of a respondent's due process rights. Section 3.1(e)(7) reflects the current authority of the Board to grant or deny requests for oral argument, but it also makes clear that no oral argument will be available in any case assigned to a single Board Member for disposition. The Department disagrees that this provision is a further erosion of a respondent's due process rights, initially because there is no due process right to an oral argument before the Board. Moreover, oral argument is rarely granted even in cases that are heard by a three-member panel, and the Department believes that it is entirely appropriate to establish a general rule barring oral argument in a case that does not even meet any of the factors meriting review by a three-member panel under § 3.1(e)(6) of this rule.

7. Location of Oral Argument

One commenter noted that the Board has held oral argument in other cities, sometimes without regard to whether the cases being argued were from those localities, thus imposing burdens on the parties and the Board. Accordingly, the commenter suggested limiting the location of oral argument to EOIR's headquarters. The Department agrees that it is generally unwarranted for the Board to hold oral argument other than in its own oral argument room, unless such other location is more convenient to the Board and the parties. Accordingly, the final rule directs the Chairman to hold oral argument at the EOIR's headquarters unless the Deputy Attorney General or his delegate specifically provides otherwise.

8. Summary Dismissal of Frivolous Appeals and Discipline

The final rule in § 3.1(d)(2)(i)(D) gives the Board the authority to summarily dismiss an appeal that the Board finds has been filed for an improper purpose, such as to cause unnecessary delay, or that lacks an arguable basis in fact or law, unless the appeal is supported by a good faith argument for extension, modification, or reversal of existing law. Attorneys who file appeals that are summarily dismissed under § 3.1(d)(2)(i)(D) may be subject to a finding that they have engaged in frivolous behavior as defined in § 3.102(j).

Several commenters expressed the view that giving the Board the authority to dismiss an appeal because it has been deemed frivolous under the standards of paragraph (D) will have a chilling effect on attorneys, so as to reduce the number of attorneys who will file appeals before the Board. These commenters believe that, if disciplinary measures are strictly enforced, attorneys will be deterred from filing an appeal on behalf of indigent respondents. Several commenters stated that the necessity of § 3.1(d)(2)(i)(D) has not been sufficiently explained and that this section is unnecessary since regulations already exist to impose disciplinary measures on attorneys. These commenters maintained that the line between an appeal that has been deemed frivolous and a bona fide legal argument is hard to distinguish. Therefore, they argue, it will be difficult for the Board to appropriately determine what actually constitutes an appeal that should be dismissed under this section.

Several commenters expressed the view that this section will also deter attorneys from presenting arguments on appeal because the Board may deem them as frivolous. A few commenters maintained that the definition of ''frivolous'' that will be used by the Board in its determination should be consistent with the definition provided in prevailing law, common law, the Federal Rules of Civil Procedure, and the Canons of Professional Responsibility. Another comment contended that the definition of frivolous may change based on the state of immigration law.

The Department has decided to retain the regulation as proposed. The primary concern stated in all of these comments is the effect this ground will have on the types and number of appeals filed. The Attorney General has the authority to instruct the Board to set criteria for which appeals may be dismissed. An appeal that is filed for an improper purpose is chief among those appeals that the Board should not be forced to review. The Department concludes that these appeals should be dismissed in order to give Board members more time to adjudicate meritorious appeals.

The Board previously had the authority to dismiss frivolous appeals. *See* 47 FR 16771, 16772 (April 20, 1982) (giving the Board authority to summarily dismiss a frivolous appeal); 8 CFR 3.1(d)(1–a)(iv) (1982). The Board has also dismissed frivolous appeals. *See, e.g.*, *Matter of Gamboa*, 14 I&N Dec. 244 (BIA 1972). There is no showing that, when these provisions were in effect, attorneys were deterred from filing appeals, or that the Board was actively dismissing appeals that truly had merit.

The prior experience of the Board in dismissing frivolous appeals also serves to address the concern that there is no appropriate definition for what constitutes a frivolous appeal. The Board can rely on earlier precedent decisions to make such a finding. *See e.g., Matter of Gamboa, supra; Matter of L–O–G–,* 21 I&N Dec. 413 (BIA 1996); *Matter of R–P–*, 20 I&N Dec. 230 (BIA 1990); *Matter of Patel*, 19 I&N Dec. 394 (BIA 1986). Along with this case law, the Board can draw from the definition for frivolous behavior in 8 CFR 3.102(j) to determine what constitutes a frivolous appeal. The Department also expects the Board to be guided by other interpretations of what amounts to ''frivolous'' in implementing the rule, including the decisions of the United States courts under F. R. Civ. P. 11 and the American Bar Association's Standards of Professional Conduct. An attorney is clearly on notice as to the definition of frivolous behavior.

The commenters also stated that this section is unnecessary because regulations already exist to impose disciplinary measures on attorneys. The Department disagrees and will retain the rule as proposed. Section 3.1(d)(2)(iii) provides that filing an appeal that is summarily dismissed as frivolous may constitute grounds for disciplining an

attorney or representative under 8 CFR 3.102. The purpose of this provision is to invoke the disciplinary process, that is, to give the EOIR Office of the General Counsel an opportunity to consider whether a complaint should be filed under the existing disciplinary process. EOIR's General Counsel may commence the disciplinary process based on a referral by anyone. The process of a referral for review by EOIR's General Counsel, and the possibility of a hearing and determination, may be invoked if the Board member or panel believes such an inquiry is justified. Accordingly, the Department believes that there is no ''chilling'' effect from the promulgation of this rule.

9. Mandatory Summary Dismissals

Some commenters suggested that it was inappropriate to change the authority to summarily dismiss appeals from discretionary to mandatory, because respondents may not understand the requirements and the Board members should retain discretion.

The Department has considered the views of the commenters, as well as judicial decisions such as *Vargas-Garcia* v. *INS,* 287 F.3d 882 (9th Cir. 2002), which have challenged summary dismissals by the Board. The Department has decided not to make this proposed change at the present time, but to defer consideration of these issues for possible action in the future. In the meantime, the Department notes that the grounds for summary dismissal in § 3.1(d)(2)(i), including the restored ground relating to frivolous appeals, will remain available for the Board to utilize, in all appropriate cases, in the exercise of discretion by the Board member or panel to which an appeal is assigned.

The rules have provided for years that an appeal may be dismissed if the appealing party ''fails to specify the reasons for the appeal on [the Notice of Appeal] or other document filed therewith.'' 8 CFR 3.1(d)(2)(i)(A). *See Toquero* v. *INS*, 956 F.2d 193 (9th Cir. 1992); *Alleyne* v. *INS*, 879 F.2d 1177 (3rd Cir. 1989); *Athehortua-Vanegas* v. *INS,* 876 F.2d 238 (1st Cir. 1989); *Bonne-Annee* v. *INS,* 810 F.2d 1077 (11th Cir. 1987); *Townsend* v. *United States Department of Justice*, *INS,* 799 F.2d 179 (5th Cir. 1986); *Matter of Lodge*, 19 I&N Dec. 500 (BIA 1987); *Matter of Valencia*, 19 I&N Dec. 354 (BIA 1986). The Department expects the Board to continue to utilize this authority in appropriate cases and reiterates the view that these requirements are fundamentally sound and in conformity with due process.

10. Finality of Decisions and Remands

The final rule also reinserts former 8 CFR 3.1(d)(3) (2000), without change, dealing with finality of decisions and remands, as new § 3.1(d)(6). That provision had been part of the Board's regulations for many years but was inadvertently overwritten when unrelated changes in the regulations were made in 2000. Under the circumstances, the Department has determined that this preexisting provision may be reinserted in the Board's regulations without notice and comment under the Administrative Procedure Act.

In 1999, as part of the streamlining rule, the Department amended 8 CFR 3.1(d) to redesignate its paragraphs for clarity. 64 FR 56135 (Oct. 18, 1999). The streamlining rule redesignated former paragraphs (d)(1–a), (d)(2), and (d)(3) as new paragraphs (d)(2), (d)(3), and (d)(4), respectively. 64 FR at 56141. After the redesignation in 1999, paragraph (d)(2) on finality of decisions and remands was codified as § 3.1(d)(3) (2000).

However, this change was unintentionally disrupted by the subsequent final disciplinary rule in 2000. 65 FR 39513 (June 27, 2000). The preamble and the regulatory text make clear the intent to update the specific regulatory citations of the summary dismissal grounds to reflect the new codification of the disciplinary grounds, and to revise the paragraph dealing with rules of practice and discipline, § 3.1(d)(4) (2000). However, that final disciplinary rule incorrectly instructed the **Federal Register** to codify the revised paragraph dealing with rules of practice as paragraph (d)(3). The result of this error was effectively to overwrite the language of the preexisting paragraph (d)(3) on finality of decisions and remands, and to leave instead two different versions of the rules of practice provision in paragraphs (d)(3) and (d)(4).

Operationally, the Board's practice has not changed despite this error in codification. Given the clearly unintended result of the erroneous 2000 regulatory instructions, the Department is reinserting the overwritten language without change, as a new paragraph (d)(6).

J. Applicability of Procedural Reforms to Pending Cases

Many commenters raised concerns that the proposed rule would impose procedural obligations that would be impossible to meet for pending cases and would otherwise violate due process. The Department notes, however, that changes in procedural rules typically are made applicable to all cases pending as of the date the new procedural rules are promulgated. *See, e.g.*, Order, 383 U.S. 1031 (1966) (transmitting amendments to the Federal Rules of Civil Procedure; including amendments to Fed. R. Civ. P. 12, 13, 19, 23); *Landgraf* v. *USI Film Products*, 511 U.S. 244, 275 n.29 (1994). The Department has determined that the final rule will apply to all pending cases, with one exception. *See Smiley* v. *Citibank (South Dakota)*, N.A., 517 U.S. 735, 739–40 (1996); *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995); *United States* v. *Morton*, 467 U.S. 822, 835–36 n.21 (1984); *United States* v. *Schooner Peggy*, 5 U.S. (1 Cranch) 103, 110 (1801).

Some commenters were of the opinion that all the pending cases, ''approximately 40,000,'' would have to be re-briefed in a short time, affecting the quality of representation. A few commenters argued that re-briefing all the pending cases would have a significant impact on small entities and therefore implicate the Small Business Regulatory Enforcement Fairness Act of 1996 and the Unfunded Mandates Reform Act of 1995.

After careful consideration of the public comments suggesting the need for an opportunity for those individuals with pending appeals at the Board to respond to the new screening criteria, the Department has adopted, in part, an approach suggested by some of the commenters. The final rule contains a notice provision at § 3.3(f) providing that a party who has an appeal pending at the Board on August 26, 2002, may file a supplemental brief or statement on why the appeal meets the criteria for three-member review under § 3.1(e)(6) of the final rule on or before September 25, 2002, or the due date for the party's brief, whichever is later. Following the effective date, the Board will apply the final rule to all appeals, with consideration given to any additional brief or statement filed in accordance with this provision. The filing of any such additional brief or statement, however, is entirely optional in all of the pending cases. The Board, in its discretion, will determine how these briefs will be considered and what procedure will be used in determining whether to apply a single-member or three-member panel review.

The Department disagrees with the notion that these cases cannot be reviewed under the standards specified in the rule for single-member and three-member panel review. Appellants do not have any vested right or entitlement to review by a three-member panel of the Board, or even an expectation that their case is more likely than not to be

referred to a three-member panel. At present, all pending cases are subject to review under the existing streamlining process under § 3.1(a)(7) of the existing rules, and this new rule would retain that streamlining process under § 3.1(e)(4). Even in FY 2001, long before the publication of the proposed rule to reform the Board's procedural rules, the Board already was resolving a clear majority of pending appeals by summary affirmance without opinion, issued by a single Board member, after determining that those cases meet the standards of the existing streamlining process. Under the new rule, all cases will be reviewed on the merits to determine if there are any factual or legal errors or other circumstances that meet the criteria for three-member review. The opportunity for those with pending cases to assert that an appeal warrants three-member review is not intended as a substitute for Board screening; rather, it is an additional opportunity to facilitate the screening process. The burden of administering this provision is quite limited. A party is not required to make any filing, but may do so. Regardless of whether a party files an optional brief or statement under § 3.3(f) regarding a pending appeal, every case will still be reviewed under the standards of this rule to determine whether or not the case meets the standards of § 3.1(e)(6).

The Department also disagrees with the notion that the application of the case management system to pending appeals at the Board will have a significant impact on small entities and implicate the Unfunded Mandates Reform Act. In approximately one third of cases filed with the Board, the respondent is not represented. In a small percentage of cases, the Service has appealed. In those cases where the respondent has appealed through counsel or an accredited representative, it behooves the attorney or representative to review the case file to determine whether these standards warrant an additional filing. However, this does not mean, and the Department does not expect, that a large number of cases will warrant such an additional filing. This is not an open invitation to file a brief where a respondent has previously indicated that he or she would file a brief in the Notice of Appeal and has not done so. These cases may be subject to summary dismissal under existing standards or under the final rule. All cases are currently subject to the streamlining review and this rule does not appreciably change that review in any case where summary affirmance would be appropriate. Accordingly, while some individual attorneys or representatives may find a few cases that objectively warrant an additional filing, the Department does not expect the impact to be significant.

Some commenters suggested that *Landgraf* v. *USI Film Products* bars the application of the revised standard of review in § 3.1(d)(3) to pending cases. The Department believes that these rules are generally administrative and procedural in nature and do not implicate the retroactivity concerns expressed in *INS* v. *St. Cyr*, 533 U.S. 289 (2001); *Lindh* v. *Murphy*, 521 U.S. 320, 327–28 (1997); and *Landgraf* v. *USI Film Products, supra.*

The commenters' concerns seem to relate particularly to whether the clearly erroneous standard for review of an immigration judge's factual findings under § 3.1(d)(3)(i) would prejudice an individual respondent. Section 3.1(d)(3)(i) of the rule establishes the scope of review for factual determinations of the immigration judge. However, the change in the standard would have no effect on any appeal where the decision is based on a question of law or the exercise of discretion based on established facts, or any appeal where a disputed fact is not material to the decision. The provision does not have any bearing on motions before the Board or appeals from decisions by Service officers. Thus, the Department believes that the number of such cases would be very small.

In order for the application of the clearly erroneous standard to be prejudicial to the respondent in a pending case, the case must turn on an error of fact made by the immigration judge—a factual finding that is erroneous, but not clearly erroneous—and that is also material to the basis for the decision of the immigration judge and the Board.

Even so, the Department recognizes that an application of the clearly erroneous standard to all pending cases would require the Board to review each case, on an individualized basis, to determine if such circumstances may be present. Rather than having the Board take the time to make these additional determinations in such pending appeals, the Department has determined that it would be more efficacious simply to continue the current scope of review standards for pending cases, and to apply the clearly erroneous standard only to the review of immigration judge decisions in those appeals filed on or after the effective date. Accordingly, § 3.3(f) of the final rule provides that § 3.1(d)(3)(i) will not apply with respect to pending cases filed with the Board prior to September 25, 2002.

The Department notes that § 3.1(d)(3)(iv), which prohibits additional factfinding by the Board on appeal, will apply to all cases pending as of the effective date of this rule. There can be no prejudice in the application of this rule to pending cases, because the rule provides for a remand for further factfinding in any case where the Board determines that additional factfinding is required in a particular case.

K. Transition Period and Reduction of the Backlog

A number of commenters suggested that the period of time imposed within the proposed rule for the Board to meet the backlog reduction requirements was far too short. They argued that the sheer numbers of cases to be decided within that six-month period would reduce the amount of time available for each case, with some commenters offering calculations that this would be reduced to approximately 15 minutes.

The Department disagrees with these comments and has not altered the time frame for eliminating the backlog of pending cases. Pure mathematical formulas in this area have the beauty of simplicity, but are deceptive. Calculating an average amount of time for a single Board member to decide one case overlooks the differences in cases themselves and the preparatory work that goes into decisions. For example, the Department expects that a clearly untimely appeal can be dispatched promptly by a Board member under the streamlining process. For each such simple case (and the Board's experience streamlining has shown there are many), more time is afforded for considering the issues to which the Board's time should be devoted.

Moreover, the six-month time frame runs from the effective date of the rule, not the date on which it is published in the **Federal Register**. To say that the Board has not been on notice of this rule also disserves the Board. The Board has been diligently preparing for the implementation of this rule to reduce its backlog of pending cases since the Notice of Proposed Rulemaking was published on February 19, 2002. The Board has increased its disposition rate dramatically. In 2000, the first full year in which the Board utilized streamlining, the Board averaged 1800 dispositions per month. With the expanded use of streamlining, dispositions increased to an average of 2600 per month in 2001. In February, 2002, when the proposed rule was published, the Board decided 3300

cases. In recent months, utilizing its authority under streamlining, the Board has increased dispositions to an average of over 5200 dispositions per month. With the additional authority granted by this final rule, the Department believes that it is reasonable to expect the Board to bring the caseload backlog down to, or near, a current balance within the six-month transition period. The Department is aware, of course, that specific factors, such as the requirement that the Board improve on providing transcripts to the parties in a timely manner, may adversely impact the disposition rate against the number of cases available for disposition by accelerating the number of records that are available for disposition. The Department is convinced that the transition period is sufficient for the Board to reduce the backlog. Accordingly, the Department is unconvinced that this implementation period should be altered.

L. Administrative Fines Cases

The Department has decided to address the transfer of administrative fines cases to the Office of the Chief Hearing Examiner (OCAHO) in a separate final rule because of a technical legal issue unrelated to the proposed rule and the comments received on the proposed rule. The Department plans to publish this separate final rule in the near future.

M. Miscellaneous and Technical Issues

1. The Board's Pro Bono Project

Several commenters stated that the Department should not take any administrative actions that would disrupt the success of the Board's Pro Bono Project. Although these comments fall outside the scope of the proposed and final rule, the Department wishes to take this opportunity to assure the bench, bar, and public of its commitment to this process. On January 17, 2001, EOIR announced a Pro Bono Project that links volunteer representatives from around the country with detained immigrants who lack legal representation. The Department fully supports this partnership between the government and nonprofit organizations. The Department recognizes the value of representation for respondents in the removal process. Although respondents generally are able to present their points of view ably, often with the assistance of language translators, the availability of attorneys and representatives learned in the technical aspects of immigration law is useful both to guide the respondent and to conserve judicial resources of the immigration judges and the Board.

2. Fundamental Changes in Structure

Other commenters have suggested substantial changes in the underlying structure of the administrative immigration adjudication system. For example, some suggested that respondents should be charged filing and transcript fees more commensurate with the actual costs of the proceedings. Another comment, as well as a proposal by a former Member of the House Judiciary Committee, was that the Department abolish automatic appeals (either generally or of denial of asylum by Service asylum officers) or that only a discretionary appeal to the Board be allowed. The Department believes that these proposals fall outside the scope of the present rule and will not consider such proposals at this time.

3. Technical Amendments

The Department has changed the regulation in § 3.1(a)(4) to permit administrative law judges (ALJs) retired from EOIR to serve as temporary Board members. Under the existing regulations, ALJs from OCAHO may participate in Board decisions as temporary members. Accordingly, the Department has determined that this technical change should be made in the final rule.

Section 3.1(e), dealing with the case management system, begins by instructing the Chairman to establish a case management system to screen all ''appeals.'' The current streamlining process screens, and the proposed rule was designed to provide screening of, all cases filed with the Board, including motions as well as appeals. Accordingly, the term has been changed to reflect the existing practice and the intent behind the proposed rule.

The Department has changed the rule in § 3.1(e)(8) to eliminate the words ''denials of review as a matter of discretion'' because it has been suggested that these words imply that the Board has authority to deny review as a matter of discretion. This was not the Department's intent. To eliminate this concern, the text has been changed.

The proposed rule in § 3.1(e)(8)(ii) provides the Chairman with the authority, in exigent circumstances, to issue a decision where a panel is unable to meet the time limits. The Department has amended the rule to permit the Chairman the authority to delegate such decisions to a Vice-Chairman.

Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it affects only Departmental employees, aliens, or their representatives who appear in proceedings before the Board of Immigration Appeals, and carriers who appeal decisions of Immigration and Naturalization Service (INS) officers. Therefore, this rule does not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Paperwork Reduction Act of 1995

The Executive Office of Immigration Review has submitted the following information collection requests to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collections are published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of one of the proposed information collection instruments with instructions or additional information, please contact the Executive Office for Immigration Review as noted above. Written comments and suggestions from the public and affected agencies concerning the proposed collections of information are encouraged. Your comments should address one or more of the following four points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The first information collection, titled Notice of Appeal from a Decision of an Immigration Judge, is a revision of a currently approved collection. The agency form number is EOIR–26. The information collected will be sponsored by the Executive Office for Immigration Review for parties affected by a decision of an Immigration Judge who may appeal to the Board of Immigration Appeals, provided the Board has jurisdiction pursuant to 8 CFR 3.1(b). An appeal from an Immigration Judge's decision is taken by completing the form and submitting it to the Board. The collection will be distributed primarily to the Federal Government. It is estimated that 23,417 complainants will report one complaint, taking an average of 30 minutes to complete. This will result in 23,417 responses with an estimated total of 11,707 annual burden hours. This is a reduction of 1,791.5 in burden hours due to a decrease in the number of appeals filed with the Board since this form was last approved in 1999.

The second information collection, titled Notice of Appeal to the Board of Immigration Appeals from a Decision of a Service Officer, is a revision of a currently approved collection, occasioned by changes in the regulations. The agency form number is EOIR–29. The information collected will be sponsored by the Executive Office for Immigration Review for a party affected by a decision of a Service Officer who may appeal that decision to the Board of Immigration Appeals, provided the board has jurisdiction pursuant to 8 CFR 3.1(b). An appeal from a Service Officer's decision is taken by completing the form EOIR–29. It is then submitted to the Service office having administrative control over the record of proceedings. The collection will be distributed primarily to individuals and households. It is estimated that 3,156 complainants will report one complaint, taking an average of 30 minutes to complete. This will result in 3,156 responses with an estimated total of 1,578 annual burden hours, which is the same as currently required.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470.

List of Subjects in 8 CFR Part 3

Aliens, Immigration.

Accordingly, for the reasons set forth in the preamble, part 3 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for 8 CFR part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386; 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

2. Amend § 3.1 by:

a. Revising the heading;

b. Revising paragraphs (a)(1) through (a)(6) and paragraph (b) introductory text;

c. Revising paragraphs (d)(1), (d)(2)(i) introductory text, (d)(2)(ii), (d)(2)(iii), and (d)(3);

d. Redesignating paragraphs (d)(2)(i)(D) through (G) as paragraphs (d)(2)(i)(E) through (H), respectively, and adding a new paragraph (d)(2)(i)(D);

e. Revising paragraph (d)(4) and adding paragraphs (d)(5) and (d)(6); and

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

§ 3.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.

(a)(1) *Organization.* There shall be in the Department of Justice a Board of Immigration Appeals, subject to the general supervision of the Director, Executive Office for Immigration Review (EOIR). The Board members shall be attorneys appointed by the Attorney General to act as the Attorney General's delegates in the cases that come before them. Within six months of the implementation of the case management screening system as provided in paragraph (e) of this section, or such other time as may be specified by the Attorney General, the Board shall be reduced to eleven members as designated by the Attorney General. A vacancy, or the absence or unavailability of a Board member, shall not impair the right of the remaining members to exercise all the powers of the Board.

(2) *Chairman.* The Attorney General shall designate one of the Board members to serve as Chairman. The Attorney General may designate one or two Vice Chairmen to assist the Chairman in the performance of his duties and to exercise all of the powers and duties of the Chairman in the absence or unavailability of the Chairman.

(i) The Chairman, subject to the supervision of the Director, shall direct, supervise, and establish internal operating procedures and policies of the Board. The Chairman shall have authority to:

(A) Issue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities;

(B) Provide for appropriate training of Board members and staff on the conduct of their powers and duties;

(C) Direct the conduct of all employees assigned to the Board to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the resolution of cases; to direct that the adjudication of certain cases be deferred, to regulate the assignment of Board members to cases, and otherwise to manage the docket of matters to be decided by the Board;

(D) Evaluate the performance of the Board by making appropriate reports and inspections, and take corrective action where needed;

(E) Adjudicate cases as a Board member; and

(F) Exercise such other authorities as the Director may provide.

(ii) The Chairman shall have no authority to direct the result of an adjudication assigned to another Board member or to a panel; provided, however, that nothing in this section shall be construed to limit the management authority of the Chairman under paragraph (a)(2)(i) of this section.

(3) *Panels.* The Chairman shall divide the Board into three-member panels and designate a presiding member of each panel if the Chairman or Vice Chairman is not assigned to the panel. The Chairman may from time to time make changes in the composition of such panels and of presiding members. Each three-member panel shall be empowered to decide cases by majority vote, and a majority of the Board members assigned to the panel shall constitute a quorum for such panel. In addition, the Chairman shall assign any number of Board members, as needed, to serve on the screening panel to implement the case management process as provided in paragraph (e) of this section.

(4) *Temporary Board members.* The Director may in his discretion designate immigration judges, retired Board members, retired immigration judges, and administrative law judges employed within, or retired from, EOIR to act as temporary, additional Board members for terms not to exceed six months. A temporary Board member assigned to a case may continue to participate in the case to its normal conclusion, but shall have no role in the actions of the Board *en banc.*

(5) *En banc process.* A majority of the permanent Board members shall constitute a quorum for purposes of convening the Board *en banc.* The Board may on its own motion by a majority vote of the permanent Board members, or by direction of the Chairman, consider any case *en banc,* or reconsider as the Board *en banc* any case that has been considered or decided by a three-member panel. En banc proceedings are not favored, and shall ordinarily be ordered only where necessary to address an issue of particular importance or to secure or maintain consistency of the Board's decisions.

(6) *Board staff.* There shall also be attached to the Board such number of attorneys and other employees as the Deputy Attorney General, upon recommendation of the Director, shall from time to time direct.

* * * * *

(b) *Appellate jurisdiction.* Appeals may be filed with the Board of Immigration Appeals from the following:

(d) *Powers of the Board*—(1) *Generally.* The Board shall function as an appellate body charged with the review of those administrative adjudications under the Act that the Attorney General may by regulation assign to it. The Board shall resolve the questions before it in a manner that is timely, impartial, and consistent with the Act and regulations. In addition, the Board, through precedent decisions, shall provide clear and uniform guidance to the Service, the immigration judges, and the general public on the proper interpretation and administration of the Act and its implementing regulations.

(i) The Board shall be governed by the provisions and limitations prescribed by applicable law, regulations, and procedures, and by decisions of the Attorney General (through review of a decision of the Board, by written order, or by determination and ruling pursuant to section 103 of the Act).

(ii) Subject to these governing standards, Board members shall exercise their independent judgment and discretion in considering and determining the cases coming before the Board, and a panel or Board member to whom a case is assigned may take any action consistent with their authorities under the Act and the regulations as is appropriate and necessary for the disposition of the case.

(2) *Summary dismissal of appeals*—(i) *Standards.* A single Board member or panel may summarily dismiss any appeal or portion of any appeal in any case in which:

* * * * *

(D) The Board is satisfied, from a review of the record, that the appeal is filed for an improper purpose, such as to cause unnecessary delay, or that the appeal lacks an arguable basis in fact or in law unless the Board determines that it is supported by a good faith argument for extension, modification, or reversal of existing law;

* * * * *

(ii) *Action by the Board.* The Board's case management screening plan shall promptly identify cases that are subject to summary dismissal pursuant to this paragraph. An order dismissing any appeal pursuant to this paragraph (d)(2) shall constitute the final decision of the Board.

(iii) *Disciplinary consequences.* The filing by an attorney or representative accredited under § 292.2(d) of this chapter of an appeal that is summarily dismissed under paragraph (d)(2)(i) of this section may constitute frivolous behavior under § 3.102(j). Summary dismissal of an appeal under paragraph (d)(2)(i) of this section does not limit the other grounds and procedures for disciplinary action against attorneys or representatives.

(3) *Scope of review.* (i) The Board will not engage in *de novo* review of findings of fact determined by an immigration judge. Facts determined by the immigration judge, including findings as to the credibility of testimony, shall be reviewed only to determine whether the findings of the immigration judge are clearly erroneous.

(ii) The Board may review questions of law, discretion, and judgment and all other issues in appeals from decisions of immigration judges *de novo.*

(iii) The Board may review all questions arising in appeals from decisions issued by Service officers *de novo.*

(iv) Except for taking administrative notice of commonly known facts such as current events or the contents of official documents, the Board will not engage in factfinding in the course of deciding appeals. A party asserting that the Board cannot properly resolve an appeal without further factfinding must file a motion for remand. If further factfinding is needed in a particular case, the Board may remand the proceeding to the immigration judge or, as appropriate, to the Service.

(4) *Rules of practice.* The Board shall have authority, with the approval of the Director, EOIR, to prescribe procedures governing proceedings before it.

(5) *Discipline of attorneys and representatives.* The Board shall determine whether any organization or individual desiring to represent aliens in immigration proceedings meets the requirements as set forth in § 292.2 of this chapter. It shall also determine whether any organization desiring representation is of a kind described in

§ 1.1(j) of this chapter, and shall regulate the conduct of attorneys, representatives of organizations, and others who appear in a representative capacity before the Board or the Service or any immigration judge.

(6) *Finality of decision.* The decision of the Board shall be final except in those cases reviewed by the Attorney General in accordance with paragraph (h) of this section. The Board may return a case to the Service or an immigration judge for such further action as may be appropriate, without entering a final decision on the merits of the case.

(e) *Case management system.* The Chairman shall establish a case management system to screen all cases and to manage the Board's caseload. Unless a case meets the standards for assignment to a three-member panel under paragraph (e)(6) of this section, all cases shall be assigned to a single Board member for disposition. The Chairman, under the supervision of the Director, shall be responsible for the success of the case management system. The Chairman shall designate, from time to time, a screening panel comprising a sufficient number of Board members who are authorized, acting alone, to adjudicate appeals as provided in this paragraph.

(1) *Initial screening.* All cases shall be referred to the screening panel for review. Appeals subject to summary dismissal as provided in paragraph (d)(2) of this section should be promptly dismissed.

(2) *Miscellaneous dispositions.* A single Board member may grant an unopposed motion or a motion to withdraw an appeal pending before the Board. In addition, a single Board member may adjudicate a Service motion to remand any appeal from the decision of a Service officer where the Service requests that the matter be remanded to the Service for further consideration of the appellant's arguments or evidence raised on appeal; a case where remand is required because of a defective or missing transcript; and other procedural or ministerial issues as provided by the case management plan.

(3) *Merits review.* In any case that has not been summarily dismissed, the case management system shall arrange for the prompt completion of the record of proceedings and transcript, and the issuance of a briefing schedule. A single Board member assigned under the case management system shall determine the appeal on the merits as provided in paragraph (e)(4) or (e)(5) of this section, unless the Board member determines that the case is appropriate for review and decision by a three-member panel under the standards of paragraph (e)(6) of this section. The Board member may summarily dismiss an appeal after completion of the record of proceeding.

(4) *Affirmance without opinion.* (i) The Board member to whom a case is assigned shall affirm the decision of the Service or the immigration judge, without opinion, if the Board member determines that the result reached in the decision under review was correct; that any errors in the decision under review were harmless or nonmaterial; and that

(A) The issues on appeal are squarely controlled by existing Board or federal court precedent and do not involve the application of precedent to a novel factual situation; or

(B) The factual and legal issues raised on appeal are not so substantial that the case warrants the issuance of a written opinion in the case.

(ii) If the Board member determines that the decision should be affirmed without opinion, the Board shall issue an order that reads as follows: ''The Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination. *See* 8 CFR 3.1(e)(4).'' An order affirming without opinion, issued under authority of this provision, shall not include further explanation or reasoning. Such an order approves the result reached in the decision below; it does not necessarily imply approval of all of the reasoning of that decision, but does signify the Board's conclusion that any errors in the decision of the immigration judge or the Service were harmless or nonmaterial.

(5) *Other decisions on the merits by single Board member.* If the Board member to whom an appeal is assigned determines, upon consideration of the merits, that the decision is not appropriate for affirmance without opinion, the Board member shall issue a brief order affirming, modifying, or remanding the decision under review, unless the Board member designates the case for decision by a three-member panel under paragraph (e)(6) of this section under the standards of the case management plan. A single Board member may reverse the decision under review if such reversal is plainly consistent with and required by intervening Board or judicial precedent, by an intervening Act of Congress, or by an intervening final regulation. A motion to reconsider or to reopen a decision that was rendered by a single Board member may be adjudicated by that Board member unless the case is reassigned to a three-member panel as provided under the standards of the case management plan.

(6) *Panel decisions.* Cases may only be assigned for review by a three-member panel if the case presents one of these circumstances:

(i) The need to settle inconsistencies among the rulings of different immigration judges;

(ii) The need to establish a precedent construing the meaning of laws, regulations, or procedures;

(iii) The need to review a decision by an immigration judge or the Service that is not in conformity with the law or with applicable precedents;

(iv) The need to resolve a case or controversy of major national import;

(v) The need to review a clearly erroneous factual determination by an immigration judge; or

(vi) The need to reverse the decision of an immigration judge or the Service, other than a reversal under § 3.1(e)(5).

(7) *Oral argument.* When an appeal has been taken, a request for oral argument if desired shall be included in the Notice of Appeal. A three-member panel or the Board *en banc* may hear oral argument, as a matter of discretion, at such date and time as is established under the Board's case management plan. Oral argument shall be held at the offices of the Board unless the Deputy Attorney General or his designee authorizes oral argument to be held elsewhere. The Service may be represented before the Board by an officer of the Service designated by the Service. No oral argument will be allowed in a case that is assigned for disposition by a single Board member.

(8) *Timeliness.* As provided under the case management system, the Board shall promptly enter orders of summary dismissal, or other miscellaneous dispositions, in appropriate cases. In other cases, after completion of the record on appeal, including any briefs, motions, or other submissions on appeal, the Board member or panel to which the case is assigned shall issue a decision on the merits as soon as practicable, with a priority for cases or custody appeals involving detained aliens.

(i) Except in exigent circumstances as determined by the Chairman, the Board shall dispose of all appeals assigned to a single Board member within 90 days of completion of the record on appeal, or within 180 days after an appeal is assigned to a three-member panel (including any additional opinion by a member of the panel).

(ii) In exigent circumstances, the Chairman may grant an extension in particular cases of up to 60 days as a matter of discretion. Except as provided in paragraph (e)(8)(iii) or (iv) of this section, in those cases where the panel

is unable to issue a decision within the established time limits, as extended, the Chairman shall either assign the case to himself or a Vice-Chairman for final decision within 14 days or shall refer the case to the Attorney General for decision. If a dissenting or concurring panel member fails to complete his or her opinion by the end of the extension period, the decision of the majority will be issued without the separate opinion.

(iii) In rare circumstances, when an impending decision by the United States Supreme Court or a United States Court of Appeals, or impending Department regulatory amendments, or an impending *en banc* Board decision may substantially determine the outcome of a case or group of cases pending before the Board, the Chairman may hold the case or cases until such decision is rendered, temporarily suspending the time limits described in this paragraph (e)(8).

(iv) For any case ready for adjudication as of September 25, 2002, and that has not been completed within the established time lines, the Chairman may, as a matter of discretion, grant an extension of up to 120 days.

(v) The Chairman shall notify the Director of EOIR and the Attorney General if a Board member consistently fails to meet the assigned deadlines for the disposition of appeals, or otherwise fails to adhere to the standards of the case management system. The Chairman shall also prepare a report assessing the timeliness of the disposition of cases by each Board member on an annual basis.

(vi) The provisions of this paragraph (e)(8) establishing time limits for the adjudication of appeals reflect an internal management directive in favor of timely dispositions, but do not affect the validity of any decision issued by the Board and do not, and shall not be interpreted to, create any substantive or procedural rights enforceable before any immigration judge or the Board, or in any court of law or equity.

* * * * *

(g) *Decisions of the Board as precedents.* Except as they may be modified or overruled by the Board or the Attorney General, decisions of the Board shall be binding on all officers and employees of the Service or immigration judges in the administration of the Act. By majority vote of the permanent Board members, selected decisions of the Board rendered by a three-member panel or by the Board en banc may be designated to serve as precedents in all proceedings involving the same issue or issues.

* * * * *

3. In § 3.2, paragraph (i) is amended by adding after the first sentence a new sentence, to read as follows:

§ 3.2 Reopening or reconsideration before the Board of Immigration Appeals.

* * * * *

(i) * * * Any motion for reconsideration or reopening of a decision issued by a single Board member will be referred to the screening panel for disposition by a single Board member, unless the screening panel member determines, in the exercise of judgment, that the motion for reconsideration or reopening should be assigned to a three-member panel under the standards of § 3.1(e)(6). * * *

* * * * *

4. In § 3.3, paragraphs (a) and (c) are revised, paragraph (b) is amended by adding a new sentence at the end thereof, and paragraph (f) is added, to read as follows:

§ 3.3 Notice of appeal.

(a) *Filing*—(1) *Appeal from decision of an immigration judge.* A party affected by a decision of an immigration judge which may be appealed to the Board under this chapter shall be given notice of the opportunity for filing an appeal. An appeal from a decision of an immigration judge shall be taken by filing a Notice of Appeal from a Decision of an Immigration Judge (Form EOIR–26) directly with the Board, within the time specified in § 3.38. The appealing parties are only those parties who are covered by the decision of an immigration judge and who are specifically named on the Notice of Appeal. The appeal must reflect proof of service of a copy of the appeal and all attachments on the opposing party. An appeal is not properly filed unless it is received at the Board, along with all required documents, fees or fee waiver requests, and proof of service, within the time specified in the governing sections of this chapter. A Notice of Appeal may not be filed by any party who has waived appeal pursuant to § 3.39.

(2) *Appeal from decision of a Service officer.* A party affected by a decision of a Service officer that may be appealed to the Board under this chapter shall be given notice of the opportunity to file an appeal. An appeal from a decision of a Service officer shall be taken by filing a Notice of Appeal to the Board of Immigration Appeals from a Decision of an INS Officer (Form EOIR–29) directly with the office of the Service having administrative control over the record of proceeding within 30 days of the service of the decision being appealed. An appeal is not properly filed until it is received at the appropriate office of the Service, together with all required documents, and the fee provisions of § 3.8 are satisfied.

(3) *General requirements for all appeals.* The appeal must be accompanied by a check, money order, or fee waiver request in satisfaction of the fee requirements of § 3.8. If the respondent or applicant is represented, a Notice of Entry of Appearance as Attorney or Representative Before the Board (Form EOIR–27) must be filed with the Notice of Appeal. The appeal and all attachments must be in English or accompanied by a certified English translation.

(b) * * * An appellant who asserts that the appeal may warrant review by a three-member panel under the standards of § 3.1(e)(6) may identify in the Notice of Appeal the specific factual or legal basis for that contention.

* * * * *

(c) *Briefs*—(1) *Appeal from decision of an immigration judge.* Briefs in support of or in opposition to an appeal from a decision of an immigration judge shall be filed directly with the Board. In those cases that are transcribed, the briefing schedule shall be set by the Board after the transcript is available. In cases involving aliens in custody, the parties shall be provided 21 days in which to file simultaneous briefs unless a shorter period is specified by the Board, and reply briefs shall be permitted only by leave of the Board. In cases involving aliens who are not in custody, the appellant shall be provided 21 days in which to file a brief, unless a shorter period is specified by the Board. The appellee shall have the same period of time in which to file a reply brief that was initially granted to the appellant to file his or her brief. The time to file a reply brief commences from the date upon which the appellant's brief was due, as originally set or extended by the Board. The Board, upon written motion, may extend the period for filing a brief or a reply brief for up to 90 days for good cause shown. In its discretion, the Board may consider a brief that has been filed out of time. All briefs, filings, and motions filed in conjunction with an appeal shall include proof of service on the opposing party.

(2) *Appeal from decision of a Service officer.* Briefs in support of or in opposition to an appeal from a decision of a Service officer shall be filed directly with the office of the Service having administrative control over the file. The alien and the Service shall be provided 21 days in which to file a brief, unless a shorter period is specified by the Service officer from whose decision the

appeal is taken, and reply briefs shall be permitted only by leave of the Board. Upon written request of the alien, the Service officer from whose decision the appeal is taken or the Board may extend the period for filing a brief for good cause shown. The Board may authorize the filing of briefs directly with the Board. In its discretion, the Board may consider a brief that has been filed out of time. All briefs and other documents filed in conjunction with an appeal, unless filed by an alien directly with a Service office, shall include proof of service on the opposing party.

* * * * *

(f) *Application on effective date.* All cases and motions pending on September 25, 2002, shall be adjudicated according to the rules in effect on or after that date, except that § 3.1(d)(3)(i) shall not apply to appeals filed before September 25, 2002. A party to an appeal or motion pending on August 26, 2002, may, until September 25, 2002, or the expiration of any briefing schedule set by the Board, whichever is later, submit a brief or statement limited to explaining why the appeal or motion does or does not meet the criteria for three-member review under § 3.1(e)(6).

* * * * *

5. In § 3.5, paragraph (a) is revised to read as follows:

§ 3.5 Forwarding of record on appeal.

(a) *Appeal from decision of an immigration judge.* If an appeal is taken from a decision of an immigration judge, the record of proceeding shall be forwarded to the Board upon the request or the order of the Board. Where transcription of an oral decision is required, the immigration judge shall review the transcript and approve the decision within 14 days of receipt, or within 7 days after the immigration judge returns to his or her duty station if the immigration judge was on leave or detailed to another location. The Chairman and the Chief Immigration Judge shall determine the most effective and expeditious way to transcribe proceedings before the immigration judges, and take such steps as necessary to reduce the time required to produce transcripts of those proceedings and improve their quality.

* * * * *

Dated: August 19, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–21545 Filed 8–23–02; 8:45 am]

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Federal Register

Monday,
August 26, 2002

Part IV

Department of Agriculture

7 CFR Part 1206

Mango Promotion, Research, and Information Order; Subpart B—Referendum Procedures; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1206

[FV–02–707–PR1]

RIN 0581–AC05

Proposed Mango Promotion, Research, and Information Order

AGENCY: Agricultural Marketing Service, Agriculture.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Department of Agriculture (Department or USDA) is seeking comments on an industry-funded promotion, research, and information program for fresh mangos. A proposed program—the Mango Promotion, Research, and Information Order (Order)—was submitted to the Department by the Fresh Produce Association of the Americas (Association). Under the proposed Order, first handlers and importers of 500,000 or more pounds of mangos would pay an assessment of ½ cent per pound on domestic and imported mangos to the National Mango Promotion Board (Board). The Board would be appointed by the Department to conduct a program of research and promotion, industry information, and consumer information needed to increase consumption of fresh mangos in the United States. The Order would be implemented if it is approved by a majority of the eligible first handlers and importers voting in a referendum. A separate proposed rule on referendum procedures is being published in this issue of the **Federal Register**.

DATES: Comments must be received by October 25, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, 1400 Independence Avenue, S.W., Room 2535-S, Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: *malinda.farmer@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this proposed rule may be found at: http://www.ams.usda.gov/rpdocketlist.htm.

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kathie Birdsell, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535–S, Washington, DC 20250–0244, telephone 888–720–9917 (toll free), fax 202–205–2800, e-mail *kathie.birdsell@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed Order is issued under the Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7411–7425; Public Law 104–127; 110 Stat. 1029), or any amendments thereto.

Question and Answer Overview

Why Is USDA Proposing a Program for Mangos?

The Department received a proposal from the Association for this program. The Department is issuing this rule to obtain comments on the proposal and the potential impact of the program on the mango industry before developing a final proposed program and conducting a referendum on it.

What Is the Purpose of the Mango Program?

The purpose of the program is to increase consumption of mangos in the United States.

Who Will Be Covered by the Program?

Domestic first handlers and importers of 500,000 or more pounds of mangos annually will pay assessments under the program. Domestic mangos that are exported will not be assessed under the Order.

Who Will Sit on the Board?

Under the proposal, there will be a 20-member Board consisting of eight U.S. importers, one U.S. first handler, two U.S. producers, seven foreign producers, and two non-voting U.S. wholesalers and/or retailers of mangos. The chairperson shall reside in the United States.

How Will Members of the Board Be Selected?

The U.S. importers, first handlers, and producers would be nominated by U.S. importers, first handlers, and producers, respectively. Foreign producers would be nominated by foreign producer associations. The U.S. wholesalers and/or retailers would be nominated by the Board. Two names must be submitted for each position. From the names submitted, the Department will appoint the members.

How Can I Express My Views on the Proposals?

You have 60 days to submit written comments to USDA on the proposals and also to OMB on the paperwork burden associated with the proposed Order. You may submit your comments by mail, fax, or e-mail as indicated above. OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. In addition, if you are a first handler or importer of mangos, you will have the opportunity to vote either ''yes'' or ''no'' in a referendum to determine if the program will be implemented.

If the Mango Program Is Implemented and There Are Concerns About How It Is Operating, Can the Program Be Terminated?

Yes. After the program is implemented, the Department will conduct a referendum to determine whether the mango industry continues to support the program: (1) Every 5 years after the program is in effect, (2) at the request of the Board established under the proposed Order, or (3) when requested by 10 percent or more of first handlers and importers covered by the proposed Order. In addition, the Department may conduct a referendum at any time. If a majority of the first handlers and importers voting in the referendum do not favor continuation, the program will be terminated.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of USDA's final ruling.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

The Association submitted a proposal on June 29, 2001, for this program to: develop and finance an effective and coordinated program of research, promotion, industry information, and consumer information regarding mangos; strengthen the position of the mango industry in U.S. markets; and maintain, develop, and expand domestic markets for mangos. The Association submitted changes to their proposal on November 1, 2001.

First handlers and importers of mangos must approve the program in a referendum in advance of its implementation. These persons would also serve on the proposed 20-member Board. The Board would be composed of eight U.S. importers, one U.S. first handler, two U.S. producers, seven foreign producers, and two non-voting wholesalers and/or retailers. If domestic production increases, additional U.S. first handlers would be added to the Board. The Board would administer the program under the Department's supervision. In addition, any person subject to the program may file with the Department a petition stating that the Order or any provision of the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. Administrative proceedings were discussed earlier in this proposed rule.

In this program, first handlers would be required to pay assessments, file reports, and submit assessments to the Board. Importers would be required to remit to the Board assessments not collected by the U.S. Customs Service (Customs) and to file reports with the Board. First handlers and importers of less than 500,000 pounds of mangos annually and exports of U.S. mangos would be exempt from assessment. While the proposed Order would impose certain recordkeeping requirements on first handlers and importers, information required under the proposed Order could be compiled from records currently maintained and would involve clerical or accounting skills. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. An estimated 89 respondents would provide information to the Board. They would be: 5 first handlers covered by the program, 3 exempt first handlers, 55 importers covered by the program, 3 exempt importers, 4 domestic producer nominees, 1 foreign producer organization, 14 foreign producer nominees, and 4 wholesaler and/or retailer nominees. The estimated total cost of providing information to the Board by all respondents would be $783.34. The cost for all first handlers covered by the program would be $336.66 or $67.33 per first handler covered by the program; $7.50 for all exempt handlers or $2.50 per exempt handler; $393.34 for all importers covered by the program or $7.15 per importer covered by the program; $7.50 for all exempt importers or $2.50 per exempt importer; $6.67 for all domestic producers or $1.67 per nominee; $1.67 for the foreign producer organization; $23.33 for all foreign producer nominees or $1.67 per nominee; and $6.67 for all wholesaler and/or retailer nominees or $1.67 for each nominee. These totals have been estimated by multiplying total burden hours requested by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

The Department would oversee the operation of the program. Every five years, the Department would conduct a referendum to determine whether the mango industry supports continuation of the program. In addition, the Secretary may conduct a referendum at any time, at the request of 10 percent or more of the first handlers and importers required to pay assessments, or at the request of the Board.

There are approximately 5 first handlers and 55 importers of mangos that would be covered by the program. First handlers and importers of less than 500,000 pounds of mangos annually and exports of U.S. mangos would be exempt from assessments. The program would also affect domestic and foreign mango producers, an association of foreign mango producers, and wholesalers and retailers. These entities would serve on the Board or participate in the nomination process.

The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts of $750,000 or less annually and small agricultural service firms as those having annual receipts of $5 million or less. First handlers, importers, wholesalers, and retailers would be considered agricultural service firms. Using these criteria, most producers, first handlers, and importers would be considered small businesses while wholesalers and retailers would not. The producer association would consist of producers and would reflect the size of these entities.

U.S. production of mangos is located in California, Florida, and Hawaii, according to the most recent U.S. Census of Agriculture (Census) which was in 1997. The Census does not include California production because California has so few producers that publishing production data would reveal confidential information. In 1997, production in Florida totaled 6.1 million pounds, and Hawaii's production was 0.1 million pounds. For Florida and Hawaii combined, production fell from 16.6 million pounds in 1992 to 6.2 million pounds in 1997. Census data are published every five years. USDA does not report the value of U.S. production. Although domestic production accounts for only eight percent of U.S. consumption of

mangos, we anticipate that any increase in demand for mangos resulting from this program may lead to a corresponding increase in domestic production.

Seven countries account for 99 percent of the mangos imported into the United States. These countries and their share of the imports (from September 1, 2000, through June 30, 2001) are: Mexico (57 percent); Brazil (11 percent); Ecuador (10 percent); Peru (10 percent); Guatemala (7 percent); Haiti (3 percent); and Costa Rica (1 percent). For the period from September 1, 2000, through June 30, 2001, the United States imported a total of 170,445 tons of mangos, valued at $106 million. In the previous full season (September 1, 1999, through August 31, 2000), 253,591 tons, valued at $141 million, were imported into the United States. A preliminary estimate of per capita consumption of mangos by USDA's Economic Research Service (ERS) was 1.8 pounds in 2000. Per capita consumption has been trending upwards for several decades. Per capita consumption was 0.21 pounds in 1979 and 0.51 pounds in 1989.

The proposed Order would authorize assessments on first handlers and on importers (collected by Customs) of mangos at a rate of ½ cent per pound. This would generate about $2.5 million to administer the program: about 8 percent from domestic production and 92 percent from imports. First handlers and importers of less than 500,000 pounds of mangos per year will be exempt. U.S. produced mangos that are exported are also exempt.

The cost of the assessment and reporting requirements for first handlers and importers is likely to be offset by the benefit of increased demand for mangos in the United States. The Association's goal for the program is to increase consumption of mangos in the United States by 30 percent after one year. In addition, U.S. consumers would benefit from additional information regarding mangos. Another benefit to first handlers and importers of mangos would be that they could serve on the Board and direct the Board's programs.

Associations and related industry media would receive news releases and other information regarding the implementation and referendum process. Furthermore, all the information would be available electronically.

The Board would develop guidelines for compliance with the program. The Board would recommend changes in the assessment rate, programs, plans, projects, budgets, and any rules and regulations that might be necessary for the administration of the program. The administrative expenses of the Board are limited by the Act to no more than 15 percent of its assessment income.

There are no federal or state programs that duplicate, overlap, or conflict with this rule. With regard to alternatives to this proposed rule, the Act itself provides for authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an order in section 516 of the Act, and other sections provide for alternatives. For example, section 514 of the Act provides for orders applicable to: (1) Producers; (2) first handlers and other persons in the marketing chain as appropriate; and (3) importers (if imports are subject to assessment).

Section 515 of the Act provides for the establishment of a board to administer a program established under the Act. This section states that the board will consist of members considered by the Department, in consultation with the agricultural commodity industry involved, to be appropriate. The Act authorizes the following types of board members: producers, first handlers, others in the marketing chain as appropriate, importers (if importers are subject to assessment), and members of the general public. The Association's proposal specified that the Board would consist of eight U.S. importers, one U.S. first handler, seven foreign producers, one public member, and two non-voting U.S. wholesalers and/or retailers of mangos. In reviewing the Association's proposal, the Department determined that an alternative composition of the Board would be more appropriate. Therefore, this proposed rule provides for the Board to consist of eight U.S. importers, one U.S. first handler, two U.S. producers, seven foreign producers, and two non-voting U.S. wholesalers and/or retailers.

Section 516 authorizes an order to provide for exemption of *de minimis* quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports.

In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the order. An order also may provide for its approval in a referendum to be based upon (1) approval by a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity.

This proposal includes provisions for domestic market expansion and improvement, reserve funds, and an initial referendum to be conducted prior to the Order going into effect. Approval would be based upon a majority of the first handlers and importers of mangos represented by those voting in the referendum.

While we have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis of the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with OMB regulation (5 CFR part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that may be imposed by this Order have been submitted to OMB for approval. Those requirements will not become effective prior to OMB review.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number for background form (number 1 below): 0505–0001

Expiration date of approval: August 31, 2002.

OMB Number for other information collections: 0581–NEW.

Expiration Date of Approval: 3 years from approval date.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Act.

In addition, there will be the additional burden on first handlers and importers voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures which is published

separately in this issue of the **Federal Register**.

Under the proposed program, first handlers would be required to pay assessments and file reports with and submit assessments to the Board. While the proposed Order would impose certain recordkeeping requirements on first handlers, information required under the proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the marketing year of their applicability.

An estimated 89 respondents would provide information to the Board. They would be: 5 first handlers covered by the program, 3 exempt first handlers, 55 importers covered by the program, 3 exempt importers, 4 domestic producer nominees, 1 foreign producer organization, 14 foreign producer nominees, and 4 wholesaler and/or retailer nominees. The estimated total cost of providing information to the Board by all respondents would be $783.34. The estimated cost for all first handlers covered by the program would be $336.66 or $67.33 per first handler covered by the program; $7.50 for all exempt first handlers or $2.50 per exempt first handler; $393.34 for all importers covered by the program or $7.15 per importer covered by the program; $7.50 for all exempt importers or $2.50 for each exempt importer; $6.67 for all domestic producer nominees or $1.67 per nominee; $1.67 for the foreign producer organization; $23.33 for all foreign producer nominees or $1.67 per nominee; and $6.67 for all wholesaler and/or retailer nominees or $1.67 for each nominee. These totals have been estimated by multiplying total burden hours requested by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other mango programs administered by USDA.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information monthly during the production season would coincide with normal industry business practices. Reporting other than monthly would impose an additional and unnecessary recordkeeping burden on first handlers and importers. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual first handlers who are subject to the provisions of the Act. The requirement to keep records for two years is consistent with normal industry practices.

Therefore, there is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this proposal include:

(1) A Background Information Form.

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each Board nominee.

Respondents: First handlers, importers, domestic producers, foreign producers, and wholesalers and/or retailers.

Estimated number of Respondents: 40 for initial nominations, 13 in subsequent years.

Estimated number of Responses per Respondent: 1 every 3 years. (0.3)

Estimated Total Annual Burden on Respondents: 20 hours for the initial nominations and 6.7 hours annually thereafter.

(2) Voting in the Nomination Process.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: First handlers, importers, domestic producers, and a foreign producer organization.

Estimated number of Respondents: 65.

Estimated Number of Responses per Respondent: 1 every 3 years. (0.3)

Estimated Total Annual Burden on Respondents: 11 hours.

(3) An Exemption Application for First Handlers and Importers Who Will Be Exempt from Assessments.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each exempt first handler and importer.

Respondents: Exempt First handlers and importers.

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.5 hours.

(4) Monthly Report by Each First Handler of Mangos.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per each first handler reporting on mangos handled.

Respondents: First handlers.

Estimated number of Respondents: 5.

Estimated number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 30 hours.

(5) A Requirement To Maintain Records Sufficient To Verify Reports Submitted Under the Order.

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Respondents: First handlers and importers.

Estimated Number of Respondents: 60.

Estimated Total Annual Burden of Respondents: 30 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the USDA's oversight of the program, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–NEW. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames listed above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be

summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

The Act authorizes the Department, under a generic authority, to establish agricultural commodity research and promotion orders. The Act provides for a number of optional provisions that allow the tailoring of orders for different commodities. Section 516 of the Act provides permissive terms for orders, and other sections provide for alternatives. For example, section 514 of the Act provides for orders applicable to: (1) Producers; (2) first handlers and others in the marketing chain as appropriate; and (3) importers (if importers are subject to assessment). Section 516 authorizes an order to provide for exemption of *de minimis* quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under an order. An order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

This proposed Order includes provisions for domestic market expansion and improvement, reserve funds, and an initial referendum to be conducted prior to the program going into effect. Approval would be based upon a majority of the first handlers and importers voting in the referendum.

The Association has requested the establishment of a Mango Promotion, Research, and Information Order (Order) pursuant to the Act. The Act authorizes the establishment and operation of generic promotion programs which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. This proposal would provide for the development and financing of an effective and coordinated program of research, promotion, and information for mangos. The purpose of the program would be to increase consumption of mangos in the United States.

The program would not become effective until approved in a referendum conducted by USDA. Section 518 of the Act provides for USDA to: (1) Conduct an initial referendum, preceding a proposed Order's effective date, among persons who would pay assessments under the program; or (2) implement a proposed Order, pending the conduct of a referendum, among persons subject to assessments, within three years after assessments first begin.

In accordance with section 518(e) of the Act, the results of the referendum must be determined one of three ways (1) by a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity.

The Association has recommended that the Department conduct a referendum in which approval of the proposed Order would be based on a majority of the eligible first handlers and importers voting in the referendum. The Association has also recommended that a referendum be conducted prior to the proposed Order going into effect.

In accordance with the Act, USDA would oversee the program's operations. In addition, the Act requires the Department to conduct subsequent referenda: (1) Not later than 7 years after assessments first begin under the proposed Order; or (2) at the request of the Board established under the proposed Order; or (3) at the request of 10 percent or more of the number of persons eligible to vote. The Association has requested that a referendum be conducted every five years to determine if first handlers and importers want the program to continue.

In addition to these criteria, the Act provides that the Department may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the proposed Order or a provision of the proposed Order is favored by persons eligible to vote.

A national research and promotion program for mangos would help the industry to increase consumption of mangos in the United States.

Worldwide, mangos rank first in terms of overall fruit consumption per capita. In the United States, mango consumption currently ranked sixteenth at 1.8 pounds per capita in 2000, according to ERS. In contrast, bananas ranked number one in the United States with a per capita consumption of 29.2 pounds. According to the Association, the low level of mango consumption is due, in part, to lack of product awareness. U.S. consumers are largely unfamiliar with the varieties of mangos, their nutritional benefits, and how to handle them.

Except for a pilot project conducted by the Association with voluntary contributions in 1999, mango promotion has been virtually non-existent in the United States. There are no large industry members capable of promoting the commodity independently. The mango industry is fragmented. Distribution is conducted by a large number of small importers receiving product from multiple countries of origin. This makes coordinated research and promotion efforts extremely difficult in the absence of a national program.

Average annual U.S. mango prices have been declining since 1990. Increased supply accompanied by current demand levels will most likely yield lower wholesale prices in the future.

A national program would generate funds through mandatory assessments on domestic and imported mangos to be used to conduct research and market development strategies such as sales promotion, publicity, public relations, and advertising. Such a program would also provide centralized communications and facilitate better distribution management for industry members. Section 516(f) of the Act allows an order to authorize the levying of assessments on imports of the commodity covered by the program or on products containing that commodity, at a rate comparable to the rate determined for the domestic agricultural commodity covered by the proposed Order. The Association has proposed to assess imports.

The assessment levied on domestically-produced and imported mangos would be used to pay for promotion, research, and consumer and industry information as well as administration, maintenance, and functioning of the Board. Expenses incurred by the Department in implementing and administering the proposed Order, including referenda costs, also would be paid from

assessments. Sections 516(e)(1) and (2) of the Act state that an order may provide for credits of assessments for generic and branded activities. The Association has elected not to propose credits for generic or branded activities. Therefore, the terms ''generic activities'' and ''branded activities'' are not defined in the proposed Order, and credits for assessments would not be allowed.

The Association's initial proposal, dated June 29, 2001, provided for the assessments to be paid by producers and included no exemptions. Subsequently, the Association sent a letter to the Department to revise its proposal by changing the U.S. producer assessment to a U.S. first handler assessment and to exempt handlers and importers of less than 500,000 pounds of mangos annually and exports of U.S. mangos. These modifications reflected a change in industry preferences for program coverage.

First handlers would be required to pay assessments to the Board and maintain records on all mangos handled, including mangos produced by a first handler.

Assessments on imported mangos would be collected by Customs at the time of entry into the United States and remitted to the Board.

All information obtained from persons subject to this proposed Order as a result of recordkeeping and reporting requirements would be kept confidential by all officers, employees, and agents of USDA and of the Board. However, this information may be disclosed only if the Department considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Department or to which the Department or any officer of USDA is a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports or on information relating to a number of persons subject to an order if the statements do not identify the information furnished by any person or the publication, by direction of the Department of the name of any person violating an order and a statement of the particular provisions of an order violated by the person.

The proposed Order provides for USDA to conduct an initial referendum preceding the proposed Order's effective date. Therefore, approval of the proposed Order will be determined by a majority of the eligible first handlers and importers voting in the referendum. The proposed Order also provides for subsequent referenda to be conducted (1) every 5 years after the program is in effect; (2) at the request of the Board established under the proposed Order; or (3) when requested by 10 percent or more of first handlers and importers of mangos covered by the proposed Order. In addition, the Department may conduct a referendum at any time.

The Act requires that an order provide for the establishment of a board to administer the program under USDA supervision. The Department modified the Association's proposal by adding two domestic producers and eliminating the public member position to help ensure that the program will benefit the domestic mango industry. Therefore, this rule provides for a 20-member Board consisting of eight U.S. importers, one U.S. first handler, two U.S. producers, seven foreign producers, and two non-voting wholesalers and/or retailers. In addition, the Department included a separate definition for foreign producers.

To ensure fair and equitable representation of the mango industry on the Board, the Act requires membership on the Board to reflect the geographical distribution of the production of mangos and the quantity or value of imports. We anticipate that this program will assist domestic producers by increasing the demand for mangos. It is possible that domestic production will expand accordingly, in which case reapportioning of the Board would be required under the Order.

Upon implementation of the proposed Order and pursuant to the Act, at least once every five years, the Board will review the geographical distribution of production of mangos in the United States, the geographical distribution of the importation of mangos into the United States, the quantity of mangos produced in the United States, and the quantity of mangos imported into the United States. The review will be based on Board assessment records and statistics from the Department. If warranted, the Board will recommend to the Department that membership on the Board be altered to reflect any changes in geographical distribution of domestic mango production and importation and the quantity of domestic production and imports. In order to help ensure equitable representation of importers and first handlers on the Board, additional first handlers may be added to the Board if the quantity of domestic production increases to a level where first handlers would be entitled to an additional member on the Board. Currently, each importer member represents about 42.6 million pounds of imported mangos, and the first handler member represents about 6.2 million pounds of domestic mango production.

Board members will serve terms of three years and be able to serve a maximum of two consecutive terms. When the Board is first established, the U.S. first handler, three U.S. importers, one U.S. producer, and two foreign producers will be assigned initial terms of four years; three U.S. importers, one U.S. producer, and three foreign producers will be assigned initial terms of three years; and two U.S. importers, two foreign producers, and the two wholesalers and/or retailers will be assigned initial terms of two years. Thereafter, each of these positions will carry a three-year term. Members serving initial terms of two or four years will be eligible to serve a second term of three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

The proposed Order submitted by the Association is summarized as follows:

Sections 1206.1 through 1206.24 of the proposed Order define certain terms, such as mango, first handler, and importer, which are used in the proposed Order.

Sections 1206.30 through 1206.37 include provisions relating to the Board. These provisions cover establishment and membership, nominations and appointments, term of office, vacancies, procedures, compensation and reimbursement, powers, duties and prohibited activities of the Board, which is the governing body authorized to administer the proposed Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about mangos, subject to oversight of the Department.

Sections 1206.40 through 1206.43 cover budget review and approval; financial statements; authorize the collection of assessments; specify how assessments would be used; specify who pays the assessment and how; exemptions; and authorize the imposition of a late-payment charge on past-due assessments.

The Association recommends a proposed assessment rate of ½ cent per pound for domestic mangos and imported mangos. The assessment rate will be reviewed and may be modified with the approval of the Department, after the first referendum is conducted as stated in § 1206.71(b). Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures as set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by USDA (60 FR 12533, March 7, 1995).

Sections 1206.50 through 1206.52 address programs, plans, and projects; require the Board to periodically conduct an independent review of its overall program; and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

Sections 1206.60 through 1206.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information from such books, records, or reports.

Sections 1206.70 through 1206.78 describe the rights of the Secretary of Agriculture (Secretary); address referenda; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after suspension or termination; and address personal liability, separability, amendments, and the OMB control number.

In addition to adding a definition of foreign producer and changing the composition of the Board, the Department made minor changes to the Association's proposal which do not materially affect the program.

The proposal set forth below has not received the approval of the Department.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1206

Administrative practice and procedure, Advertising, Consumer information, Mangos, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

1. Part 1206 is proposed to be added as follows:

PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION

Subpart A—Mango Promotion, Research, and Information Order

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Authority: 7 U.S.C. 7411–7425.

Subpart A—Mango Promotion, Research, and Information Order

Definitions

§ 1206.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425; Public Law 104–127; 110 Stat. 1029), or any amendments thereto.

§ 1206.2 Board.

Board or National Mango Promotion Board means the administrative body established pursuant to § 1206.30, or such other name as recommended by the Board and approved by the Department.

§ 1206.3 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1206.4 Customs.

Customs means the U.S. Customs Service of the U.S. Department of the Treasury.

§ 1206.5 Department.

Department means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1206.6 First handler.

First handler any person, (excluding a common or contract carrier), receiving 500,000 pounds or more of mangos from producers and who as owner, agent, or otherwise ships or causes mangos to be shipped as specified in the Order. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing mangos in commercial quantities. This includes only retailers who purchase, acquire, or handle mangos on behalf of any producer. The term first handler includes a producer who handles or markets mangos of the producer's own production.

§ 1206.7 Fiscal period.

Fiscal period means a calendar year from January 1 through December 31, or such other period as recommended by the Board and approved by the Department.

§ 1206.8 Foreign producer.

Foreign producer means any person who is engaged in the production and sale of mangos outside of the United States and who owns, or shares the ownership and risk of loss of, the crop for sale in the U.S. market.

§ 1206.9 Importer.

Importer means any person who imports 500,000 or more pounds of mangos into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles mangos outside of the United States for sale in the United States, and who is listed as the importer of record for such mangos.

§ 1206.10 Information.

Information means information and programs that are designed to develop

new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of mangos in the United States. These include:

(a) Consumer information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of mangos; and

(b) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the mango industry, and activities to enhance the image of the mango industry.

§ 1206.11 Mangos.

Mangos means all fresh fruit of *Mangifera indica L.* of the family *Anacardiaceae.*

§ 1206.12 Market or marketing.

Marketing means the sale or other disposition of mangos in the U.S. domestic market. To market means to sell or otherwise dispose of mangos in the United States.

§ 1206.13 Order.

Order means an order issued by the Department under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1206.14 Part and subpart.

Part means the Mango Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a subpart of such part.

§ 1206.15 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1206.16 Producer.

Producer means any person who is engaged in the production and sale of mangos in the United States and who owns, or shares the ownership and risk of loss of, the crop or a person who is engaged in the business of producing, or causing mangos to be produced, mangos beyond the person's own family use and having value at first point of sale.

§ 1206.17 Promotion.

Promotion means any action taken to present a favorable image of mangos to the general public and the food industry for the purpose of improving the competitive position of mangos and stimulating the sale of mangos in the United States. This includes paid advertising and public relations.

§ 1206.18 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of mangos, including research relating to nutritional value, cost of production, new product development, varietal development, nutritional value and benefits, and marketing of mangos.

§ 1206.19 Retailer.

Retailer means a person engaged in the business of selling mangos only to consumers.

§ 1206.20 Secretary.

Secretary means the Secretary of Agriculture of the United States.

§ 1206.21 Suspend.

Suspend means to issue a rule under section 553 of title 5, U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1206.22 Terminate.

Terminate means to issue a rule under section 553 of title 5, U.S.C., to cancel permanently the operation of an order or part thereof beginning on a date certain specified in the rule.

§ 1206.23 United States.

United States or U.S. means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1206.24 Wholesaler.

Wholesaler means any person engaged in the purchase, assembly, transportation, storage, and distribution of mangos for sale to other wholesalers, retailers, and foodservice firms.

National Mango Promotion Board

§ 1206.30 Establishment and membership.

(a) *Establishment of the National Mango Promotion Board.* There is hereby established a National Mango Promotion Board composed of eight importers, one first handler, two domestic producers, seven foreign producers, and two non-voting wholesalers and/or retailers of mangos in the United States. The chairperson shall reside in the United States and the Board office shall also be located in the United States.

(b) *Importer districts.* The importer seats shall be allocated based on the volume of mangos imported into the Customs Districts identified by their name and Code Number as defined in the Harmonized Tariff Schedule of the United States. The initial allocation will be two seats for District I, three seats for District II, two seats for District III, and one seat for District IV.

(1) *District I* includes the Customs Districts of Portland, ME (01), St. Albans, VT (02), Boston, MA (04), Providence, RI (05), Ogdensburg, NY (07), Buffalo, NY (09), New York City, NY (10), Philadelphia, PA (11), Baltimore, MD (13), Norfolk, VA (14), Charlotte, NC (15), Charleston, SC (16), Savannah, GA (17), Tampa, FL (18), San Juan, PR (49), Virgin Islands of the United States (51), Miami, FL (52) and Washington, DC (54).

(2) *District II* includes the Customs Districts of Mobile, AL (19), New Orleans, LA (20), Port Arthur, TX (21), Laredo, TX (23), Minneapolis, MN (35), Duluth, MN (36), Milwaukee, WI (37), Detroit, MI (38), Chicago, IL (39), Cleveland, OH (41), St. Louis, MO (45), Houston, TX (53), and Dallas-Fort Worth, TX (55).

(3) *District III* includes the Customs Districts of El Paso, TX (24), Nogales, AZ (26), Great Falls, MT (33), and Pembina, ND (34).

(4) *District IV* includes the Customs Districts of San Diego, CA (25), Los Angeles, CA (27), San Francisco, CA (28), Columbia-Snake, OR (29), Seattle, WA (30), Anchorage, AK (31), and Honolulu, HI (32).

(c) *Adjustment of membership.* At least once every five years, the Board will review the geographical distribution of production of mangos in the United States, the geographical distribution of the importation of mangos into the United States, the quantity of mangos produced in the United States, and the quantity of mangos imported into the United States. The review will be based on Board assessment records and statistics from the Department. If warranted, the Board will recommend to the Department that membership on the Board be altered to reflect any changes in geographical distribution of domestic mango production and importation and the quantity of domestic production and imports. To ensure equitable representation, additional first handlers may be added to the Board to reflect increases in domestic production.

§ 1206.31 Nominations and appointments.

(a) Voting for first handler, importer, and domestic producer members will be made by mail ballot.

(b) There shall be two nominees for each position on the Board.

(c) Nominations for the initial Board will be handled by the Department. Subsequent nominations will be handled by the Board's staff.

(d) Nominees to fill the first handler member position on the Board shall be solicited from all known first handlers. The nominees shall be placed on a ballot which will be sent to all first handlers for a vote. The nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the first handlers' first and second choice nominees.

(e) Nominees to fill the importer positions on the Board shall be solicited from all known importers of mangos. The members from each district shall select the nominees for two positions on the Board. Two nominees shall be submitted for each position. The nominees shall be placed on a ballot which will be sent to importers in the districts for a vote. For each position, the nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the importers' first and second choice nominees.

(f) Nominees to fill the domestic producer member positions on the Board shall be solicited from all known domestic producers. The nominees shall be placed on a ballot which will be sent to all domestic producers for a vote. The nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the producers' first and second choice nominees.

(g) Nominees to fill the foreign producer member positions on the Board shall be solicited from an organization of foreign mango producers. The organization shall submit two nominees for each position, and the nominees shall be representative of the major countries exporting mangos to the United States.

(h) The Board will nominate the wholesaler and/or retailer members.

(i) From the nominations, the Department shall select the members of the Board.

§ 1206.32 Term of office.

Board members will serve terms of three years and be able to serve a maximum of two consecutive three-year terms. When the Board is first established, the first handler, three importers, one domestic producer, and two foreign producers will be assigned initial terms of four years; three importers, one domestic producer, and three foreign producers will be assigned initial terms of three years; and two importers, two foreign producers, and the two wholesalers and/or retailers will be assigned initial terms of two years. Thereafter, each of these positions will carry a full three-year term. Members serving initial terms of two or four years will be eligible to serve a second term of three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

§ 1206.33 Vacancies.

(a) In the event that any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Department that the member be removed from office. If the Department finds the recommendation of the Board shows adequate cause, the Department shall remove such member from office.

(c) Should any member position become vacant, successors for the unexpired term of the member shall be appointed in the manner specified in § 1206.31, except that nomination and replacement shall not be required if the unexpired term is less than six months.

§ 1206.34 Procedure.

(a) At a Board meeting, it will be considered a quorum when at least ten voting members are present.

(b) At the start of each fiscal period, the Board will select a chairperson and vice chairperson who will conduct meetings throughout that period.

(c) All Board members will be notified at least 30 days in advance of all Board and committee meetings unless an emergency meeting is declared.

(d) Each voting member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Board members present.

(e) It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present. Committees may consist of individuals other than Board members, and such individuals may vote in committee meetings. Committee members shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board.

(f) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or any other means of communication. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All telephone votes shall be confirmed promptly in writing. All votes shall be recorded in Board minutes.

(g) There shall be no voting by proxy.

(h) The chairperson shall be a voting member and shall reside in the U.S.

(i) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Department.

§ 1206.35 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board members.

§ 1206.36 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Department for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines to be appropriate;

(d) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs, plans, and projects, and enter into contracts or agreements, which must be approved by the Department before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with

funds collected pursuant to this subpart. Each contract or agreement shall provide that: any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and, make such other reports available as the Board or the Department considers relevant. Furthermore, any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Department or the Board may require;

(3) The Department may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(f) To prepare and submit for approval of the Department fiscal year budgets in accordance with § 1206.40;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Department as the Department may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal year and at such other times as the Department may request, and to submit a report of the audit directly to the Department;

(i) To give the Department the same notice of Board and committee meetings as is given to members in order that the Department's representative(s) may attend such meetings.

(j) To act as intermediary between the Department and any first handler or importer;

(k) To furnish to the Department any information or records that the Department may request;

(l) To receive, investigate, and report to the Department complaints of violations of the Order;

(m) To recommend to the Department such amendments to the Order as the Board considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the mango industry's position in the U.S. domestic market; maintain and expand existing markets and uses for mangos; and to carry out programs, plans, and projects designed to provide maximum benefits to the mango industry.

§ 1206.37 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest; and

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Department amendments to the Order.

Expenses and Assessments

§ 1206.40 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Department a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data or at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Department, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Department.

(d) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Department finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Department, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Voluntary contributions shall be free from any encumbrance by the donor, and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Department for all expenses incurred by the Department in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Board for that fiscal year. Reimbursements to the Department required under paragraph (g) of this section are excluded from this limitation on spending.

(i) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided* that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Department, such reserve funds may be used to defray any expenses authorized under this part.

§ 1206.41 Financial statements.

(a) As requested by the Department, the Board shall prepare and submit financial statements to the Department on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the

report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Department within 30 days after the end of the time period to which it applies.

(c) The Board shall submit annually to the Department an annual financial statement within 90 days after the end of the fiscal year to which it applies.

§ 1206.42 Assessments.

(a) The funds to cover the Board's expenses shall be paid from assessments on first handlers and importers, donations from any person not subject to assessments under this Order, and other funds available to the Board and subject to the limitations contained therein.

(b) The assessment rate shall be ½ cent per pound on all mangos. The assessment rate will be reviewed and may be modified by the Board with the approval of the Department, after the first referendum is conducted as stated in § 1206.71(b).

(c) *Domestic mangos.* First handlers of domestic mangos are required to pay assessments on all mangos handled for the U.S. market. This includes mangos of the first handler's own production.

(d) *Imported mangos.* Each importer of mangos shall pay an assessment to the Board through Customs on mangos imported for marketing in the United States.

(1) The assessment rate for imported mangos shall be the same or equivalent to the rate for mangos produced in the United States.

(2) The import assessment shall be uniformly applied to imported mangos that are identified by the numbers 0804.50.4040 and 0804.50.6040 in the Harmonized Tariff Schedule of the United States or any other numbers used to identify mangos.

(3) The assessments due on imported mangos shall be paid when they enter or are withdrawn for consumption in the United States.

(e) Each person responsible for remitting assessments under paragraph (c) of this section shall remit the amounts due to the Board's office on a monthly basis no later than the fifteenth day of the month following the month in which the mangos were marketed, in such manner as prescribed by the Board.

(f) A late payment charge shall be imposed on any person failing to remit to the Board the total amount for which the person is liable by the payment due date established under this section. The amount of the late payment charge shall be prescribed by the Department.

(g) An additional charge shall be imposed on any person subject to a late payment charge in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed by the Department.

(h) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(i) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Department.

§ 1206.43 Exemptions.

(a) Any first handler or importer of less than 500,000 pounds of mangos annually may claim an exemption from the assessments required under § 1206.42.

(b) A first handler or importer desiring an exemption shall apply to the Board, on a form provided by the Board, for a certificate of exemption. A first handler shall certify that the first handler will handle less than 500,000 pounds of domestic mangos for the fiscal year for which the exemption is claimed. An importer shall certify that the importer will import less than 500,000 pounds of mangos during the fiscal year for which the exemption is claimed.

(c) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board then will issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. It is the responsibility of these persons to retain a copy of the certificate of exemption.

(d) Importers who receive a certificate of exemption shall be eligible for reimbursement of assessments collected by Customs. These importers shall apply to the Board for reimbursement of any assessments paid. No interest will be paid on the assessments collected by Customs. Requests for reimbursement shall be submitted to the Board within 90 days of the last day of the fiscal year the mangos were actually imported.

(e) Any person who desires an exemption from assessments for a subsequent fiscal year shall reapply to the Board, on a form provided by the Board, for a certificate of exemption.

(f) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt mangos and, in the case of importers, proof of payment of assessments.

Promotion, Research, and Information

§ 1206.50 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Department for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to mangos; and

(2) The establishment and conduct of research with respect to: the use, nutritional value and benefits, sale, distribution, and marketing of mangos in the United States; the creation of new products thereof, to the end that the marketing and use of mangos in the United States may be encouraged, expanded, improved, or made more acceptable; and to advance the image, desirability, or quality of mangos in the United States.

(b) No program, plan, or project shall be implemented prior to its approval by the Department. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Mangos of all origins shall be treated equally.

§ 1206.51 Independent evaluation.

The Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Department, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1206.52 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government, as represented by the Board, and shall, along with any rents,

royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Department. Upon termination of this subpart, § 1206.73 shall apply to determine disposition of all such property.

Reports, Books, and Records

§ 1206.60 Reports.

(a) Each first handler will be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Department, which may include but not be limited to the following:

(1) Number of pounds of domestic mangos handled;

(2) Number of pounds of domestic mangos on which an assessment was paid;

(3) Name and address of the producers from whom the first handler has received mangos;

(4) Date that assessment payments were made on each pound of domestic mangos handled;

(5) Number of pounds of domestic mangos exported;

(6) The first handler's tax identification number;

(b) Each importer may be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Department, which may include but not be limited to the following:

(1) Number of pounds of mangos imported;

(2) Number of pounds of mangos on which an assessment was paid;

(3) Name, address, and tax identification number of the importer; and

(4) Date that assessment payments were made on each pound imported.

§ 1206.61 Books and records.

Each first handler and importer shall maintain and make available for inspection by the Department such books and records as are necessary to carry out the provisions of this part, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1206.62 Confidential treatment.

All information obtained from books, records, or reports under the Act and this part shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, first handlers, or importers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

§ 1206.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1206.71 Referenda.

(a) *Initial referendum.* The Order shall not become effective unless:

(1) The Department determines that the Order is consistent with and will effectuate the purposes of the Act; and

(2) The Order is approved by a majority of the first handlers and importers voting, who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos.

(b) *Subsequent referenda.* Every five years, the Department shall hold a referendum to determine whether first handlers and importers of mangos favor the continuation of the Order. The Order shall continue if it is favored by a majority of the first handlers and importers voting who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos. The Department will also conduct a referendum if 10 percent or more of all non-exempt, first handlers and importers of mangos request the Department to hold a referendum. In addition, the Department may hold a referendum at any time.

§ 1206.72 Suspension and termination.

(a) The Department shall suspend or terminate this part or subpart or a provision thereof if the Department finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Department determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Department shall suspend or terminate this subpart at the end of the marketing year whenever the Department determines that its suspension or termination is approved or favored by a majority of the first handlers and importers voting who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos.

(c) If, as a result of a referendum the Department determines that this subpart is not approved, the Department shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1206.73 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Department to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Department, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Department;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the

trustees, to such person or persons as the Department may direct; and

(4) Upon request of the Department, execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Department to be disposed of, to the extent practical, to one or more mango industry organizations in the interest of continuing mango promotion, research, and information programs.

§ 1206.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Department, the termination or amendment of this part or any subpart therof shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this part; or

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the United States, or of the Department, or of any other persons with respect to any such violation.

§ 1206.75 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1206.76 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1206.77 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Department.

§ 1206.78 OMB control number.

The control numbers assigned to the information collection requirements of this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, are OMB control number 0505–0001 and OMB control number 0581–[NEW, to be assigned by OMB].

Dated: August 19, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–21535 Filed 8–23–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1206

[FV–02–708–PR]

Mango Promotion, Research, and Information Order; Subpart B—Referendum Procedures

AGENCY: Agricultural Marketing Service, Agriculture.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Mango Promotion, Research, and Information Order (Order) is favored by first handlers and importers of mangos. The Order will be implemented if it is approved by a majority of the eligible first handlers and importers voting in the referendum. These procedures would also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The proposed Order is being published separately in this issue of the **Federal Register**. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996.

DATES: Comments must be received by October 25, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Research and Promotion Branch (RP), Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: *malinda.farmer@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: *www.ams.usda.gov/fv/rpdocketlist.htm.*

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kathie M. Birdsell, RP, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535–8, Washington, DC 20250–0244; telephone 202–720–4835, fax 202–205–2800, or *kathie.birdsell@usda.gov.*

SUPPLEMENTARY INFORMATION: A referendum will be conducted among eligible first handlers and importers of mangos to determine whether they favor issuance of the proposed Mango Promotion, Research, and Information Order (Order) [7 CFR part 1206]. The program will be implemented if it is approved by a majority of the first handlers and importers voting in the referendum. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [Pub. L. 104–127, 7 U.S.C. 7411–7425]. It would cover domestic and imported mangos of the *Mangifera indica L.* variety from the family of *Anacardiaceae.* A proposed Order is being published separately in this issue of the **Federal Register**.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988

This proposed rule has been reviewed under E.O.12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing

promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to an order may file a petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of USDA's final ruling.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The Act, which authorizes the Department to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who also represent a majority of the volume of the agricultural commodity voted in the referendum. In addition, Section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under an order. The Fresh Produce Association of the Americas (Association) has recommended that the Department conduct a referendum in which approval of an order would be based on a majority of the first handlers and importers voting. The Association also has recommended that a referendum be conducted prior to the proposed Order going into effect.

This proposed rule would establish the procedures under which first handlers and importers of mangos may vote on whether they want a mango promotion, research, and information program to be implemented. This proposal would add a new subpart which establishes procedures to conduct an initial and future referenda. The proposed subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 5 first handlers and 55 importers of mangos who would be subject to the program and eligible to vote in the first referendum. The Small Business Administration [13 CFR 121.201] defines small agricultural service firms as those having annual receipts of $5 million or less. First handlers and importers would be considered agricultural service firms. Using these criteria, most first handlers and importers to be covered by the proposed program would be considered small businesses.

U.S. production of mangos is located in California, Florida, and Hawaii, according to the most recent U.S. Census of Agriculture (Census) which was in 1997. The Census does not include California production because California has so few producers that publishing production data would reveal confidential information. In 1997, production in Florida totaled 6.1 million pounds, and Hawaii's production was 0.1 million pounds. For Florida and Hawaii combined, production fell from 16.6 million pounds in 1992 to 6.2 million pounds in 1997. Census data are published every five years. USDA does not report the value of U.S. production.

Seven countries account for 99 percent of the mangos imported into the United Sates. These countries and their share of the imports (from September 1, 2000, through June 30, 2001) are: Mexico (57 percent); Brazil (11 percent); Ecuador (10 percent); Peru (10 percent); Guatemala (7 percent); Haiti (3 percent); and Costa Rica (1 percent). For the period from September 1, 2000, through June 30, 2001, the United States imported a total of 170,445 tons of mangos, valued at $106 million. In the previous full season (September 1, 1999, through August 31, 2000), 253,591 tons, valued at $141 million, were imported into the United States.

A preliminary estimate of per capita consumption of mangos by USDA' s Economic Research Service (ERS) was 1.80 pounds in 2000. Per capita consumption has been trending upwards for several decades. In 1979 per capita consumption was 0.21 pounds, and in 1989 was 0.51 pounds.

This proposed rule provides the procedures under which first handlers and importers of mangos may vote on whether they want the Order to be implemented. In accordance with the provisions of the Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply. There are approximately 5 first handlers and 55 importers who will be eligible to vote in the first referendum. First handlers and importers of less than 500,000 pounds of mangos annually will be exempt from assessments and not eligible to vote in the referendum.

USDA will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if first handlers and importers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this proposed rule are designed to minimize the burden on first handlers and importers. This rule provides for a ballot to be used by eligible first handlers and importers to vote in the referendum. The estimated annual cost of providing the information by an estimated 5 first handlers and for an estimated 55 importers would be $5.00 for all first handlers or $1.00 per first handler and $55.00 for all importers or $1.00 per importer.

USDA considered requiring eligible voters to vote in person at various USDA offices across the country. USDA also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot would also be more cost-effective and reliable. USDA will provide easy access to information for potential voters through a toll-free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities.

Paperwork Reduction Act

In accordance with the OMB regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–NEW.

Expiration Date of Approval: To be assigned by OMB.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act. The burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response for each first handler and importer.

Respondents: First handlers and importers.

Estimated Number of Respondents: 60.

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 6.0 hours.

The estimated annual cost of providing the information by an estimated 5 first handlers would be $5.00 or $1.00 per first handler and for an estimated 55 importers would be $55.00 or $1.00 per importer.

The ballot will be added to the other information collections approved for use under OMB Number 0581–NEW.

Comments are invited on: (a) Whether the proposed collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–NEW, the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames specified above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

The Act, which became effective on April 4, 1996, authorizes the Department to establish a national research and promotion program covering domestic and imported mangos. The Association submitted an entire proposed Order on June 29, 2001, and revisions to the proposal on November 1, 2001. The proposal is being published for public comment in this issue of the **Federal Register**.

The proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and consumer and industry information for mangos in the United States. The program would be funded by an assessment levied on first handlers and importers (to be collected by the U.S. Customs Service at time of entry into the United States) at an initial rate of ½ cent per pound. First handlers and importers of less than 500,000 pounds of mangos annually would be exempt from paying assessments. In addition, exports of U.S. mangos would be exempt from assessments.

The assessments would be used to pay for promotion, research, and consumer and industry information; administration, maintenance, and functioning of the National Mango Promotion Board; and expenses incurred by the Department in implementing and administering the Order, including referendum costs.

Section 1206 of the Act requires that a referendum be conducted among eligible first handlers and importers of mangos to determine whether they favor implementation of the Order.

That section also requires the Order to be approved by a majority of the first handlers and importers voting.

This proposed rule establishes the procedures under which first handlers and importers of mangos may vote on whether they want the mango promotion, research, and information program to be implemented. There are approximately 60 eligible voters.

This proposed rule would add a new subpart which would establish procedures to be used in this and future referenda. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for the mango industry.

List of Subjects in 7 CFR Part 1206

Administrative practice and procedure, Advertising, Consumer information, Mangos, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

1. 7 CFR part 1206, proposed to be added elsewhere in this issue of the **Federal Register**, is proposed to be amended by adding subpart B to read as follows:

PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION

* * * * *

Subpart B—Referendum Procedures

Sec.
1206.100 General.
1206.101 Definitions.
1206.102 Voting.
1206.103 Instructions.
1206.104 Subagents.
1206.105 Ballots.
1206.106 Referendum report.
1206.107 Confidential information.
1206.108 OMB control number.

Authority: 7 U.S.C. 7411–7425.

Subpart B—Referendum Procedures.

§ 1206.100 General.

Referenda to determine whether eligible first handlers and importers of mangos favor the issuance, amendment, suspension, or termination of the Mango Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1206.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to

redelegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Department* means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(c) *Eligible first handler* means any person (excluding a common or contract carrier) who handled 500,000 or more pounds of domestic mangos during the representative period, who receives mangos from producers, and who as owner, agent, or otherwise, ships or causes mangos to be shipped. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing mangos in commercial quantities. This includes only retailers who purchase, acquire, or handle mangos on behalf of any producer. The term first handler includes a producer who handles or markets mangos of the producer's own production.

(d) *Eligible importer* means any person who imports 500,000 or more pounds of mangos into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles mangos outside of the United States for sale in the United States, and who is listed as the importer of record for such mangos that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0804.50.4040 and 0804.50.6040, during the representative period. Importation occurs when mangos originating outside of the United States are released from custody by the U.S. Customs Service and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced mangos immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of mangos from the U.S. Customs Service when such mangos are entered or withdrawn for consumption in the United States.

(e) *Mangos* means all fresh fruit of *Mangifera indica L.* of the family *Anacardiaceae.*

(f) *Order* means the Mango Promotion, Research, and Information Order.

(g) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a mango farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(h) *Referendum agent* or *agent* means the individual or individuals designated by the Department to conduct the referendum.

(i) *Representative period* means the period designated by the Department.

(j) *United States or U.S.* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1206.102 Voting.

(a) Each eligible first handler and eligible importer of mangos shall be entitled to cast only one ballot in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate first handler or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, as instructed by the Department.

§ 1206.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible first handlers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1206.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1206.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1206.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1206.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the

Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1206.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0581–[NEW, to be assigned by OMB].

Dated: August 19, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–21537 Filed 8–23–02; 8:45 am]

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Federal Register

Monday,
August 26, 2002

Part V

Department of Agriculture

Commodity Credit Corporation

7 CFR Parts 1435 and 1436

2002 Farm Security and Rural Investment Act of 2002 Sugar Programs and Farm Facility Storage Loan Program; Final Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1435 and 1436

RIN 0560–AG73

2002 Farm Security and Rural Investment Act of 2002 Sugar Programs and Farm Facility Storage Loan Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements the provisions of Title I of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) relating to the various activities affecting sugar beet and sugar cane producers and processors and the marketing of sugar. Generally, these regulations are applicable through Fiscal Year (FY) 2007. Major provisions of the 2002 Act terminate marketing assessments; make in-process sugar eligible for loans; authorize the establishment of a payment-in-kind program; cap the minimum payment requirement for sugar beet growers; eliminate a loan forfeiture penalty; provide for storage facility loans; and establish flexible marketing allotments.

EFFECTIVE DATE: August 22, 2002.

FOR FURTHER INFORMATION CONTACT: Dan Colacicco, Economic and Policy Analysis Staff, Farm Service Agency (FSA), United States Department of Agriculture (USDA), Stop 0540, 1400 Independence Ave, SW, Washington, DC 20250–0540. Phone: (202) 720–6733. E-mail: dcolacicco@wdc.fsa.usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the 2002 Act requires that the regulations needed to implement Title I of the 2002 Act which includes the Sugar Program are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This final rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment was completed and is summarized after the background section explaining the rule.

Federal Assistance Programs

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies is Commodity Loans and Loan Deficiency Payments, 10.051.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this final rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. FSA has completed a final environmental assessment and concluded that the proposed action will have no significant impacts upon the human environment as documented through the completion of a Finding of No Significant Impact (FONSI). A copy of the final environmental assessment and FONSI are available for review at *http://www.fsa.usda.gov/dafp/cepd/environmental/default.htm.*

Executive Order 12778

The final rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with it, however, this rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

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

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking about this rule. Also, this rule contains no mandates as defined in sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) also requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. These regulations affect the planting and marketing decisions of a large number of agricultural producers. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be done without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Background

Sugar Program

This rule completely replaces the existing Sugar Program regulations at 7 CFR part 1435. Implementation of the 2002 Act requires substantial modification or elimination of existing subparts and the addition of 2 new subparts.

Subpart A, General Provisions, is updated to reflect the new crop years (2002 through 2007), elimination of marketing assessments, and the addition of a sugar marketing allotment program and a processor Payment-In-Kind (PIK) program. Definitions are expanded to reflect new provisions such as sugar marketing allotments.

Subpart B, Sugar Loan Program, is expanded to include loans for in-process sugar, which are set at 80

percent of the raw cane sugar or beet sugar loan rate, as applicable. To be eligible for loans, sugar now must be stored in CCC-approved warehouses to ensure the quality of CCC's loan collateral or assets. CCC will use temporary approvals as required to ensure this requirement does not interrupt loan making. Loan settlement will be based on a schedule of premiums and discounts available in county offices. The previous 30-day notification of intent to forfeit sugar loan collateral is eliminated.

Loan maintenance provisions in the rule now require that sugar beet grower minimum payments not exceed the amount specified in the grower/processor contract. The 2002 Act eliminates the requirement that CCC add 1 percentage point to the interest rate as calculated by the procedure in place in 1996 but does not establish a sugar loan interest rate. CCC has decided to use the rates required for other commodity loans. The 2002 Act also eliminated the forfeiture penalty.

The loan settlement and foreclosure sections in the rule now address in-process sugars. Forfeiture of such sugars, pledged as collateral, will be accepted as payment in full of principal and interest if the processor converts them into raw cane sugar or refined beet sugar of acceptable grade and quality for sugar eligible for loans within 1 month after loan maturity. If forfeited in-process sugars are not converted into raw cane sugar or refined beet sugar of suitable quality and transferred to CCC within 1 month, CCC may charge liquidated damages. If the processor does not forfeit the collateral, but instead further processes the in-process sugar into raw cane sugar or refined beet sugar and repays the loan, the processor may obtain a loan at the higher rate for the raw cane sugar or refined beet sugar.

Loan collateral forfeited on September 30, the last day of the crop year, will become property of CCC on October 1 of the next crop year. Therefore, forfeitures made on the last day of the crop year will be considered as marketings made during the following crop year and count against the following year's marketing allotments, unless allotments are suspended.

Subpart C, Information Reporting and Recordkeeping Requirements, is expanded to include reporting of sugarcane production and imports. Sugarcane producers located in Louisiana must report sugarcane yields and planted acres. Importers of sugars, syrups, or molasses to be used for domestic human consumption or to be used for the extraction of sugar for domestic human consumption shall report the quantities of products imported and the sugar content or equivalent of the products. The requirement does not apply to sugars, syrups, or molasses within tariff-rate quota quantities subject to the lower rate of duties.

Subpart D, Flexible Sugar Marketing Allotments, is added to part 1435 to clarify administration of the sugar marketing allotment program established by the 2002 Act. The 2002 Act restores and modifies the sugar marketing allotment program that was suspended by the Agricultural Market Transition Act (7 U.S.C. 7201 note). The new flexible sugar marketing allotments are always established before the crop year. Allotments and the processor allocations will be suspended if sugar imports for human consumption exceed 1,532,000 short tons, raw value, and CCC reduces the overall allotment quantity in response to the imports. The suspension is lifted if imports are reduced to a level at or below 1,532,000 tons. Thus, processors will always have an allocation, but at times the allocations may be suspended due to imports exceeding the trigger level and the overall allotment quantity being reduced.

Estimates of beginning stocks, production, imports, exports, and consumption used to administer the sugar marketing allotment program will come from the World Agricultural Supply and Demand Estimates published monthly by USDA's World Board. CCC will set the reasonable ending stocks estimate at a level expected to preclude sugar loan collateral forfeitures.

Several types of sugar marketings will not be counted against a processor's allocation. Sugar marketings for export and nonhuman consumption (*e.g.*, feed and ethanol uses) will not be counted against a processor's allocation. The 2002 Act also specifically excludes from the definition of prohibited sugar marketing activity a sale of sugar from a processor who has more sugar than allocation to a processor who has more allocation than sugar. CCC excluded sugar sales for nonhuman consumption from allotments because the law excludes sugar imports for nonhuman consumption from the import trigger level and excluding nonhuman uses should not encourage forfeitures since these uses do not generate revenue consistent with the loan forfeiture level.

The 2002 Act instructs CCC to periodically determine whether a processor has more allocation than sugar supply and then reassign the deficit according to a very specific hierarchy. Thus, CCC can limit these sales by reducing the allocation of the processor buying over-allocation sugar. CCC will permit these transactions until May 1 of each crop year, which is expected to leave enough time in the crop year to permit CCC to reassign the unused allocation. CCC must be notified of sales from a processor with more sugar than allocation to a processor with more allocation than sugar within 5 days of the sale. These sales are not permitted between cane processors in different States because the 2002 Act specifically requires that only cane sugar produced in a State may be used to fulfill the State's cane sugar allotment.

The 2002 Act provides limited CCC discretion in establishing sugar beet processor allocations and has no provision for collecting industry comments through the hearing process. If a processor had an aggregate quality loss exceeding 20 percent, the loss threshold under CCC's Quality Loss Program, on stored sugar beets during the 1998 through 2000 crop years, CCC will apply the beet sugar production history by 1.25 percent as the 2002 Act mandates.

The 2002 Act provides wide discretion to CCC in establishing sugarcane State allotments and sugarcane processor allocations of those allotments. CCC will conduct a hearing in August of each year, if requested by interested sugarcane growers or processors by July 15, beginning with the 2003 crop. CCC will put the most weight, 50 percent, on the ''ability to market the current crop'' factor and weights of 25 percent each on the ''past marketings'' and ''past processings'' factors. The 2002 Act defines past marketings and past processings in terms of past sugar production history. CCC's experience with sugar marketing allotments in the mid-1990's resulted in CCC changing from equal weights to a 50/25/25 weighting system. CCC determined that the equal weighting system put a disproportionate share of the negative impacts of marketing allotments on a relatively few efficient processors.

Allotments will be suspended if (1) sugar imports for human consumption exceed 1,532,000 short tons, raw value, and (2) CCC reduces the overall allotment quantity in response to the imports.

CCC will require processors receiving allocations to provide assurances that they will divide their allocation fairly and equitably among producers they serve in a manner that adequately reflects the producers' production history.

The rule permits producers who delivered to a factory that later closed to apply to CCC to move the allocation commensurate with their sugar beet or sugarcane production to a factory willing to take their production. All allocation transfers stemming from the transfer of title of processing companies or their assets will be subject to the above conditions.

Subpart E, Processor Sugar Payment-In-Kind (PIK) Program, covers the requirements for sugar beet and sugarcane processors to participate in a PIK program and provisions for the implementation of a PIK program. Participating processors must act in conjunction with producers, that is, the acreage to be reduced must have been under contract with the processor during the applicable crop year and the land left fallow during the crop year the PIK program is implemented. CCC may permit processors to bid, in lieu of acreage, desugarizing capacity or other measures of sugar production as CCC may approve. Distribution of sugar from CCC inventory will occur as CCC determines appropriate. CCC will stop storage payments on sugar when title to the sugar is transferred to a participating processor or assignee.

Storage Facility Loans

Section 1402 of the 2002 Act provides that CCC shall amend its existing storage facility loan program to include loans for processors of sugar. Accordingly, the regulations of 7 CFR part 1436 are amended to include sugar processors as eligible borrowers. This rule also amends 7 CFR 1436.3 to change the definition of facility loan commodities to include dry peas, lentils, small chickpeas, and peanuts to provide a consistent CCC policy to make loans available for producers of all crops eligible for marketing assistance loans.

Cost/Benefit Assessment

An assessment of the sugar program's costs and benefits concluded that the 2002 Act changes, principally the establishment of sugar marketing allotments and the elimination of the loan forfeiture penalty, will increase farm income, increase consumer/user sugar expenditures, and slightly decrease federal expenditures. The elimination of the sugar loan forfeiture penalty increases the likelihood and cost of forfeitures because it increases the price, by about a cent per pound, a processor must achieve in the market to be deterred from forfeiting sugar loan collateral to CCC.

The cost/benefit analysis (CBA) assumes the current oversupply conditions will exist throughout the next decade and be acerbated by Mexican imports. The forecast of the economic impacts is very sensitive to the imposition of sugar marketing allotments. Sugar marketing allotments shift the burden of surplus sugar storage from CCC to the sugar beet and sugarcane processors and increases sugar prices. Marketing allotments are dependent on the level of Mexican sugar imports, and to a lesser degree, sugar (or products for the extraction of sugar) imports from other nations not under the sugar tariff rate quota (TRQ). Sugar marketing allotments are likely to be suspended if these imports exceed 276,000 short tons, raw value, because this is the difference between the required World Trade Organization minimum TRQ and the import level in the allotment suspension trigger. The cost/benefit assessment assumed that sugar marketing allotments would be suspended in five of the next 10 years.

The CBA concluded that the 2002 Act sugar program changes will result in a slight decrease in domestic sugar production. The sugar program changes are expected to decrease the annual average available stocks-to-use ratio by 26 percent, increase sugar prices about 9 percent, increase sugar loan collateral forfeitures by 15 percent, decrease average CCC sugar inventory by 67 percent, and slightly reduce, by $13 million per year, CCC expenditures on the sugar program.

The Cost/Benefit Assessment of the sugar program and is available from Thomas Bickerton, Economic and Policy Analysis Staff, United States Department of Agriculture (USDA), Stop 0516, 1400 Independence Ave, SW., Washington, DC 20250–0540. Phone: (202) 720–6733. E-mail: *Thomas.Bickerton2@usda.gov.*

List of Subjects

7 CFR Part 1435

Loan programs/agriculture, Price support programs, Reporting and record keeping requirements, and Sugar.

7 CFR Part 1436

Grains, Loan programs/agriculture, Oilseeds, Reporting and record keeping requirements, and Sugar.

For the reasons set out in the preamble, 7 CFR parts 1435 and 1436 are amended as set forth below.

PART 1435—SUGAR PROGRAM

1. 7 CFR part 1435 is revised to read as follows:

PART 1435—SUGAR PROGRAM

Subpart A—General Provisions

Sec.

1435.1 Applicability.
1435.2 Definitions.
1435.3 Maintenance and inspection of records.
1435.4 Administration.
1435.5 Other regulations.

Subpart B—Loan Program

1435.100 Applicability.
1435.101 Loan rates.
1435.102 Eligibility requirements.
1435.103 Availability, disbursement, and maturity of loans.
1435.104 Loan maintenance.
1435.105 Loan settlement and foreclosure.
1435.106 Miscellaneous provisions.

Subpart C—Information Reporting and Recordkeeping Requirements

1435.200 Information reporting.
1435.201 Civil penalties.

Subpart D—Flexible Marketing Allotments For Sugar

1435.300 Applicability.
1435.301 Annual estimates and quarterly re-estimates.
1435.302 Establishment and suspension of allotments.
1435.303 Overall allotment quantity.
1435.304 Adjustment of overall allotment quantity.
1435.305 Beet sugar and cane sugar allotments.
1435.306 State cane sugar allotment.
1435.307 Allocation of marketing allotments to processors.
1435.308 Transfer of allocations, new entrants.
1435.309 Reassignment of deficits.
1435.310 Sharing processors' allocations with producers.
1435.311 Proportionate shares for sugarcane producers.
1435.312 Establishment of acreage bases under proportionate shares.
1435.313 Permanent transfer of acreage base histories under proportionate shares.
1435.314 Temporary transfer of proportionate share due to disasters.
1435.315 Adjustments to proportionate shares.
1435.316 Acreage reports for purposes of proportionate shares.
1435.317 Revision of allocations and proportion shares.
1435.318 Penalties and assessments.
1435.319 Appeals and arbitration.

Subpart E—Processor Sugar Payment-In-Kind (PIK) Program

1435.400 General statement.
1435.401 Bid submission procedures.
1435.402 Bid selection procedures.
1435.403 In-kind payments.
1435.404 Timing of distribution of CCC-owned sugar.
1435.405 Miscellaneous provisions.

Authority: 7 U.S.C. 1359aa–1359jj and 7272 *et seq.*; 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

§ 1435.1 Applicability.

These regulations set forth the terms and conditions for the 2002–2007 crop years under which the Commodity Credit Corporation (CCC) will:

(a) Make loans and enter agreements with eligible processors,

(b) Collect data from sugarcane processors, sugar beet processors, cane refiners, and importers of sugar, syrup, and molasses,

(c) Administer sugar marketing allotments, and

(d) Administer an inventory disposition program to exchange CCC inventory for processor reductions in production.

§ 1435.2 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration. Terms defined in part 718 of this title are also applicable.

Ability to market means the estimated quantity of sugar, raw value, as CCC determines, that will be produced in the cane State or by the sugarcane processor, as appropriate, during the applicable crop year.

Allocation means the division of the beet sugar allotment among the sugar beet processors in the United States and the division of each State's cane sugar allotment among the State's sugarcane processors.

Beet sugar means sugar that is processed directly or indirectly from sugar beets or sugar beet molasses.

Beet sugar allotment means that portion of the overall allotment quantity allocated to sugar beet processors.

Cane sugar means sugar derived directly or indirectly from sugarcane produced in the United States, including sugar produced from sugarcane molasses.

Cane sugar allotment means that portion of the overall allotment quantity allocated to sugarcane processors.

Cane sugar refiner means a person who processes raw sugar into refined crystalline sugar or liquid sugar.

Carry-in stocks means inventories of sugar owned by sugar beet processors, sugarcane processors, cane sugar refiners, and CCC and physically located in the United States at the beginning of the fiscal year.

Crop year means the period from October 1 through September 30, inclusive, and is identified by the year in which the crop year begins. For example, the 2002 crop year begins on October 1, 2002. The 2002 crop of sugar beets or sugar cane means domestically grown sugar beets or sugar cane processed during the 2002 crop year. The 2002 crop of sugar means sugar processed from domestically-grown sugar beets or sugarcane during the 2002 crop year. Sugar from de-sugaring molasses is considered to be from the crop year the de-sugaring occurred.

Deputy Administrator means the Deputy Administrator, Farm Programs, FSA, or designee.

Deficit means the quantity of sugar covered by an allocation of an allotment that CCC estimates a sugar beet processor or sugarcane processor will be unable to market during the crop year in which marketing allotments are in effect.

Edible molasses means molasses that is not to be further refined or improved in quality and that is to be distributed for human consumption, either directly or in molasses-containing products.

Edible syrups means syrups that are not to be further refined or improved in quality and that are to be distributed for human consumption, either directly or in syrup-containing products.

Executive Vice President, CCC, means the Executive Vice President, CCC, or designee.

Farm means that entity as defined in § 718 of this title, except that when a State is subject to proportionate shares, producers will not be allowed to have farms reconstituted across State lines even if the farm land is adjoining.

Fiscal year means that year beginning October 1 and ending the following September 30.

FSA means Farm Service Agency.

Imports means sugar originating in foreign countries or areas and entered, or to be entered, into the United States customs territory.

In-process sugar means the intermediate sugar containing products, as CCC determines, produced in the processing of domestic sugar beets and sugarcane. It does not include raw sugar, liquid sugar, invert sugar, invert syrup, or other finished products that are otherwise eligible for a loan.

Market or *marketing* means the transfer of title associated with the sale or other disposition of sugar in United States commerce, including the forfeiture of sugar loan collateral under Subpart B, and for any integrated processor and refiner, the movement of raw cane sugar into the refining process. Marketings do not include sales for nondomestic or nonhuman consumption, or sales of sugar to enable another processor to fulfill an allocation established for such processor.

Nonrecourse loan means a loan for which eligible sugar offered as loan collateral may be forfeited to CCC, at loan maturity, in satisfaction of loan indebtedness.

Overall allotment quantity means, on a national basis, the total quantity of sugar, raw value, processed from domestically produced sugarcane or domestically produced sugar from sugar beets, and the raw value equivalent of sugar in sugar products, that is permitted to be marketed by processors, during a crop year or other period in which marketing allotments are in effect.

Past marketings means, for purposes of determining State cane sugar allotments and sugarcane processor allocations for States other than Louisiana, the average of the 2 highest years of sugar production during the 1996 through 2000 crop years; for Louisiana sugarcane processor allocations, the average of the 2 highest years of sugar production during the 1997 through 2001 crop years.

Past processing means, for determining Hawaii and Puerto Rico's allotments, the 3-year average of the 1998 through 2000 crop years; and for determining the remaining cane State allotments, the 3 crop years with the greatest production (in the States collectively) during the 1991 through 2000 crop years. Past processing, for determining the sugarcane processor allocation for States other than Louisiana, means the average of the 3 highest years of production during the 1996 through 2000 crop years; and, for determining sugarcane processor allocations in Louisiana, the average of the 2 highest years of sugar production during the 1997 through 2001 crop years.

Per-acre yield goal means a State's yield level that is established at not less than the State's two highest average per-acre yield years from among the 1999 through 2001 crop years as CCC determines to ensure an adequate net return per pound to State producers.

Proportionate share means the total acreage from which a producer may harvest sugarcane for sugar or seed during any crop year or other period in which marketing allotments are in effect.

Raw sugar means any sugar that is to be further refined or improved in quality other than in-process sugar.

Raw value of any quantity of sugar means its equivalent in terms of raw sugar testing 96 sugar degrees, as determined by a polarimetric test performed under procedures recognized by the International Commission for Uniform Methods of Sugar Analysis (ICUMSA). Direct-consumption sugar derived from sugar beets and testing 92 or more sugar degrees by the

polariscope shall be translated into terms of raw value by multiplying the actual number of pounds of such sugar by 1.07. Sugar derived from sugarcane and testing 92 sugar degrees or more by the polariscope shall be translated into terms of raw value in the following manner: raw value = {[(actual degree of polarization − 92) × 0.0175] + 0.93} × actual weight. For sugar testing less than 92 sugar degrees by the polariscope, derive raw value by dividing the number of pounds of the ''total sugar content'' (*i.e.*, the sum of the sucrose and invert sugars) thereof by 0.972.

Reasonable carryover stocks means desirable inventories of sugar owned by sugar beet processors, sugarcane processors, cane sugar refiners, and CCC and on hand in the United States at the end of the fiscal year, as CCC determines.

State means any of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

Sugar means any grade or type of saccharine product derived, directly or indirectly, from sugarcane or sugar beets and consisting of, or containing, sucrose or invert sugar, including raw sugar, refined crystalline sugar, liquid sugar, edible molasses, and edible cane syrup. For allotments, *sugar* means any grade or type of saccharine product processed, directly or indirectly, from sugarcane or sugar beets (including sugar produced from sugar beet or sugarcane molasses), produced for human consumption, and consisting of, or containing, sucrose or invert sugar, including raw sugar, refined crystalline sugar, edible molasses, edible cane syrup, and liquid sugar.

Sugar beet processor means a person who commercially produces sugar, directly or indirectly, from sugar beets (including sugar produced from sugar beet molasses), has a viable processing facility, and a supply of sugar beets for the applicable allotment year.

Sugar products means products for human consumption, other than sugar, that contain 50 percent or more of sucrose, on a dry weight basis, and that are marketed by a sugar beet processor or sugarcane processor. In determining sugar subject to marketing allocations, only the sugar content of such products will be counted against the allocation.

Sugarcane processor means a person who commercially produces sugar, directly or indirectly, from sugarcane, has a viable processing facility, and a supply of sugarcane for the applicable allotment year.

Ton means a short ton or 2,000 pounds.

United States means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

U.S. market value means, for sugarcane, the daily New York Board of Trade No. 14 contract price for raw sugar, or other price, as determined by CCC; for sugar beets, the Midwest refined beet sugar price published in Milling and Baking News, or other price, as determined by CCC.

USDA means the United States Department of Agriculture.

§ 1435.3 Maintenance and inspection of records.

(a) CCC, as well as any other U.S. Government agency, has the right of access to the premises of any sugar beet processor, sugarcane processor, cane sugar refiner, importer of sugars, syrups, and molasses, or of any other person having custody of records that the examining agency deems necessary to verify compliance with this part's requirements. The examining agency has the right to inspect, examine, and make copies of such books, records, accounts, and other written or electronic data as the examining agency deems relevant.

(b) Each sugar beet processor, sugarcane processor, importer of sugars, syrups and molasses, and cane sugar refiner or any person having custody of the records shall retain such books, records, accounts, and other written or electronic data for not less than 3 years from the date:

(1) A loan is disbursed under subpart B;

(2) Market data are reported to CCC under subpart C of this part; and

(3) Marketings are conducted under marketing allotments under subpart D of this part.

§ 1435.4 Administration.

(a) This program shall be administered under the general supervision of the Executive Vice President, CCC, and may be carried out in the field by FSA State and county committees.

(b) State and county committees, and representatives and employees thereof, may not modify or waive any of the provisions of part 1435.

(c) The State committee shall take any action required by this part that the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, a county committee action not under this part; or

(2) Require a county committee to withhold taking any action not under this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, from determining any question arising under the program or from reversing or modifying any State or county committee determination.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such requirements do not adversely affect program operation.

(f) A CCC representative may execute loans and related documents only under the terms and conditions CCC determines and announces. Any such document not executed under such terms and conditions, including any purported execution before the CCC-authorized date, shall be null and void.

§ 1435.5 Other regulations

The following are applicable to this part:

(a) Part 707—Payments due persons who have died, disappeared, or have been declared incompetent.

(b) Part 718—Provisions applicable to multiple programs.

(c) Part 780—Appeal regulations.

(d) Part 1403—Debt settlement policies and procedures.

(e) Part 1405—Loans, purchases, and other operations.

Subpart B—Loan Program

§ 1435.100 Applicability.

(a) The regulations of this subpart set forth the terms and conditions under which CCC will make nonrecourse loans available to eligible processors. Additional terms and conditions are set forth in the loan application and note and security agreement that a processor must execute to receive a loan.

(b) Loan rates used in administering the loan program are available in FSA State and county offices.

(c) Loans shall not be available for sugar produced from imported sugar beets, sugarcane, molasses, syrups and in-process sugar.

§ 1435.101 Loan rates.

(a) The national average loan rate for raw cane sugar produced from domestically-grown sugarcane is 18 cents per pound.

(b) The national average loan rate for refined beet sugar from domestically-grown sugar beets is 22.90 cents per pound.

(c) Loan rates for eligible sugar are adjusted to reflect the processing location of the sugar offered as loan collateral.

(d) Loan rates for eligible in-process sugar shall equal 80 percent of the loan

rate applicable to raw cane sugar or beet sugar on the basis of the expected production of raw sugar or beet sugar from the in-process sugar or syrups.

§ 1435.102 Eligibility requirements.

(a) An eligible producer is the owner of a portion or all of the domestically-grown sugar beets or sugarcane, including share rent landowners, at both the time of harvest and the time of delivery to the processor, except those producers determined to be ineligible as a result of the regulations governing highly erodible land and wetland conservation found at 7 CFR part 12, regulations governing crop insurance at 7 CFR part 400, or regulations governing controlled substance violations at 7 CFR part 718.

(b) In addition to all other provisions of this part, a sugar beet or sugarcane processor is eligible for loans only if the processor has agreed to all the terms and conditions in the loan application, and has executed a note and security agreement, and storage agreement with CCC. No loan proceeds will be distributed by CCC before CCC's approval of the note and security agreement and the CCC storage agreement.

(c) Sugar pledged as collateral during the crop year:

(1) May not exceed the quantity derived from processing domestically-grown sugar beets or sugarcane from eligible producers during the applicable crop year;

(2) Must be processed and owned by the eligible processor and stored in a CCC-approved warehouse;

(3) May not have been processed from imported sugarcane, sugar beets, or molasses;

(4) Must have been processed in the United States; and

(5) Must have processor certification in the loan application that the sugar or in-process sugar syrups are eligible and available to be pledged as collateral.

(d) Sugar and in-process sugar must meet the following minimum quality requirements to be eligible to be pledged as loan collateral:

(1) Refined beet sugar to be pledged as loan collateral must be:

(i) Dry and free flowing;

(ii) Free of excessive sediment; and

(iii) Free of any objectionable color, flavor, odor, or other characteristic that would impair its merchantability or that would impair or prevent its use for normal commercial purposes.

(2) Raw cane sugar to be pledged as loan collateral must be:

(i) Of reasonable grain size; and

(ii) Free of objectionable color, flavor, odor, moisture or other characteristic that would impair its merchantability or that would impair or prevent its use for normal refining and commercial purposes.

(3) Edible sugarcane syrup or edible molasses must be free from any objectionable color, flavor, odor, or other characteristic that would impair the merchantability of such syrup or molasses or would impair or prevent the use of such syrup or molasses for normal commercial purposes.

(4) In-process sugar must be of at least the minimum quality expected to commercially yield raw cane sugar or refined beet sugar, as determined by CCC.

(e) The loan collateral must be stored in a CCC-approved warehouse as described in 7 CFR part 1423.

§ 1435.103 Availability, disbursement, and maturity of loans.

(a) Before obtaining a loan, a processor must:

(1) File a loan application, as CCC prescribes, no earlier than October 1 and no later than September 30 of the applicable crop year, with the State committee of the State where such processor is headquartered, or with a county committee designated by the State committee.

(2) Execute a note and security agreement, and storage agreement with CCC;

(3) Provide quantity and quality information as prescribed by CCC of the commodity to be pledged as collateral;

(4) Pay CCC a loan service fee, as determined by CCC, for the disbursement of each loan.

(5) If there are any liens or encumbrances on sugar or in-process sugar pledged as loan collateral, obtain waivers that fully protect CCC's interest even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the sugar after loan approval; and

(6) Agree to reimburse CCC for any costs incurred as a result of the failure of the processor to obtain the waivers specified in subparagraph (5).

(b) No loan proceeds may be disbursed until the sugar and in-process sugar have actually been produced and are otherwise established as being eligible to be pledged as loan collateral.

(c)(1) A processor may, within the loan availability period, repledge as collateral sugar that previously served as loan collateral for a repaid loan. In making application for such a loan, the processor shall:

(i) Specify that the loan collateral should be treated as a quantity of eligible sugar that previously served as loan collateral for a repaid loan; and

(ii) Designate the loan to which the reoffered loan collateral was originally pledged.

(2) The subsequent loan shall have the same maturity date as the original loan.

(3) Loan collateral repledged that was previously redeemed from CCC is not included in determining the total quantity of sugar on which loans have been obtained for purposes of § 1435.102.

(d) Raw cane sugar loan disbursements shall be made without regard to the actual polarity or quality factors of the sugar pledged as loan collateral but shall be made on the assumption that the polarity of such sugar is 96 degrees by the polariscope.

(e)(1) Loans will mature at the earlier of:

(i) the end of the 9-month period beginning on the 1st day of the first month after the month in which the loan is made; or

(ii) September 30 following disbursement of the loan.

(2) CCC may accelerate loan maturity dates under § 1435.105(h).

(f) Processors receiving loans in July, August, or September may repledge the sugar as collateral for a supplemental loan. Such supplemental loan shall:

(1) Be requested by the processor during the following October;

(2) Be made at the loan rate in effect at the time the supplemental loan is made; and

(3) Mature in 9 months minus the number of whole months that the initial loan was in effect.

§ 1435.104 Loan maintenance.

(a) All processors receiving loans shall:

(1) Abide by the terms and conditions of the loan application, note and security agreement and storage agreement;

(2) Pay interest on the principal at a rate determined in part 1405 of this chapter.

(b) The security interests CCC obtains as a result of the execution of security agreements by sugarcane and sugar beet processors shall be superior to all statutory and common law liens on raw cane sugar, refined beet sugar, and in-process sugar for the producers of sugarcane and sugar beets and all prior recorded and unrecorded liens on the crops of sugarcane and sugar beets from which the sugar was derived.

(c) A processor receiving a loan under this part shall pay all eligible producers who have delivered or will deliver sugar beets or sugarcane to such processors for processing not less than the minimum payment levels CCC specifies for the applicable crop year.

(1) In the case of sugar beets, the minimum payment shall not exceed the rate of payment provided for under the applicable contract between a sugar beet producer and a sugar beet processor.

(2) CCC will not reject a loan application from a beet sugar processor from eligibility to obtain a loan under this section solely because of the failure of the processor to provide the appropriate minimum payment established under this subsection if the failure:

(i) Occurred during a crop year before the date of enactment of the Farm Security and Rural Investment Act of 2002; and

(ii) Was related, at least in part, to the effects of a natural disaster, including freeze damage.

(3) In the case of sugarcane, CCC will annually determine and announce the annual grower minimum payment.

(4) Processors are ineligible for loans for the crop year following their failure to meet the required minimum grower payment.

(d)(1) A processor shall maintain eligible sugar or in-process sugar of sufficient quality and quantity as collateral to satisfy the processor's loan indebtedness to CCC. CCC shall not assume any loss in quantity or quality of the loan collateral.

(2) The processor is responsible for storage costs through the loan maturity date or title transfer to CCC, whichever occurs later.

(3) Sugar and in-process sugar pledged as loan collateral need not be stored identity preserved.

(4) When the proceeds of the sale of loan collateral are needed to repay all or part of a sugar loan, the processor may request and obtain prior written approval from the loan making office by executing a loan collateral release request, as prescribed by CCC, to remove a specified quantity of the loan collateral from storage for the purpose of delivering it to a buyer before loan repayment. Any such approval shall be subject to the terms and conditions set forth in the applicable form. The loan making office shall not approve such a request unless the buyer of the sugar agrees to pay CCC an amount necessary to satisfy the processor's loan indebtedness regarding collateral being sold. Any such approval shall not:

(i) Constitute a release of CCC's security interest in the loan collateral; or

(ii) Relieve the processor of liability for the full amount of the loan indebtedness, including interest.

§ 1435.105 Loan settlement and foreclosure.

(a) A processor may, any time before loan maturity, redeem all or any part of the loan collateral by paying CCC the applicable principal and interest.

(b) Forfeiture of sugar loan collateral will be accepted as payment in full of the principal and interest due under a nonrecourse loan, applicable to the quality and quantity of sugar delivered, subject to applicable premiums and discounts.

(c)(1) Forfeiture of in-process sugar serving as loan collateral will be accepted as payment in full of principal and interest if the processor converts the in-process sugar into raw cane sugar or refined beet sugar of acceptable grade and quality for sugar eligible for loans within 1 month of loan maturity.

(2) The in-process sugar must be fully processed into raw cane sugar or refined beet sugar, the processor shall transfer the sugar to CCC.

(3) On transfer of the sugar, CCC shall make a payment to the processor in an amount equal to the amount obtained by multiplying the difference between the loan rate for raw cane sugar or refined beet sugar, as appropriate, and the in-process loan rate the processor received by the quantity of sugar transferred to CCC. The loan agreement shall specify the quantity of sugar that can be forfeited to CCC.

(d) If the processor does not forfeit the collateral, but instead further processes the in-process sugar into raw cane sugar or refined beet sugar and repays the loan on the in-process sugar;

(1) the processor may obtain a loan for the raw cane sugar or refined beet sugar, as appropriate, and

(2) the term of a loan made under this subsection for a quantity of in-process sugar, when combined with the term of a loan made for the raw cane sugar or refined beet sugar derived from the in-process sugar, may not exceed 9 months.

(e) CCC shall not accept delivery of sugar in settlement of a nonrecourse loan in excess of the quantity of sugar that is shown on the note and security agreement minus any quantity that was redeemed or released for removal under this section.

(f) If the processor does not redeem any of the nonrecourse loan collateral, title to the unredeemed nonrecourse loan collateral as described in the note and security agreement will, without further CCC or processor action transfer to CCC in-store at the CCC-approved warehouse at 12 a.m. the day following the maturity date of the loan. Title, all rights, and interest to such sugar shall immediately vest in CCC.

(g) The value of the settlement of loans shall be made by CCC according to the CCC schedule of premiums and discounts.

(h) CCC may, at any time, accelerate the date for loan repayment including interest. CCC will give the processor notice of such acceleration at least 15 days in advance of the accelerated loan maturity date.

(i) If a processor's nonrecourse loan indebtedness is not satisfied under the provisions of this section or if forfeited in-process sugar is not converted to raw or refined sugar within the prescribed time:

(1) Interest on the processor's indebtedness shall accrue as specified in part 1403 of this title and shall accrue until the debt is paid;

(2) CCC may, upon notice, with or without removing the collateral from storage, sell such collateral at either a public or private sale;

(3) The processor shall be liable for the deficiency if the net proceeds are less than the amount of principal, interest, and any other charges CCC incurs; and

(4) If the processor forfeits the in-process sugar loan collateral but does not transfer raw or refined sugar of suitable quality to CCC within 1 month, CCC will charge liquidated damages, as provided in the loan agreement.

§ 1435.106 Miscellaneous provisions.

(a) The regulations governing setoffs and withholding set forth at parts 3 and 1403 of this title are applicable to the program set forth in this subpart.

(b) A producer or processor may obtain reconsideration and review of determinations made under this subpart under the regulations at parts 11 and 780 of this title.

(c) Any false certification, including those made for the purpose of enabling a processor to obtain a loan to which it is not entitled, will subject the person making such certification to liability under applicable Federal civil and criminal statutes.

Subpart C—Information Reporting and Recordkeeping Requirements

§ 1435.200 Information reporting.

(a) Every sugar beet processor, sugarcane processor, cane sugar refiner, and importer of sugar, syrup, and molasses shall report, on a monthly basis on CCC required forms, its imports and receipts, processing inputs, production, distribution, stocks, and other information necessary to administer sugar programs.

(b) Any processor must, upon CCC's request, provide such information as CCC deems appropriate for determining regional loan rates.

(c) Any processor must, upon CCC's request, provide such information as

CCC deems appropriate for determining whether processors of sugarcane or sugar beets will be able to market their respective sugar allocations.

(d) Each sugarcane producer located in Louisiana shall report, in the manner CCC prescribes, sugarcane yields and sugarcane planted acres.

(e) Importers of sugars, syrups, or molasses to be used for domestic human consumption or to be used for the extraction of sugar for domestic human consumption shall report, in the manner CCC prescribes, the quantities of the products imported and the sugar content or equivalent of the products. This requirement shall not apply to sugars, syrups, or molasses within the quantities of tariff-rate quotas subject to the lower rate of duties.

(f) Based on the information received under this subsection, the Secretary shall publish on a monthly basis composite data on sugar production, imports, distribution, and stock levels.

(g) The sugar information reporting and recordkeeping requirements of this subpart are administered under the general supervision of the Executive Vice President, CCC.

§ 1435.201 Civil penalties.

(a) Any processor, refiner, or importer of sugar, syrup, and molasses who willfully fails or refuses to furnish the information, or who willfully furnishes false data required under § 1435.200, is subject to a civil penalty of no more than $10,000 for each such violation.

(b) The Controller, CCC, shall assess civil penalties and interest.

(c) Affected processors, refiners, and importers of sugar, syrup, and molasses may request reconsideration of civil penalties by filing a request, within 30 days of receipt of certified written notification from the Controller, CCC, of such assessment of civil penalties, with the Executive Vice President, CCC, Stop 0501, 1400 Independence Ave. SW., Washington, DC 20250–0501.

(d) After reconsideration, affected processors, refiners, or importers of sugar, syrup, and molasses may appeal civil penalties by filing a notice of appeal, within 30 calendar days of receipt of certified written notification from the Executive Vice President, CCC, of an affirmation of the assessment of civil penalties, with the National Appeals Division under part 780 of this title.

Subpart D—Flexible Marketing Allotments For Sugar

§ 1435.300 Applicability.

(a) This subpart applies to the establishment and allocation of marketing allotments for:

(1) Processor marketings of sugar domestically processed from sugar beets,

(2) Processor marketings of sugar processed from domestically produced sugarcane,

(3) Distribution of a processor's allocation to producers in proportionate share States, and

(4) Harvesting sugarcane by producers subject to proportionate shares.

(b) This subpart does not apply to:

(1) Marketing sugar for nondomestic or nonhuman consumption,

(2) Marketing imported raw or refined sugar,

(3) Exportation of sugar from the United States customs territory.

(c) This subpart applies throughout the United States and Puerto Rico.

§ 1435.301 Annual estimates and quarterly re-estimates.

(a) Not later than August 1 before the beginning of the crop year, CCC will estimate, and make re-estimates as necessary but not later than the beginning of each quarter of such crop year, the:

(1) Quantity of sugar that will be consumed in the United States (other than sugar imported for the production of polyhydric alcohol or to be refined and re-exported in refined form or in sugar-containing products);

(2) Quantity of sugar that will provide for reasonable carryover stocks;

(3) Quantity of sugar that will be available for consumption from carry-in stocks;

(4) Quantity of sugar that will be available for consumption from domestic processing of sugarcane and sugar beets; and

(5) Quantity of sugars, syrups, and molasses that will be imported for human consumption or for the extraction of sugar for human consumption in the United States and Puerto Rico (other than sugar imported for the production of polyhydric alcohol or to be refined and re-exported in refined form or in sugar-containing products), whether such articles are included in a tariff-rate quota or not.

(b) Calculation of all allotments, allocations, estimates, and re-estimates in this subpart will use available USDA statistics and estimates of production, consumption, and stocks, taking into account, where appropriate, data supplied in reports submitted pursuant to the reporting requirements set forth in § 1435.200.

§ 1435.302 Establishment and suspension of allotments.

(a) By the beginning of the crop year, CCC will establish the overall allotment quantity, beet sugar and cane sugar allotments, State cane sugar allotments, and allocations for processors marketing sugar domestically processed from sugar beets and domestically produced sugarcane at a level estimated to result in no sugar loan collateral forfeitures to CCC.

(b) Marketing allotments will be suspended whenever CCC determines that imports of sugars, syrups, and molasses for domestic human consumption or to be used for the extraction of sugar for domestic human consumption, whether under a tariff-rate quota or not, will exceed 1,532,000 short tons, raw value, excluding any imports attributable to a reassignment of allotments, and that the imports would lead to a reduction in the overall allotment quantity. The suspension of marketing allotments will be lifted if CCC subsequently determines that imports are estimated to be no higher than 1,532,000 short tons, raw value.

(c) Each determination under this section to establish or suspend marketing allotments will be published in the **Federal Register** and accompanied by a statement of the reasons for the determination.

§ 1435.303 Overall allotment quantity.

The overall allotment quantity for the crop year will be calculated by deducting from the sum of estimated sugar consumption and reasonable carryover stocks:

(a) 1,532,000 short tons, raw value; and

(b) Carry-in stocks.

§ 1435.304 Adjustment of the overall allotment quantity.

(a) The overall allotment quantity will be adjusted, as CCC determines appropriate,

(1) To avoid forfeiture of sugar loan collateral to CCC, and

(2) To reflect changes in estimated consumption, stocks, production, or imports based on re-estimates under § 1435.301.

(b) Each determination to adjust the overall allotment quantity will be published in the **Federal Register** and accompanied by a statement of the reasons for the determination.

(c) The beet sugar allotment, cane sugar allotment, State cane sugar allotments, proportionate shares, and allocations to each sugar beet processor and sugarcane processor will be increased or decreased, as appropriate, to reflect an overall allotment quantity adjustment.

(d) If the overall allotment quantity is reduced under paragraph (a) of this section and the quantity of sugar and

sugar products any individual processor marketed by the time of the reduction exceeds the processor's reduced allocation, the quantity of excess sugar or sugar products marketed will be deducted from the processor's allocation under an allotment next established.

§ 1435.305 Beet and cane sugar allotments.

(a) The allotment for beet sugar will be 54.35 percent of the overall allotment quantity.

(b) The allotment for cane sugar will be 45.65 percent of the overall allotment quantity.

(c) A sugar beet processor allocated a share of the beet sugar allotment may use only beet sugar to fill such allocation. A sugarcane processor allocated a share of the cane sugar allotment may use only cane sugar to fill such allocation.

§ 1435.306 State cane sugar allotments.

(a) Hawaii and Puerto Rico will be allotted a total of 325,000 short tons, raw value, of the cane sugar allotment.

(b) A new entrant cane State will receive an allotment to accommodate a new processor's allocation under 1435.308(f).

(c) Subject to paragraphs (a) and (b) of this section, the remaining cane States will be allotted, in aggregate, the remaining cane sugar allotment.

(d) The individual cane State allotments, other than a new entrant cane State, will be based on:

(1) Past marketings of cane sugar,

(2) Past processing of cane sugar, and

(3) The ability to market the sugar covered under the allotment assigned to the State.

(e) Past marketings and past processings will each be weighted by 0.25 and the ability to market will be weighted by 0.50 in determining the States' respective cane sugar allotments. The weights may be adjusted, as CCC deems appropriate, for the crop year.

(f) Except when deficits are reassigned as provided in § 1435.309, a processor may fill an allocation of a cane sugar allotment only with sugar processed from sugarcane grown in the State for which the allotment was established.

§ 1435.307 Allocation of marketing allotments to processors.

(a) Each sugar beet processor's allocation of the beet allotment will be calculated as the beet processor's share times the beet sector allotment:

(1) A beet processor's share is calculated as the beet processor's adjusted weighted average sugar production divided by the sum of all beet processors' adjusted weighted average sugar production.

(2) A beet processor's weighted average sugar production equals 0.25 times its 1998-crop sugar production plus 0.35 times its 1999-crop sugar production plus 0.40 times its 2000-crop sugar production, with the 2000 sugar PIK payments added to its 2000-crop sugar production.

(3) A beet processor's weighted average sugar production shall be adjusted by the following, as CCC determines:

(i) Increased 1.25 percent of the sum of all beet processors' weighted average sugar production for opening a sugar factory during the 1996 through 2000 crop years;

(ii) Decreased 1.25 percent of the sum of all beet processors' weighted average sugar production for closing a sugar factory during the 1998 through 2000 crops years;

(iii) Increased 0.25 percent of the sum of all beet processors' weighted average sugar production for opening a molasses desugarization facility during the 1998 through 2000 crop years; and

(iv) Increased 1.25 percent of the sum of all beet processors' weighted average sugar production for suffering a substantial quality loss on stored beets, as CCC determines, during the 1998 through 2000 crop years.

(b) Each sugarcane processors' allocation from a State cane sugar allotment will be calculated as the cane processor's share times the State cane sector allotment.

(1) Each cane processor's share, other than a new entrant, will be calculated as the processor's production base divided by the sum of the State's processor production bases.

(2) A processor's production base, other than a new entrants, is the sum of 0.50 times its ability to market plus 0.25 times its past processings plus 0.25 times its past marketings. These weights may be adjusted as CCC deems appropriate for the crop year.

(3) CCC will calculate an allocation for the Talisman processing facility, based on paragraph (b)(2) of this section and distribute the allocation among Florida processors according to the agreements between cane processors and the Secretary of the Interior dated March 25, and March 26, 1999.

(c) An informal hearing will be held in August of each year, if requested by affected sugarcane processors and growers by July 15th, to afford all interested persons the opportunity to comment on the next crop year's marketing allotments and allocations. After consideration of comments obtained at the hearing, a final determination on cane State allotments and processor allocations will be announced.

(d) During any crop year in which marketing allotments are in effect and allocated to processors, the quantity of sugar and sugar products that a processor markets shall not exceed the quantity of the processor's allocation.

(e) Paragraph (d) of this section shall not apply to:

(1) Any sugar marketings to facilitate the export of sugar or sugar-containing products,

(2) Any sugar marketings for nonhuman consumption, and

(3) Any processor marketings of sugar to another processor made to enable the purchasing processor to fulfill its allocation if such sales:

(i) Are made before May 1, and

(ii) Reported to CCC within 5 days of the date of sale.

(f) CCC may charge liquidated damages as specified in a surplus allocation survey and agreement on such sales made after May 1 if the purchasing processor had surplus allocation after May 1 because the purchasing processor provided incomplete or erroneous information to CCC.

§ 1435.308 Transfer of allocation, new entrants

(a) If a sugar beet or sugarcane processing facility is closed and the growers that delivered their crops to the closed facility elect to deliver their crops to another processor, the growers may petition the Executive Vice President, CCC, to transfer the share of allocation commensurate with the growers' production history from the processor that closed the facility to their new processor. CCC may grant the request to transfer the allocation upon:

(1) Written approval of the processing company that will accept the additional deliveries, and

(2) Evidence satisfactory to CCC that the new processor has the capacity to accommodate the production of petitioning growers.

(3) Subject to paragraph (a) of this section, CCC will eliminate the allocation of the processor who has been dissolved or liquidated in a bankruptcy proceeding and the allocation will be distributed to all other processors on a pro-rata basis.

(4) If the purchasing processor is not a new entrant, then the purchased plants must operate for the initial season and the following crop year for the purchasing processor to permanently obtain the allocation. CCC shall reassign the allocation on a pro rata basis if the purchased plants do not operate for the required 2 crop years.

(5) If the purchasing processor is a new entrant, then CCC shall immediately transfer allocation commensurate with the purchased factories' production history with no requirement on operating the facility for 2 crop years.

(b) Allocations, equal to the number of acres of proportionate shares being transferred times the State's per-acre yield goal, will be transferred between mills in proportionate share States, if the transfers are based on:

(1) Written consent of the crop-share owners, or their representative representatives,

(2) Written consent of the processing company holding the allocation for the subject proportionate shares,

(3) Written consent of the processing company that will accept the additional sugarcane deliveries, and

(4) Evidence, satisfactory to CCC, that the additional sugarcane deliveries will not exceed the processing capacity of the receiving company.

(c) New entrants, not acquiring existing facilities, may apply to the Executive Vice President, CCC, for an allocation.

(1) Applicants must demonstrate their ability to process, produce, and market sugar for the applicable crop year.

(2) CCC will consider adverse effects of the allocation upon existing processors and producers.

(3) New entrant cane processors are limited to 50,000 short tons, raw value, the first crop year.

(4) New entrant cane processors will be provided, as determined by CCC,

(i) A share of their State's cane allotment if the processor is located in Hawaii, Puerto Rico, Florida, Louisiana, or Texas, or

(ii) A share of the overall cane allotment if the processor is located in any state not listed in paragraph (f)(4)(i) of this section.

(5) If a new entrant acquires and reopens a factory that previously produced beet sugar from sugar beets and sugar beet molasses, but the factory last operated during the 1997 crop year, CCC will:

(i) Assign an allocation to the new entrant not less than the greater of 1.67 percent of the adjusted weighted average quantities of beet sugar produced by all processors during the 1998 through 2000 crop years, as determined under § 1435.307, or 1,500,000 hundredweight.

(ii) Reduce all other beet processor allocations on a pro rata basis.

§ 1435.309 Reassignment of deficits.

(a) CCC will determine, by May 1, whether sugar beet or sugarcane processors will be able to market their respective allocations.

(b) Sugarbeet and sugarcane processors will report to CCC, by April 15, current inventories, estimated production, expected marketings, and any other pertinent factors CCC deems appropriate to determine a processor's ability to market its allocation.

(c) If CCC determines a sugarcane processor will be unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will:

(1) First, be reassigned proportionately to allocations of other sugarcane processors within that State, depending on the capacity of each other processor to fill the portion of the deficit to be reassigned to it, and accounting for interests of associated producers;

(2) If the deficit cannot be eliminated after reassignment within the same State, be reassigned to the other cane States based on the ability of processors in such States to market the deficit to be reassigned to such States, with the reassigned quantity to each State being allocated among its processors in proportion to initial processor allocations;

(3) If the deficit cannot be eliminated by paragraphs (c)(1) and (c)(2) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

(4) If any portion of the deficit remains after paragraphs (c)(1), (c)(2), and (c)(3) of this section have been implemented, be reassigned to imports.

(d) If CCC determines that a sugar beet processor is unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will:

(1) First, be reassigned proportionately to allocations of other sugar beet processors, depending on the capacity of other processors to fill the portion of the deficit to be reassigned to them, accounting for the interests of associated producers.

(2) If the deficit cannot be eliminated by paragraph (d)(1) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

(3) If any portion of the deficit remains after paragraphs (d)(1) and (d)(2) of this section have been implemented, be reassigned to imports.

(e) The crop year allocation of each sugar beet or sugarcane processor who receives a reassignment will be increased accordingly for that year.

§ 1435.310 Sharing processors' allocations with producers.

(a) Every sugar beet and sugarcane processor must provide CCC a certification that:

(1) The processor intends to share its allocation among its producers fairly and equitably, and in a manner adequately reflecting each producer's production history, and

(2) The processor has, in the previous allotment year, shared its allocation among producers fairly and equitably, reflecting each producer's production history. If a processor is unable to provide such certification, CCC may reduce or eliminate its marketing allocation.

(b) Any producer or processor may request arbitration of a dispute regarding the sharing of the processor's allocation among the producers. Arbitration will be available on behalf of CCC at the State FSA office for the State in which the processor is located. Subsequent review of the arbitration decision is available at the discretion of the Executive Vice President, CCC. Any arbitration is subject to appeal to the Office of the Administrative Law Judge, USDA.

§ 1435.311 Proportionate shares for sugarcane producers.

(a) Proportionate shares and the provisions of this section and §§ 1435.312 through 1435.316 apply only to Louisiana sugarcane farms.

(b) CCC will determine whether Louisiana sugar production, in the absence of proportionate shares, will exceed the quantity needed to enable processors to fill the State cane sugar allotment and provide a normal carryover inventory. If the determination is made that the quantity of sugar produced in Louisiana, plus a normal carryover inventory, will exceed the State's allotment, CCC will establish for each sugarcane producing farm a proportionate share that limits the sugarcane acreage that may be harvested on the farm for sugar or seed.

(c) For purposes of determining proportionate shares CCC will:

(1) Establish the State's per-acre yield goal at a level not less than the average per-acre yield in the State for the 2 highest years from among the 1999 through 2001 crop years;

(2) Adjust the per-acre yield goal by the State average recovery rate;

(3) Convert the State cane sugar allotment into a State acreage allotment by dividing the State allotment by the adjusted per-acre yield goal;

(4) Establish a uniform reduction percentage for the crop by dividing the State acreage allotment by the sum of all

adjusted acreage bases in the State as determined under § 1435.312; and

(5) Apply the uniform reduction percentage to the acreage base established for each sugarcane producing farm in the State to determine the farm's proportionate share of sugarcane acreage that may be harvested for sugar or seed.

§ 1435.312 Establishment of acreage bases under proportionate shares.

(a) CCC will establish a sugarcane crop acreage base for each farm subject to proportionate shares as the simple average of the acreage planted and considered planted for harvest for sugar or seed on the farm in the 2 highest of the 1999 through 2001 crop years. Acreage considered planted shall be determined under § 1435.315.

(b) In establishing crop acreage bases, CCC will:

(1) Not consider acreage prevented from planting, and

(2) Consider acreage planted to sugarcane that fails.

(c) In establishing crop acreage bases, CCC will allow producers who have not previously reported their sugarcane acreage to do so by a date CCC determines and announces. Late-filed acreage reports will be accepted as the Deputy Administrator determines appropriate.

(d) The farm's crop acreage base shall be used to determine the farm's proportionate share.

(e) The regulations at part 718 of this title shall apply to this subpart, except reconstitution of farms with a sugar crop acreage base shall not be allowed across State lines.

§ 1435.313 Permanent transfer of acreage base histories under proportionate shares.

(a) A sugarcane producer on a farm may transfer all or a portion of the producer's acreage base history of land owned, operated, or controlled to any other farm in the State that the producer owns, operates, or controls under the Deputy Administrator-issued instructions. The transfer will reduce permanently the transferring farm's sugarcane acreage base history and increase the receiving farm's crop acreage base.

(b) All farm owners must agree in writing to the transfer.

(c) Producers may transfer sugarcane acreage base histories under this section by the date the State FSA committee establishes annually.

§ 1435.314 Temporary transfer of proportionate share due to disasters.

(a) If, for reasons beyond the control of a producer on a farm, such producer is unable to harvest sugarcane acreage relative to all or a portion of the proportionate share established for the farm, the Secretary may preserve, on producer application and written consent of all owners of the farm, for a period of not more than 5 consecutive years, the acreage base history of the farm to the extent of the proportionate share involved.

(b) Such proportionate share may be transferred, with the written consent of all owners of the farm, for 1 crop year to other farm owners or operators subject to the following conditions:

(1) The acreage base history of the transferring farm will be preserved for a period from 1 to 5 years; and

(2) Acreage base history will not be increased on the receiving farm.

(c) Producers who transfer a proportionate share under this section will be required to:

(1) Initiate the transfer in the county FSA office where the proportionate shares are established; and

(2) Obtain approval from the transferring county FSA committee.

(d) All transfers made under this section must be completed by the date the State FSA committee establishes.

§ 1435.315 Adjustments to proportionate shares.

Whenever CCC determines that, because of a natural disaster or other condition beyond the control of producers adversely affecting a sugarcane crop, the amount of sugarcane produced by producers subject to proportionate shares will not be sufficient to enable state processors to produce sufficient sugar to meet the State's cane sugar allotment and provide a normal carryover of sugar, CCC may uniformly allow producers to harvest sugarcane in excess of their proportionate shares, or suspend proportionate shares entirely.

§ 1435.316 Acreage reports for purposes of proportionate shares.

(a) A report of planted and failed acreage shall be required on farms that produce sugarcane for sugar or seed. Such report shall also specify the total acreage intended for harvest for sugar and seed.

(b) The reports required under paragraph (a) of this section shall be on forms prescribed by CCC and shall be filed annually with the county FSA committee by the applicable final reporting date CCC establishes. The farm operator or farm owner shall file such reports.

(c) Acreage reports will be used to determine compliance with proportionate shares and acreage bases for future proportionate shares.

(d) An acreage report may be accepted after the established date for reporting if physical evidence is still available for inspection that may be used to make a determination relative to:

(1) Existence of the crop;

(2) Use made of the crop;

(3) Lack of crop; or

(4) Disaster condition affecting the crop.

(e) The farm operator shall pay the cost of a farm visit by an authorized FSA employee unless the county FSA committee has determined that failure to report in a timely manner was beyond the producer's control.

(f) The farm operator may revise an acreage report. Revised reports shall be filed in accordance with CCC instructions and shall be accepted at any time if:

(1) Evidence exists for inspection and determination of:

(i) Existence of the crop;

(ii) Use made of the crop;

(iii) Lack of crop; or

(iv) Disaster condition affecting the crops.

(2) The farm has not already been inspected and the acreage already determined or harvesting of sugarcane already begun.

(g) Provisions of part 718 of this chapter will apply for field inspections, tolerance, and variance. Assessments for false acreage reporting will be applied under § 1435.318.

§ 1435.317 Revisions of allocations and proportionate shares.

The Executive Vice President, CCC, may modify any processor's allocation or any producer's proportionate share on the same basis as the initial allocation or proportionate share was required to be established.

§ 1435.318 Penalties and assessments.

(a) Under § 359b(c)(3) of the Agricultural Adjustment Act of 1938, as amended, any sugar beet or sugarcane processor who knowingly markets sugar or sugar products in excess of the processor's allocation in violation of § 1435.307 shall be liable to CCC for a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of sugar involved in the violation.

(b) Under § 359f(c)(5) of the Agricultural Adjustment Act of 1938, as amended, any producer of sugarcane whose farm has a proportionate share, and who knowingly harvests or allows to be harvested an acreage of sugarcane for sugar or seed in excess of the farm's proportionate share shall pay to CCC a civil penalty in an amount equal to 1.5

times the U.S. market value of the quantity of sugar that is marketed by the processor of such sugarcane in excess of the allocation of such processor, for the year in which the violation was committed. However, civil penalties will not be assessed when the producer harvests acreage for sugar or seed in excess of the farm's proportionate share, if the excess sugarcane harvested is:

(1) Processed by a sugarcane processor that does not exceed its marketing allocation; or

(2) Diverted to a use other than sugar or seed if:

(i) The sugarcane producer requests and pays for a CCC field inspection, and

(ii) CCC verifies the disposition of the excess harvest is not for sugar or seed.

(c) Any penalty assessed under paragraph (b) of this section shall be prorated among the producers of all sugarcane acquired by the processor from excess acres.

(d) Any person filing a false acreage report that exceeds tolerance will be subject to an assessment not to exceed $10,000. Whenever the failure of a producer to comply fully with the terms and conditions applicable to proportionate shares would result in an assessment, the Deputy Administrator may authorize the waiver or reduction of the assessment in such amounts as determined to be equitable about the seriousness of the failure, the producer's good-faith effort to comply fully with such terms and conditions, and the producer's substantial performance.

(e) Any person who knowingly violates any provision of this subpart other than paragraph (d) of this section is subject to the assessment of a civil penalty by CCC of not more than $5,000 for each violation.

§ 1435.319 Appeals and arbitration.

(a) A person adversely affected by any determination made under this subpart may request reconsideration of such determination by filing a written request with the Executive Vice President, CCC, detailing the basis of the request within 10 days of such determination. Such a request must be submitted at: Executive Vice President, CCC, Stop 0501, 1400 Independence Ave., SW, Washington, DC 20250–0501.

(b) For issues arising under §§ 359d, 359f(b) and (c), and 359(i) of the Agricultural Adjustment Act of 1938, as amended, after completion of the process provided in paragraph (a) of this section, a person adversely affected by a reconsidered determination may appeal such determination by filing a written notice of appeal within 20 days of the issuance of the reconsidered determination with the Hearing Clerk, USDA. The notice of appeal must be submitted at: Hearing Clerk, USDA, Room 1081, South Building, 1400 Independence Ave., SW., Washington, DC, 20250–9200. Any hearing conducted under this paragraph shall be by the Judicial Officer.

(c) For issues arising under §§ 359a–359c, 359e, and 359g of the Agricultural Adjustment Act of 1938, as amended, after completion of the process provided in paragraph (a) of this section, a person adversely affected by the reconsidered determination may appeal such determination by filing a written notice of appeal with the Director, National Appeals Division, USDA, as provided in part 11 of this title.

For issues arising under § 359f(a) of the Agricultural Adjustment Act of 1938, as amended, such disputes shall be resolved through arbitration under the direction of the Executive Vice President, CCC. A request for arbitration must be filed in writing at the address specified in paragraph (a) of this section.

Subpart E—Processor Sugar Payment-In-Kind (PIK) Program

§ 1435.400 General statement.

This subpart shall be applicable to sugar beet and sugarcane processors throughout the United States who, acting in conjunction with the producers of the sugarcane or sugar beets processed by the processors, reduce sugar production in return for a payment of sugar from CCC when CCC determines that such action will reduce forfeitures of sugar pledged as collateral for a CCC loan.

§ 1435.401 Bid submission procedures.

(a) After announcement by CCC that a program authorized by this subpart is in effect, processors who desire to participate in the program must submit a bid to CCC, on a form prescribed by CCC, that specifies:

(1) For a program involving acreage diversion, the amount of acreage to be reduced by producers who have contracts for delivery of sugar beets or sugar cane to the processor and contains the information CCC determines necessary to conduct the program and includes but is not limited to:

(i) The number of acres that the processor, acting in conjunction with the producers, will divert;

(ii) The previous consecutive 3-year simple average sugar beet or sugarcane yield on that acreage while under contract (years with no production contracted with a producer will not be considered (for first-time producers, however, the previous consecutive 3-year simple average sugar beet or sugarcane yield for all the producers under contract who delivered to the applicable factory will be used);

(iii) The previous 3-year simple average sugar content of the producer's beets or sugarcane (for first-time producers, the previous 3-year simple average sugar content for all beets or cane delivered to that factory will be used);

(iv) The processor's previous 3-year simple average recovery rate (for processors that have not been fully operational during the last 3 years, the simple average for those years that they were fully operational);

(v) The value of CCC sugar to be received as payment; and

(vi) Other information CCC deems necessary for program administration; or

(2) The sugar production capacity to be removed from production by the processor.

(b) The following acreage is ineligible for enrollment in the PIK program:

(1) If planted, acreage not currently under contract for delivery of sugar beets to a sugar beet processor or sugarcane to a sugarcane processor for sugar production.

(2) If planted, acreage that is not harvestable,

(3) Acreage devoted to roads or other non-producing areas, or

(4) If planted, acreage on which a crop insurance indemnity or replant payment was received for the current crop or for which a claim has been, or will be, filed to receive a crop insurance indemnity or replant payment for the current crop, except for replant payments for acreage actually replanted before the end of the normal planting period.

(c) If planted, the diverted acres cannot be grazed until after the sugar beets or sugarcane are destroyed by disking, plowing, or other means of mechanical destruction. In addition, the sugar beets or sugarcane on the diverted acres may not be used for any commercial purpose.

(d) The acreage offered must meet the following requirements:

(1) If less than or equal to 15 acres, then the acreage bid must consist of one of the following:

(i) One contiguous area of land,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one contiguous area of land to complete the balance;

(2) If more than 15 acres, then the acreage bid must consist of one of the following:

(i) One or more areas of land of at least 15 contiguous acres each with one remaining area of land of less than 15

contiguous acres to complete the balance,

(ii) One or more entire permanent fields, or

(iii) One or more entire permanent fields and one area of contiguous land to complete the balance.

(3) Contiguous areas of land must have a minimum width of 3 chains (198 feet).

(e) For a program involving desugaring capacity, or other measures of sugar production, not involving acreage diversion, the bid must contain the information CCC determine necessary to conduct the program.

§ 1435.402 Bid selection procedures.

(a) For bids in which the processor offers to remove acreage of sugar beets or sugarcane from production, CCC will rank bids on the basis of the bid amount as a percentage of the expected sugar produced from the retired acreage. Bids with the lowest of such percentages will be selected first. In the case of identical bids, selection may be based on random selection or pro rata shares, as CCC deems appropriate.

(b) CCC will reject bids for which the bid amounts exceed the expected sugar produced from the retired acreage.

(c) For bids in which the processor offers to remove sugar production capacity from production, CCC will rank the bids on the basis of the capacity to be removed from production.

(d) All acceptable bids specified in paragraphs (a) and (c) of this section will be further reviewed by CCC and ranked in order of the greatest reduction in sugar program that can be achieved at the lowest cost to CCC.

§ 1435.403 In-kind payments.

(a) CCC will, through such methods as CCC deems appropriate, make payments in the form of sugar held in CCC inventory.

(b) To the maximum extent practicable, CCC will use its inventory in making an in-kind payment based on the following priority:

(1) CCC-owned sugar held in storage by the processor;

(2) CCC-owned sugar held in storage by any other processor in the same region as the producer;

(3) CCC-owned sugar held in storage by any other processor that is not in the same region as the producer; and

(4) CCC-owned sugar held in storage anywhere in the United States, if CCC determines that such sugar is eligible to be used for in-kind payments.

(c) The value of CCC-owned inventory is dependent upon the storage location of the sugar and the type of sugar (raw or refined). CCC will announce the value of its inventory before bid solicitation. Accordingly, the quantity of sugar CCC will provide in terms of an in-kind payment to a processor will be determined by dividing:

(1) The total of the processor's bid amount that CCC accepts, by

(2) The value of CCC's inventory at the storage location at which title will transfer from CCC to the processor.

§ 1435.404 Timing of distribution of CCC-owned sugar.

Distribution of sugar from CCC inventory will occur in such manner as CCC determines appropriate.

§ 1435.405 Miscellaneous provisions.

(a) CCC may permit processors to bid, in lieu of acreage, desugarizing capacity or other measures of sugar production as CCC determines.

(b) The contract shall provide for the payment of liquidated damages if a processor fails to comply with the obligations specified in the CCC production diversion contract.

(c) CCC will transfer title of the sugar to the processor by notifying the processor or assignee that the sugar is available. CCC will stop storage payments on this sugar on the date of transfer.

PART 1436—FARM STORAGE FACILITY LOAN PROGRAM

2. The authority citation for part 1436 is revised to read as follows:

Authority: 7 U.S.C. 7971;15 U.S.C. 714 *et seq.*

3. Section 1436.3 is amended by revising the definitions of ''facility loan commodity'' and ''storage need requirement'' to read as follows:

§ 1436.3 Definitions.

* * * * *

Facility loan commodity means wheat, rice, raw or refined sugar, soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, other oilseeds as determined and announced by CCC, dry peas, lentils, small chickpeas, harvested as whole grain and including peanuts, except that corn, grain sorghum, oats, wheat, or barley shall be included whether harvested as whole grain or other than whole grain.

* * * * *

Storage need requirement means:

(1) The average of the most recent 3 years available, the applicant's share of the acres farmed for each facility loan commodity requiring storage at the proposed facility multiplied by a yield determined reasonable by the county committee, multiplied by two, less existing storage capacity. If acreage data is not available, including prevented planted acres, or the data is not applicable to the storage need, a reasonable acreage projection may be made for newly acquired farms, changes in cropping operations, or for facility loan commodity crops being grown for the first time.

(2) For sugar-related loans, a projection from the processor of the processing volume, available storage capacity, volume not to be marketed due to marketing allotments, and other factors affecting the processor's storage need, as appropriate. CCC shall determine if the storage need is reasonable using data such as past processing volume and marketing allotments.

* * * * *

4. Section 1436.4 is amended by removing the term ''Producers'' where it appears in paragraph (b) and adding in its place ''Borrowers'', and by adding a new paragraph (c) to read as follows:

§ 1436.4 Availability of loans.

* * * * *

(c) For sugar-related loans, a loan application shall be submitted to the county FSA office that maintains the applicant's records. If no such records exist, loan applications shall be submitted to the county office serving the headquarters' location of the sugar processor.

5. Section 1436.5 is amended by revising the introductory text of paragraph (a) and adding a paragraph (b) to read as follows:

§ 1436.5 Eligible borrowers.

(a) ''Borrower'' means a person who, as landowner, landlord, operator, producer, tenant, leaseholder, sharecropper, or processor of domestically produced sugarcane or sugar beets:

* * * * *

(b) For sugar related facility loans:

(1) Paragraphs (a)(4), (6), and (7) of this section do not apply.

(2) Sugar processors must be approved by CCC to store sugar owned by CCC or pledged as security to CCC for non-recourse loans.

6. Section 1436.6 is amended by adding a new paragraph (f) to read as follows:

§ 1436.6 Eligible storage or handling equipment.

* * * * *

(f)(1) Paragraphs (a) and (b) of this section shall not apply to sugar-related loans made under this part.

(2) For sugar-related loans, the loan amount may include costs associated with the purchase, installation,

building, improving, remodeling or renovating an eligible storage or handling facility. Eligible facilities include the following:

(i) New conventional-type bins or silos designed for and used to store raw or refined sugar, having a useful life of at least 15 years;

(ii) New flat-type storage structures including a permanent concrete floor, designed for and used to store raw or refined sugar, having a useful life of at least 15 years;

(iii) New storage structures designed for and used to store in-process sugar, having a useful life of at least 15 years.

(iv) Permanently affixed sugar handling equipment determined by the CCC to be needed and essential to the proper functioning of the sugar storage system;

(v) Safety equipment CCC requires such as lighting, and inside and outside ladders;

(vi) Equipment to improve, maintain, or monitor the quality of stored sugar, such as moisture testers, and heat detectors;

(vii) Electrical equipment, including labor and materials for installation, such as lighting, motors, and wiring integral to the proper operation of the sugar storage and handling equipment; and

(viii) Concrete foundations, aprons, pits, and pads (including site preparation, labor and materials) essential to the proper operation of the sugar storage and handling equipment.

(3) For sugar-related loans, storage and handling equipment that is not eligible for loans, includes:

(i) Portable handling equipment and portable augers;

(ii) Structures of a temporary natures that require the weight or bulk of the stored commodity to maintain its shape (such as fences or bags);

(iii) Used or pre-owned structures or handling equipment;

(iv) Structures that are not suitable for storing raw or refined sugar;

(v) Weigh scales.

(4) For sugar-related loans, loans may be approved for financing additions to or modifications of an existing storage facility with an expected useful life of at least 15 years if CCC determines there is a need for the capacity of the structure.

7. Section 1436.7 is revised to read as follows:

§ 1436.7 Loan term.

The maximum term of the loan shall be 7 years from the date a promissory note and security agreement are executed, except in the case of a sugar-related loan in which case CCC, at its discretion, may authorize a loan of 15 years. The minimum term of a sugar-related loan is 7 years. No extensions of the loan term will be granted. The loan balance and all related costs are due 7 years from the date of the execution of the promissory note and security agreement, except in the cast of a sugar-related loan, in which case such balance and costs are due 15 years from the date of the promissory note and security agreement are executed.

8. Amend § 1436.8 by adding paragraphs (h) and (i) to read as follows:

§ 1436.8 Security for loan.

* * * * *

(h) For sugar-related facility loans, in addition to the above requirements, additional security, including real estate, chattels, crops in storage, and other assets owned by the applicant, is required if necessary to adequately secure the loan. A sugar-related loan will be considered to be adequately secured when the CCC determined value of security for the loan is at least equal to 125 percent of the loan amount.

(i) For sugar-related facility loans, paragraph (g) is not applicable. The borrower shall pay all loan making fees and closing costs. This includes, but is not limited to, attorney fees for loan closings, environmental assessments and studies, chattel and real estate appraisals, title opinions, title insurance, title searches, filing and recording all real estate liens, fixture filings, subordinations, credit reports, collateral lien searches, and filing and recording financing statements for the collateral.

9. Amend § 1436.9 by revising paragraph (h) and adding paragraphs (j) and (k) to read as follows:

§ 1436.9 Loan amount and loan application approvals.

* * * * *

(h) Farm storage facility loan approvals will expire in 4 months after the date of approval unless extended in writing for an additional 4 months by the FSA State Committee. Sugar storage facility loan approvals will expire in 8 months after the date of approval unless extended in writing for an additional 4 months by the FSA State Committee.

(j) For sugar-related facility loans, paragraphs (c) and (d) and (g) do not apply.

(k) For sugar-related facility loans, the Agency approval officials may only approve loans, subject to available funds.

10. Amend § 1436.12 by adding paragraph (d) to read as follows:

§ 1436.12 Interest and fees.

* * * * *

(d) For sugar-related facility loans, paragraph (c) does not apply.

11. Amend § 1436.15 by adding a paragraph (f) to read as follows:

§ 1436.15 Maintenance, liability, insurance and inspections.

* * * * *

(f) For sugar-related loans, in addition to the requirements of paragraph (d) of this section, sugar processors shall also insure the contents of storage structures used as collateral for a sugar-related facility loan against all perils.

13. Section 1436.19 is added to read as follows:

§ 1436.37 Equal Opportunity and Non-discrimination requirements.

(a) No recipient of a Storage Facility loan shall directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, religion, color, national origin, gender, or other prohibited basis. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters.

(b) With respect to any aspect of a credit transaction, CCC will not discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status, or age, provided the applicant can execute a legal contract. Nor will CCC discriminate on the basis of whether all or a part of the applicant's income derives from any public assistance program, or whether the applicant in good faith, exercises any rights under the Consumer Protection Act.

Signed in Washington, DC, on August 7, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

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2–29	(869–048–00089–5)	57.00	Apr. 1, 2002
30–39	(869–048–00090–9)	39.00	Apr. 1, 2002
40–49	(869–048–00091–7)	26.00	Apr. 1, 2002
50–299	(869–048–00092–5)	38.00	Apr. 1, 2002
300–499	(869–048–00093–3)	57.00	Apr. 1, 2002
*500–599	(869–048–00094–1)	12.00	[5] Apr. 1, 2002
600–End	(869–048–00095–0)	16.00	Apr. 1, 2002
27 Parts:			
1–199	(869–048–00096–8)	61.00	Apr. 1, 2002

Title	Stock Number	Price	Revision Date
200–End	(869–048–00097–6)	13.00	Apr. 1, 2002
28 Parts:			
0-42	(869–044–00098–9)	55.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001
29 Parts:			
0–99	(869–044–00100–4)	45.00	July 1, 2001
100–499	(869–044–00101–2)	14.00	[6]July 1, 2001
500–899	(869–044–00102–1)	47.00	[6]July 1, 2001
*900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–044–00104–7)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869–044–00105–5)	42.00	July 1, 2001
1911–1925	(869–044–00106–3)	20.00	[6]July 1, 2001
1926	(869–044–00107–1)	45.00	July 1, 2001
1927–End	(869–044–00108–0)	55.00	July 1, 2001
30 Parts:			
1–199	(869–044–00109–8)	52.00	July 1, 2001
200–699	(869–044–00110–1)	45.00	July 1, 2001
700–End	(869–044–00111–7)	53.00	July 1, 2001
31 Parts:			
0–199	(869–044–00112–8)	32.00	July 1, 2001
200–End	(869–044–00113–6)	56.00	July 1, 2001
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–044–00114–4)	51.00	[6]July 1, 2001
191–399	(869–044–00115–2)	57.00	July 1, 2001
400–629	(869–044–00116–8)	35.00	[6]July 1, 2001
630–699	(869–044–00117–9)	34.00	July 1, 2001
700–799	(869–044–00118–7)	42.00	July 1, 2001
800–End	(869–044–00119–5)	44.00	July 1, 2001
33 Parts:			
1–124	(869–044–00120–9)	45.00	July 1, 2001
125–199	(869–044–00121–7)	55.00	July 1, 2001
200–End	(869–044–00122–5)	45.00	July 1, 2001
34 Parts:			
1–299	(869–044–00123–3)	43.00	July 1, 2001
300–399	(869–044–00124–1)	40.00	July 1, 2001
400–End	(869–044–00125–0)	56.00	July 1, 2001
35	(869–044–00126–8)	10.00	[6]July 1, 2001
36 Parts			
*1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–044–00128–4)	33.00	July 1, 2001
300–End	(869–044–00129–2)	55.00	July 1, 2001
37	(869–044–00130–6)	45.00	July 1, 2001
38 Parts:			
0–17	(869–044–00131–4)	53.00	July 1, 2001
18–End	(869–044–00132–2)	55.00	July 1, 2001
39	(869–044–00133–1)	37.00	July 1, 2001
40 Parts:			
1–49	(869–044–00134–9)	54.00	July 1, 2001
50–51	(869–044–00135–7)	38.00	July 1, 2001
52 (52.01–52.1018)	(869–044–00136–5)	50.00	July 1, 2001
52 (52.1019–End)	(869–044–00137–3)	55.00	July 1, 2001
53–59	(869–044–00138–1)	28.00	July 1, 2001
60 (60.1–End)	(869–044–00139–0)	53.00	July 1, 2001
60 (Apps)	(869–044–00140–3)	51.00	July 1, 2001
61–62	(869–044–00141–1)	35.00	July 1, 2001
63 (63.1–63.599)	(869–044–00142–0)	53.00	July 1, 2001
63 (63.600–63.1199)	(869–044–00143–8)	44.00	July 1, 2001
63 (63.1200-End)	(869–044–00144–6)	56.00	July 1, 2001
64–71	(869–044–00145–4)	26.00	July 1, 2001
72–80	(869–044–00146–2)	55.00	July 1, 2001
81–85	(869–044–00147–1)	45.00	July 1, 2001
86 (86.1–86.599–99)	(869–044–00148–9)	52.00	July 1, 2001
86 (86.600–1–End)	(869–044–00149–7)	45.00	July 1, 2001
87–99	(869–044–00150–1)	54.00	July 1, 2001
100–135	(869–044–00151–9)	38.00	July 1, 2001
136–149	(869–044–00152–7)	55.00	July 1, 2001
150–189	(869–044–00153–5)	52.00	July 1, 2001
190–259	(869–044–00154–3)	34.00	July 1, 2001
260–265	(869–044–00155–1)	45.00	July 1, 2001
266–299	(869–044–00156–0)	45.00	July 1, 2001
300–399	(869–044–00157–8)	41.00	July 1, 2001
400–424	(869–044–00158–6)	51.00	July 1, 2001
425–699	(869–044–00159–4)	55.00	July 1, 2001
700–789	(869–044–00160–8)	55.00	July 1, 2001
790–End	(869–044–00161–6)	44.00	July 1, 2001
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–044–00162–4)	22.00	July 1, 2001
101	(869–044–00163–2)	45.00	July 1, 2001
102–200	(869–044–00164–1)	33.00	July 1, 2001
201–End	(869–044–00165–9)	24.00	July 1, 2001
42 Parts:			
1–399	(869–044–00166–7)	51.00	Oct. 1, 2001
400–429	(869–044–00167–5)	59.00	Oct. 1, 2001
430–End	(869–044–00168–3)	58.00	Oct. 1, 2001
43 Parts:			
1–999	(869–044–00169–1)	45.00	Oct. 1, 2001
1000–end	(869–044–00170–5)	56.00	Oct. 1, 2001
44	(869–044–00171–3)	45.00	Oct. 1, 2001
45 Parts:			
1–199	(869–044–00172–1)	53.00	Oct. 1, 2001
200–499	(869–044–00173–0)	31.00	Oct. 1, 2001
500–1199	(869–044–00174–8)	45.00	Oct. 1, 2001
1200–End	(869–044–00175–6)	55.00	Oct. 1, 2001
46 Parts:			
1–40	(869–044–00176–4)	43.00	Oct. 1, 2001
41–69	(869–044–00177–2)	35.00	Oct. 1, 2001
70–89	(869–044–00178–1)	13.00	Oct. 1, 2001
90–139	(869–044–00179–9)	41.00	Oct. 1, 2001
140–155	(869–044–00180–2)	24.00	Oct. 1, 2001
156–165	(869–044–00181–1)	31.00	Oct. 1, 2001
166–199	(869–044–00182–9)	42.00	Oct. 1, 2001
200–499	(869–044–00183–7)	36.00	Oct. 1, 2001
500–End	(869–044–00184–5)	23.00	Oct. 1, 2001
47 Parts:			
0–19	(869–044–00185–3)	55.00	Oct. 1, 2001
20–39	(869–044–00186–1)	43.00	Oct. 1, 2001
40–69	(869–044–00187–0)	36.00	Oct. 1, 2001
70–79	(869–044–00188–8)	58.00	Oct. 1, 2001
80–End	(869–044–00189–6)	55.00	Oct. 1, 2001
48 Chapters:			
1 (Parts 1–51)	(869–044–00190–0)	60.00	Oct. 1, 2001
1 (Parts 52–99)	(869–044–00191–8)	45.00	Oct. 1, 2001
2 (Parts 201–299)	(869–044–00192–6)	53.00	Oct. 1, 2001
3–6	(869–044–00193–4)	31.00	Oct. 1, 2001
7–14	(869–044–00194–2)	51.00	Oct. 1, 2001
15–28	(869–044–00195–1)	53.00	Oct. 1, 2001
29–End	(869–044–00196–9)	38.00	Oct. 1, 2001
49 Parts:			
1–99	(869–044–00197–7)	55.00	Oct. 1, 2001
100–185	(869–044–00198–5)	60.00	Oct. 1, 2001
186–199	(869–044–00199–3)	18.00	Oct. 1, 2001
200–399	(869–044–00200–1)	60.00	Oct. 1, 2001
400–999	(869–044–00201–9)	58.00	Oct. 1, 2001
1000–1199	(869–044–00202–7)	26.00	Oct. 1, 2001

Title	Stock Number	Price	Revision Date
1200–End	(869–044–00203–5)	21.00	Oct. 1, 2001
50 Parts:			
1–199	(869–044–00204–3)	63.00	Oct. 1, 2001
200–599	(869–044–00205–1)	36.00	Oct. 1, 2001
600–End	(869–044–00206–0)	55.00	Oct. 1, 2001
CFR Index and Findings Aids	(869–044–00047–0)	59.00	Jan. 1, 2002
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.