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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 916

[Docket No. FV02–916–2 FIR]

Nectarines Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Nectarine Administrative Committee (committee) for the 2002–03 and subsequent fiscal periods from $0.20 to $0.19 per 25-pound container or container equivalent of nectarines handled. The committee locally administers the marketing order which regulates the handling of nectarines grown in California. Authorization to assess nectarine handlers enables the committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period runs from March 1 through the last day of February. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: October 17, 2002.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721, (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 124 and Order No. 916, both as amended (7 CFR part 916), regulating the handling of nectarines grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California nectarine handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable nectarines beginning on March 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the decreased assessment rate established for the committee for the 2002–03 and subsequent fiscal periods. The rate was decreased from $0.20 to $0.19 per 25-pound container or container equivalent of nectarines.

The nectarine marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the committee are producers of California nectarines. They are familiar with the committee's needs, and with the costs for goods and services in their local area and are, thus, in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–02 fiscal period, the committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on May 1, 2002, and unanimously recommended 2002–03 expenditures of $4,671,342 and an assessment rate of $0.19 per 25-pound container or container equivalent of nectarines. In comparison, last year's budgeted expenditures were $4,338,744. The recommended rate is $0.01 lower than the previous rate.

The decrease was recommended because the crop is expected to be larger than originally estimated. In early spring, the crop was estimated to be 22 million containers or container equivalents of nectarines. The crop is now estimated to be more than 23 million containers or container equivalents. Assessment income and funds from the committee's operating reserve will be adequate to cover approved committee expenses in 2002–03.

The major expenditures recommended by the committee for 2002–03 include $505,000 for salaries and benefits, $309,039 for general expenses, $1,050,000 for inspection, $138,018 for research, and $2,574,160

for domestic and international promotion.

Budgeted expenses for these items in 2001–02 were $423,176 for salaries and benefits, $157,821 for general expenses, $1,000,000 for inspection, $169,393 for research, and $2,429,000 for domestic and international promotion.

To determine the applicable 2002–03 assessment rate, the committee considered the total expenses of $4,671,342, and the assessable nectarines estimated at 23,248,000 25-pound containers or container equivalents. At the $0.19 rate, assessment income for 2002–03 will be $4,417,120. The committee began 2002–03 with $684,368 in operating reserves and expects to end the fiscal period with $350,000. Section 916.42 authorizes a reserve equal to approximately one fiscal period's expenses. Funds from the committee's operating reserve will be kept within the maximum permitted.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other available information.

Although this assessment rate is effective for an indefinite period, the committee will continue to meet annually to recommend a budget of expenses and to consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The committee's 2002–03 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 California nectarine handlers subject to regulation under the order covering nectarines grown in California, and about 1,800 producers of nectarines grown in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

In the 2001 season, the average handler price received was $9.00 per container or container equivalent of nectarines. A handler would have to ship at least 555,556 containers or container equivalents of nectarines to have annual receipts of $5,000,000. Based on shipment data maintained by the committee's staff, it is estimated that small handlers of nectarines represent approximately 94 percent of the handlers within the industry.

In the 2001 season, the average producer price received was $5.50 per container or container equivalent of nectarines. A producer would have to produce at least 136,364 containers or container equivalents of nectarines to have annual receipts of $750,000. Based on data maintained by the committee's staff, it is estimated that small producers represent approximately 78 percent of the nectarine producers within the industry.

This rule continues in effect the decreased assessment rate established for the committee and collected from handlers for the 2002–03 and subsequent fiscal periods. The assessment rate was decreased from $0.20 to $0.19 per 25-pound container or container equivalent of nectarines. The committee unanimously recommended 2002–03 expenditures of $4,671,342 and an assessment rate of $0.19 per 25-pound container or container equivalent of nectarines. The recommended assessment rate is $0.01 lower than the previous rate. The quantity of assessable nectarines for the 2002–03 fiscal year is estimated at 23,248,000 25-pound containers or container equivalents. Thus, the $0.19 rate should provide $4,417,120 in assessment income. Income derived from handler assessments, along with other income and funds from the committee's authorized reserve will be adequate to cover budgeted expenses.

The major expenditures recommended by the committee for the 2002–03 year include $505,000 for salaries and benefits, $309,039 for general expenses, $1,050,000 for inspection, $138,018 for research, and $2,574,160 for domestic and international promotion.

Budgeted expenses for these items in 2001–02 were $423,176 for salaries and benefits, $157,821 for general expenses, $1,000,00 for inspection, $169,393 for research, $2,429,000 for domestic and international promotion.

The decrease was recommended because the crop is expected to be larger than originally estimated. The crop estimate in early spring was 22 million containers or container equivalents of nectarines. The crop is now estimated to be more than 23 million containers or container equivalents. The committee reviewed and unanimously recommended 2002–03 expenditures of $4,671,342.

Prior to arriving at this budget, the committee considered information and recommendations from various sources, including, but not limited to: the Management Services Committee, the Research Subcommittee, the International Programs Subcommittee, the Grade and Size Subcommittee, the Domestic Promotion Subcommittee, and the Grower Relations Subcommittee. The assessment rate of $0.19 per 25-pound container or container equivalent is expected to result in an operating reserve of $350,000, which is less than the committee generally recommends, but considered adequate to meet the committee's financial needs in the early part of the 2003 season.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2002–03 season could range between $5.50 and $6.00 per 25-pound container or container equivalent of nectarines. Therefore, the estimated assessment revenue for the 2002–03 fiscal period as a percentage of total grower revenue could range between 3.17 and 3.45 percent.

This action continues in effect the decreased assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the committee's meeting was widely publicized throughout the California nectarine industry and all interested persons were invited to attend the meeting and

participate in committee deliberations on all issues. Like all committee meetings, the May 1, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. This action imposes no additional reporting or recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on June 25, 2002 (67 FR 42707). Copies of that rule were made available to all nectarine growers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on August 26, 2002, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 916

Nectarines, Marketing agreements, Reporting and recordkeeping requirements.

PART 916—NECTARINES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 916 which was published at 67 FR 42707 on June 25, 2002, is adopted as a final rule without change.

Dated: September 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–23550 Filed 9–16–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV02–955–1 FIR]

Vidalia Onions Grown in Georgia; Revision of Reporting and Assessment Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule revising the reporting and assessment requirements prescribed under the marketing order for Vidalia onions grown in Georgia (order). The order regulates the handling of Vidalia onions grown in Georgia, and is administered locally by the Vidalia Onion Committee (Committee). This rule continues in effect the change from monthly shipment reporting to weekly reporting. It also continues in effect changes in when assessments are due and how delinquent assessments are handled. This rule provides the industry with more accurate and timely shipment and supply information and facilitates the collection of assessments.

EFFECTIVE DATE: October 17, 2002.

FOR FURTHER INFORMATION CONTACT: William Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, FL 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW,. STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955, (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect changes to the reporting and assessment requirements prescribed under the order. This rule continues in effect the change from monthly shipment reporting to weekly reporting. It also continues in effect changes in when assessments are due and how delinquent assessments are handled. This rule provides the industry with more accurate and timely shipment and supply information and facilitates assessment collection. The Committee unanimously recommended these changes at a meeting held on December 6, 2001.

Section 955.60 of the order provides authority for the Committee to require handlers to file reports and provide other information as may be necessary for the Committee to perform its duties. Section 955.101 of the regulations provides the requisite reporting requirements. Previously, handlers were required to file monthly reports including the name and address of the handler, the period covered in the report, the total Vidalia onions received by the handler, and the handler's total fresh market shipments.

Section 955.42 provides the authority for the formulation of an annual budget of expenses and the collection of assessments from handlers to administer

the order. Section 955.42(f) provides the authority to impose a late payment charge or an interest charge or both, on any handler who fails to pay assessments in a timely manner and the authority to establish the time and rate of such charges. Section 955.142 of the rules and regulations outlines the procedures for applying interest charges to delinquent assessments.

This rule continues in effect revisions to § 955.101 requiring handlers to file shipping reports on a weekly, rather than a monthly, basis. This rule also continues in effect revisions to § 955.142, specifying when assessments are due and adjusting the way interest is applied to delinquent assessments.

Previously, § 955.101 required handlers to provide the Committee with information regarding the volume of Vidalia onions they received and shipped during each month of the shipping season. The shipping reports were to be filed no later than seven days after the end of each shipping month. The Committee provided a form to assist handlers with supplying the required shipping information. The main fresh shipping season for Vidalia onions generally runs from April through June. However, over the past 10 years, the industry has developed and refined Controlled Atmosphere (CA) storage, allowing Vidalia onions to be shipped throughout the year.

When the reporting requirement was originally implemented following the promulgation of the order in 1990, the Committee believed the best method for obtaining shipment data was by requiring handlers to report their volume of fresh market shipments at the end of each week. However, after the order had been in operation for a few seasons, the Committee found that many handlers considered weekly reporting too cumbersome. In the early 1990's, many Vidalia onion growers and handlers were small family operations. These operations did not pack large quantities or only packed for a limited time. Assessments owed were relatively small, and the industry found weekly reporting unnecessary and burdensome. Consequently, the Committee recommended a change to monthly reporting in 1993 (January 13, 1994, 59 FR 1896).

In the early years of the order, if a handler missed a report and owed assessments for a short period of time, it did not create a significant problem. The entities were small and the volumes shipped and the assessment amounts owed were often minimal. However, the Vidalia onion industry has grown from approximately 3,700 acres in 1989, to approximately 15,000 acres in 2001, producing a much larger volume of Vidalia onions. With advances in farming technology and changes in farm size, many smaller entities became part of larger enterprises or sell their onions to large handling operations rather than handle the onions themselves. These large operations can pack a considerable volume of Vidalia onions in a short amount of time. Under monthly reporting, the volumes shipped and assessments owed by a single handler can now be significant.

The Committee uses the information in the shipment reports to improve decision-making and program administration with regard to marketing research, market development, and promotional activities. The more accurate the information obtained from handlers, the more precise the Committee can be in adjusting its marketing research and promotion efforts. The shipment information is also provided to the industry on a composite basis to aid growers and handlers in planning their individual operations and in making marketing decisions during the season.

The reports are also used by the Committee to calculate the assessments owed by each handler. These reports are the Committee's best source for industry shipping data. Because these reports are so closely tied to industry information and assessment collection, it is imperative that the reports be both timely and accurate. Timely reports translate into information that is more exact and current and helps expedite the collection of assessments. However, the Committee had been experiencing problems receiving timely reports from some handlers. With handling operations increasing in size, delays in receiving reports were magnifying the industry's information and assessment collection problems because of the volume shipped and assessments owed.

With handlers failing to file reports in a timely manner, the composite reports the Committee issues on this shipping data were compromised. Delayed reporting made available industry information inaccurate. In some years, the Committee had not received accurate monthly pack-out figures until the end of the season. Consequently, Committee reports based on this data were of limited value to the industry. In addition, in this time of rapidly changing markets, monthly reports offer handlers little insight into current market conditions. Because of these things, there was no reliable information regarding the amount of Vidalia onions in the current channels of commerce. Without good information regarding the supply of Vidalia onions available in the market, the pipelines became full, driving down prices.

Delayed reporting also effected assessment collection. The Committee needs accurate and timely reporting to calculate and collect assessments due. Late reporting can lead to late assessment payments and corresponding interest charges on these late payments. If the handler has a small operation, this problem has little impact on the overall Committee budget. However, with the size of handler operations increasing, a larger handler can affect the Committee's cash flow and budget by falling behind in its reporting and with the corresponding assessment payments. This could force the Committee to delay, reduce, or eliminate projects due to lack of financial resources. The Committee does have the authority to go to lending institutions for operating capital, but prefers not to incur debt or the accompanying interest expense. Thus, it is important that reports and assessments be forwarded in a timely manner.

To address these problems, the Committee voted unanimously to change the reporting requirement from monthly reporting to weekly reporting. Under this change, the shipping week is defined as Monday through Sunday. Reports for each shipping week are due no later than 4 p.m. on Tuesday of the following week. Handlers are required to file reports for each season, with each new season beginning January 1. Handlers begin reporting the first week of the season in which they have shipments. In weeks when no shipments are made the handler is still required to file a report indicating that they had zero shipments. This continues until the handler files a final report for the season. The reporting form provided by the Committee has a space for the handler to indicate when they are filing their final report.

The Committee believes this change reduces the problems with late reporting and delinquent assessments. This change gives Committee staff an earlier indication of potential problems. By identifying these potential problems sooner, the Committee staff can address them in a shorter period than under the monthly reporting requirement and before the volumes and assessments due grow to significant amounts.

Weekly reporting compresses the reporting window and helps accelerate the compliance process. Identifying handlers that are not reporting can now be measured in weeks rather than months. With weekly reporting, the Committee's compliance officer has a better indication of which operating

handlers are filing timely reports and can concentrate compliance efforts on non-reporting handlers. A quicker response to potential compliance problems should help reduce reporting delays. Therefore, this change improves industry reporting and helps the Committee staff more accurately track industry shipments.

The Committee believes weekly reporting also improves the accuracy and benefits of their composite reports. Handlers receive more accurate information regarding industry shipments and in a timelier manner. With a shipping week of Monday through Sunday, handlers are required to file reports no later than 4 p.m. on Tuesday following the week shipments were made. The Committee assembles composite reports by Wednesday and distributes them to handlers. Consequently, handlers have information on shipments and the supply of onions on the market on a timelier basis.

Having weekly shipping data provides a clearer picture of market conditions and affords better information regarding the balance of supply and demand. This is expected to help handlers better address market swings, reduce market gluts, and increase grower returns.

Because reporting and assessments are tied closely, the Committee believes this change also helps expedite the collection of assessments. Reducing the volume of delayed reporting provides the Committee with better, timelier information on which to determine assessments due. As with the filing of reports, the Committee staff has an earlier indication under weekly reporting of those handlers that are not paying their assessments in a timely manner. Again, the earlier a problem can be identified, the quicker it can be addressed and compliance and collection efforts can be started.

Timely reports are important for both accurate reports and assessment collection. Therefore, the Committee recommended that the shipment reporting requirement in § 955.101 be changed from monthly reporting to weekly reporting.

In addition, this rule continues in effect revisions to § 955.101, to add information being reported by handlers but that was not specified in the provisions. Under the revised provisions, handlers report their name and address, the period covered by the report, the total onions received by the handler, the total fresh market onions shipped, as well as the amount of shipments from their own acreage, their total assessments due, the amount of onions sold, the volume of onions packed under contract for another handler and the handler name(s), onions sold to another handler, and information on onions placed in Controlled Atmosphere storage.

This rule also continues in effect revisions to the rules and regulations regarding the handling of delinquent assessments. Section 955.142 had stated that each handler must pay interest charges of 1 percent per month on any unpaid assessments levied, and on any accrued unpaid interest beginning thirty days after the date of billing, until the delinquent handler's assessment plus applicable interest had been paid in full. This rule continues in effect changes specifying when assessments are due from handlers and adjusting the way interest is applied to delinquent assessments.

Under past requirements, a handler reported shipments at the end of each month. The handler could then request to be billed for the assessments due on those shipments reported. The handler could further delay payment by holding the bill until the Committee sent a follow-up letter. This created budgeting problems and angered those handlers paying on time.

To make the collection of assessments easier, timelier, and more cost-effective, the Committee voted to revise § 955.142 by making assessments due at the time when the handler's shipping volume is required to be reported. With the change to weekly reporting, assessments are paid on a weekly basis for each week of shipments. Assessments are now due no later than 4 p.m. on Tuesday for those shipments made the previous week (Monday through Sunday). The option to request billing for assessments is no longer available.

This change makes it easier to collect assessments. It is no longer necessary to keep track of who has paid, and who needs to be billed. Each handler's assessments are collected the same way and are due at the same time. With this change, the Committee also receives its money in a timelier manner. Rather than having to submit a bill and wait for payment, payment is due immediately on the date when the weekly shipments are required to be reported. This change also saves the Committee money by reducing mailing costs associated with having to bill handlers for assessments.

This change also improves the Committee's cash flow. Rather than lump sum payments at the end of the season or large monthly collections, assessment income is received each week of the shipping season.

Therefore, the Committee voted that § 955.142 be changed so assessments are due no later than 4 p.m. on the Tuesday immediately following the week in which the shipments were made, at the same time weekly reports are due.

Finally, this rule continues in effect revisions to § 955.142 that adjust the way interest charges are applied to delinquent assessments. Previously, § 955.142 specified that handlers must pay interest of 1 percent per month on any unpaid assessments and on any accrued unpaid interest beginning thirty days after the date of billing. The Committee recommended changing this language so that interest accrues at 1 percent per week on any unpaid assessments and any accrued unpaid interest beginning with the day the assessments were due until the delinquent handler's assessment plus applicable interest has been paid in full. Consequently, interest begins accruing on delinquent assessments on the Wednesday immediately following the Tuesday when the assessments were due.

The Committee also voted to increase the interest charged to encourage handlers to pay on time. In the past, some handlers waited until the end of the season to pay their assessments, in a way, forcing the Committee to basically loan them the assessment money.

This change provides more incentive for handlers to pay in a timely manner. The additional interest charge also helps compensate the Committee for the extra effort and expenditures required to collect the late assessments. This change is expected to improve assessment collection, provide more timely payments, reduce compliance costs, and reduce the need for the Committee to borrow operating funds.

The Committee has been looking for ways to improve the timeliness of reports and the payment of assessments. The Committee believes these changes help address these issues.

Final Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own

behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 133 producers of Vidalia onions in the production area and approximately 109 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms, which include handlers, are defined as those whose annual receipts are less than $5,000,000.

Based on the Georgia Agricultural Statistical Service and Committee data, the average annual grower price for fresh Vidalia onions during the 2001 season was $13.75 per 50-pound bag. Total Vidalia onion shipments for the 2001 season were around 3,592,200 50-pound bags. Using available data, about 97 percent of Vidalia onion handlers could be considered small businesses under the SBA definition. In addition, based on acreage, production, grower prices as reported by the National Agricultural Statistics Service, and the total number of Vidalia onion growers, the average annual grower revenue is below $750,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of Vidalia onions may be classified as small entities.

The Committee had not been receiving timely reports from some handlers. With handling operations increasing in size, this had a negative impact on both industry information and assessment collection because the quantities shipped and assessments owed by some delinquent handlers were significant. This rule continues to revise § 955.101, requiring handlers to file shipping reports on a weekly basis rather than monthly and increases the information requested. This rule also continues to revise § 955.142, specifying when assessments are due and adjusting the way interest is applied to delinquent assessments. By identifying problems sooner, they can be addressed in a shorter period than under monthly reporting and before the volumes and assessments due grow to significant amounts. This rule also encourages handlers to report and pay their required assessments in a timely manner to avoid increased interest charges and other compliance activities. These changes should help reduce the problems with late reporting and assessment collection and provide more accurate information on shipments and supply. Authority for these actions is provided in §§ 955.42 and 955.60 of the order. The Committee unanimously recommended these changes at a December 6, 2001, meeting.

With weekly reporting, the Committee has more accurate and timely information regarding industry shipments. Having this information and the resulting reports helps both the Committee and the industry make better decisions.

This rule offers the potential for cost savings. Under this change, the Committee and the industry have access to more current information. The Committee is able to use this data when considering marketing research and promotion funding and activities. The industry can use the information to improve marketing decisions. Having access to information that is more current should help the industry balance supply with demand, thus reducing periods of oversupply and price variations. Even the slightest increase in price would more than compensate for any costs related to these changes.

These changes also are expected to reduce assessment collection costs for the Committee. By removing the option to be billed for assessments, the Committee is saving both employee time and postage. This rule may also lower compliance costs for the Committee. By reducing the number of handlers that are reporting late, the Committee cuts costs associated with identifying these handlers. This should decrease the overall number of compliance cases.

In addition, increasing the interest applied to late assessments helps curtail the volume of delinquent assessments. Such a reduction also eases staff and mailing costs directed toward collecting past due assessments.

This rule will have a positive impact on affected entities. The changes were recommended to improve available industry information, facilitate assessment collection, and to reduce costs. The availability of more timely and accurate industry information will benefit both large and small handling operations. The changes this rule makes in terms of assessment collection mean that all handlers are assessed the same way, with their assessments due at the same time. The reduction in Committee costs is also expected to benefit all handlers regardless of their size. Consequently, the opportunities and benefits of this rule are expected to be equally available to all.

An alternative to the actions recommended by the Committee was considered prior to making the final recommendations. The alternative considered was implementing a mandatory inspection program under the marketing order. However, the Committee recognized this alternative would require amending the order and take further time to implement. While not ruling out this alternative in terms of future action, the Committee believed the recommended actions give them a more timely solution while they consider other alternatives.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS obtained emergency approval for a new information collection request under OMB No. 0581–NEW for Vidalia Onions Grown in Georgia, Marketing Order No. 955. The emergency request was necessary because insufficient time was available to follow normal clearance procedures. This information collection will be merged with the forms currently approved for use under OMB No. 0581–0178 ''Vegetable and Specialty Crops'', and replaces the existing FV–181 ''Vidalia Onion Handler Report Form.''

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The Committee's meeting was widely publicized throughout the Vidalia onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 6, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on June 20, 2002. Copies of the rule were mailed by the Committee's staff to all Committee members and Vidalia onion handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period, which ended August 19, 2002. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that

finalizing the interim final rule, without change, as published in the **Federal Register** (67 FR 41811, June 20, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 955

Onions, Marketing agreements, Reporting and recordkeeping requirements.

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

Accordingly, the interim final rule amending 7 CFR part 955 which was published at 67 FR 41811 on June 20, 2002, is adopted as a final rule without change.

Dated: September 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–23551 Filed 9–16–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 155 and 156

46 CFR Part 32

[USCG–2001–9046]

RIN 2115–AG10

Tank Level or Pressure Monitoring Devices

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: In December of 2000, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the Coast Guard must promulgate a regulation for tank vessels to use tank level or pressure monitoring (TLPM) devices as mandated by the Oil Pollution Act of 1990 (OPA 90). The Coast Guard is implementing regulations to include minimum standards for the performance and use of TLPM devices on single-hull tank ships and single-hull tank barges carrying oil or oil residue as cargo.

DATES: This final rule is effective October 17, 2002.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2001–9046 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, call Martin L. Jackson, Project Manager, Standards Evaluations and Analysis Division (G–MSR–1), Coast Guard, at 202–267–1140. For technical questions concerning the performance standards for TLPM devices call Dolores Mercier, Technical Program Manager, Engineering Systems Division (G–MSE–3), Coast Guard, telephone 202–267–0658. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

The Oil Pollution Act of 1990 (OPA 90) Public Law 101–380, directed the Coast Guard to promulgate a number of regulations, including a variety of standards for the design and operation of equipment to reduce the number and severity of tank vessel oil spill incidents. Section 4110 of OPA 90 mandates that the Coast Guard: (1) Establish standards for devices that measure oil levels in cargo tanks or devices that monitor cargo tank pressure level, and (2) issue regulations establishing requirements concerning the use of these devices on tank vessels carrying oil or oil residue as cargo. Functionally, these tank level or pressure monitoring (TLPM) devices measure changes in cargo volume, thereby detecting possible oil leaks into the marine environment.

In May of 1991, the Coast Guard published in the **Federal Register** an Advance Notice of Proposed Rulemaking (ANPRM)(56 FR 21116) that solicited public comments relating to TLPM devices on tank vessels carrying oil. We received 20 comments.

In August of 1992, the Volpe National Transportation Systems Center completed a feasibility study (Volpe study) on TLPM devices. Then, in January of the following year, we made this study available to the public for comment by publishing a notice of availability (58 FR 7292).

As announced in a notice of public meeting (59 FR 58810), we held a public meeting at Coast Guard Headquarters in December of 1994 to discuss this rulemaking. This meeting gave the public an opportunity to provide further input into the development of the proposed regulations. As a result of the public meeting nine comments were received.

In 1995, we proposed a regulation that set minimum standards for leak detection devices (60 FR 43427). Upon review of the Volpe study and the risks of oil spills, we determined that the minimum detection threshold for such devices should be the lesser of either 0.5 percent below the quantity to which the tank was loaded or 1,000 gallons, which matched the criteria for an inland medium and coastal minor oil spill. This notice of proposed rulemaking received 10 comments.

In 1997, we published a temporary rule [62 FR 14828 (March 28, 1997)] establishing the minimum standards for TLPM devices. In the temporary rule, we requested the submission of TLPM devices that could meet the performance standard set out in the rule. The Coast Guard would have evaluated the submitted TLPM devices to ensure that they met the performance standards required by the temporary rule. We would have assessed the costs and benefits associated with any devices that met this performance standard to support decisions regarding implementing use requirements. At the time the rule expired in April 1999, no devices had been submitted to us for evaluation.

In 1999, Bluewater Network and Ocean Advocates brought suit in the U.S. Court of Appeals for the District of Columbia Circuit. In their suit, the petitioners asked the Court for a Writ of Mandamus ordering us to promulgate TLPM regulations. In December of 2000, the Court agreed with the petitioners on this item and directed the Coast Guard to promptly promulgate regulations setting TLPM standards and requiring use of TLPM on tank vessels.

On October 1, 2001, we published a notice of proposed rulemaking (NPRM) entitled Tank Level or Pressure Monitoring Devices in the **Federal Register** (66 FR 49877). Within that notice of proposed rulemaking, we presented a minimum performance standard and eight proposed regulatory options, and corresponding regulatory text for each option, regarding the use of TLPM devices on single-hull tank ships and single-hull tank barges carrying oil as cargo. A public meeting was held on November 6, 2001, in Washington, DC. As a result of the notice and public meeting, we received 129 letters commenting on the proposal.

Background and Purpose

The purpose of TLPM devices is to reduce the size and impact of oil spills by alerting the tank vessel operator that an accidental discharge of cargo oil is occurring. In the NPRM [October 1, 2001 (66 FR 49877)], the Coast Guard

proposed removing the temporary regulations of Subpart 32.22T-Tank Level or Pressure Monitoring Devices found in 46 CFR part 32. We proposed removing this subpart because the effective period of the standard has passed. We also proposed adding new, permanent performance and use standards for tank level or pressure monitoring devices in 33 CFR parts 155 and 156. The new standards we proposed included regulating the installation and operation of TLPM devices on cargo tanks on U.S. and foreign-flag single-hull tank ships and tank barges carrying oil or oil residue as cargo. Section 4110(b) of OPA 90 (Pub. L. 101–380) authorizes the Coast Guard to require the use of TLPM devices on U.S. and foreign-flag vessels constructed or adapted to carry oil in bulk as cargo or cargo residue on the United States navigable waters or exclusive economic zone.

We did not propose requiring the use of TLPM devices on double-hull vessels. These TLPM devices are intended to warn the operators of possible loss of cargo oil into the water due to leaks they might otherwise not notice from cargo tanks. As stated in previous notices, double-hull vessels are intrinsically designed to prevent this type of discharge, having a redundant tank boundary. Therefore, the proposal exempted double-hull tank vessels.

During the development of the proposal, we examined the impact of this rule on single-hull tank ships and single-hull tank barges. The regulatory analysis for this rule showed that of all single-hull tank vessels, barges caused most of the oil spills where TLPM devices would have been effective on single-hull tank vessels. In fact, out of the 27 oil spill incident cases, 20 incidents were from tank barges, with only seven from tank ships. In these 27 cases tank barges contributed 75 percent of the amount of actual oil spilled. Additionally, a majority of current tank barges will be in existence for much longer than will tank ships. Approximately 91 percent of the single-hull tank barges will be allowed to operate after 2010, compared to 54 percent of the tank ships. (All single-hull tank vessels will be phased-out by 2015.) Furthermore, section 4110 of OPA 90, which requires the installation and use of TLPM devices, was added in part as a result of an oil spill from a barge resulting in the spill of 4,000 barrels of oil during a night transit in the Chesapeake Bay.

Even though the 27 oil spill incident cases revealed that tank barges spilled more oil than tank ships, tank ships, on the other hand, present a greater potential for leaking great quantities should a leak occur. A one percent leak from a typical tank ship translates to approximately 36,078 gallons (859 barrels). In comparison, a one percent leak from an average tank barge is 4,536 gallons (108 barrels).

To allow for the maximum flexibility to meet the regulatory and statutory intent, we proposed in the NPRM eight regulatory options that reflect all the reasonable approaches we have examined in developing this proposed regulation. The eight options were designed to be performance based. In developing them, we assumed that this rulemaking will apply only to single-hull tank vessels with a TLPM device that will detect a one percent change in cargo volume.

Each of the eight options was categorized under one of four alternatives (two options per alternative). The alternatives indicated the possible affected vessels. The options indicated either a three-year or a five-year phase-in period for the affected vessels. Any earlier period would place undue financial and logistical burden on industry. Any period beyond five years would reduce benefits in protecting the environment from oil spills before the single-hull tank vessels are phased out. Therefore, the options were characterized by the affected single-hull tank vessel type and the installation phase-in of TLPM devices with the one percent performance standard.

The following table outlines the eight proposed options.

	What type of single-hull tank vessel is affected by this rule?	How long do the affected vessels have to comply with TLPM regulations?
Alternative One		
Option One	Tank Ships	3 years.
Option Two	Tank Ships	5 years.
Alternative Two		
Option One	Tank Barges	3 years.
Option Two	Tank Barges	5 years.
Alternative Three		
Option One	Tank Vessels	3 years.
Option Two	Tank Vessels	5 years.
Alternative Four		
Option One	Tank Ships	3 years.
	Tank Barges	5 years.
Option Two	Tank Ships	5 years.
	Tank Barges	3 years.

Note: Alternatives indicate the possible affected vessels. Options indicate the possible phase-in dates for the affected vessels

The one percent performance standard required TLPM devices to alarm when the quantity of the cargo oil increases or decreases by one percent. With this standard in place, we would be able to detect oil spills of approximately 859 barrels and 108 barrels from a typical tank ship and tank barge, respectively.

As previously stated in this final rule, the Coast Guard received several comment letters addressing our prior NPRM. None of the comments received address our proposal to remove the temporary regulations of Subpart 32.22T—Tank Level or Pressure Monitoring Devices found in 46 CFR part 32. We are removing the temporary regulations of Subpart 32.22T. After consideration of all the comments received, we have elected to implement Alternative Three, Option Two (all single-hull tank vessels, 5-year implementation).

Preface to Discussion of Comments and Changes

From the comments we received from the NPRM and the lack of the response from the manufacturers during the affective period of the temporary rule, the Coast Guard acknowledges that there are no TLPM devices being marketed. However, as discussed in the regulatory analysis, devices capable of measuring cargo levels are being manufactured. Properly modified, these devices would be able to meet the requirements established by this rulemaking. The actual type of system designed and installed is dependent on the manufacturer of the system and the vessel operator.

Discussion of Comments and Changes

The Coast Guard received 129 letters commenting on the NPRM [October 1, 2001 (66 FR 49877)]. Seventy-two of those letters were copies of the same form letter. Also, some comments were iterated or similarly addressed in other comment letters. When considering all of the comments submitted, we gave each comment received the same degree of consideration. Comments that were submitted in multiple do not receive priority over a comment that was submitted only once. We present the following responses to each comment that addressed our proposed rule.

The majority of the comments express support for adding permanent performance and use standards for tank level or pressure monitoring devices in 33 CFR parts 155 and 156. The comments have been grouped in specific topics related to this rulemaking.

Vessels Required To Install and Use TLPM Devices

The applicability requirements of this rule were addressed within 96 of the comment letters. We received comments stating that we should expand our applicability requirements to include vessels with double hulls, while other comments supported exempting them from the TLPM requirements. One argument cited in several comments interpreted ''tank vessels'' as used in section 4110(b) of the Oil Pollution Act of 1990 as including both single-hull and double-hull vessels. The Coast Guard disagrees. Although there is legislative history to support the proposition that not all tank vessels must be equipped with the device, there is nothing in the law and legislative history describing that double-hull tank vessels were intended to have the device. These TLPM devices are intended to warn the operators of possible loss of cargo oil from cargo tanks due to leaks they might otherwise not notice. As stated earlier, double-hull vessels are intrinsically designed to prevent this type of discharge. Therefore, this final rule will apply only to single-hull tank vessels, exempting double-hull tank vessels.

One comment requested that vessels with type-2 and type-1 location requirements that have a Certificate of Fitness be exempt from this rule. The Coast Guard disagrees. Type-2 and type-1 vessels are not considered double-hull vessels, nor would they offer the same level of protection. Therefore, type-2 and type-1 vessels are subject to TLPM requirements.

We received two comments concerning the applicability of the rulemaking based on the vessel's flag-state. One commenter believes that this rulemaking should be incorporated into our ''good neighbor policy'' toward other nations that are subject to pollution from ships registered in the United States. The other comment states that the proposed rule was not specific enough as to whether this rule applies to foreign-flag vessels all of the time or only when it is in the navigable waters of the U.S.

These regulations apply to tank vessels that operate in the navigable waters of the United States and the exclusive economic zone, consistent with international law. The TLPM requirements apply to U.S. single-hull tank ships and tank barges carrying oil or oil residue as cargo no matter the location. Foreign-flag single-hull tank vessels carrying oil or oil residue as cargo are required to meet the TLPM requirements whenever they are operating in the waters set forth above when bound for a port or place within the jurisdiction of the United States.

One comment recommended that bitumen carriers be exempt from these requirements. Bitumen is a mixture of tar-like hydrocarbons derived from petroleum. Black or brown, it varies from viscous to solid; the solid form is usually called asphalt. As detailed in 33 CFR 155.490(d), asphalt carriers are exempt from this requirement.

We received comments arguing that retrofitting TLPM devices on oceangoing vessels costs less than retrofitting the devices on inland tank vessels. Because of the retrofitting cost differential between these tank vessel types, the commenters recommended that we develop cost effective performance standards for inland tank vessels. The Coast Guard disagrees. An inland oil spill will potentially have a greater environmental impact than out at sea. Relaxing the requirement for inland tank vessels will not provide the same level of protection as ocean-going tank vessels. Case analysis revealed that most spills for which TLPMs would have been effective were inland spills.

Installation Date

We received 82 letters addressing the phase-in period for vessels required to install TLPM devices. Half of the commenters specifically recommended codifying proposed Alternative Three, Option One, meaning all single-hull tank vessels installing TLPM device within a three-year phase-in period. The remainder of commenters promoted a five-year phase-in period to provide the necessary flexibility for a vessel to integrate scheduling installation of the devices during the vessel's normal shipyard cycle.

This rulemaking sets the installation date at five years from the effective date of this rule. Currently, no devices meet the performance standards established by this rulemaking. The rationale of the five-year phase-in period is to provide industry manufacturers time to test a device that will meet the performance standards of this rule in a dynamic sea state and to give each owner of single-hull tank vessels time to schedule installation of the TLPM device during normal shipyard cycles.

Justification for Requiring the Installation and Use of TLPM Devices on All Single-Hull Tank Vessels

We received 86 comments requesting the Coast Guard to qualify its authority and reasoning for requiring single-hull tank vessels to equip each tank on the vessel with a TLPM device. Commenters pointed out that if a tank ship were involved in a collision, allision, or hard grounding and as a result of the casualty the vessel's cargo was flowing out of a damaged tank, the TLPM devices will not provide the crew with any additional information about the tank and its cargo. Another commenter stated that a TLPM device would not prevent cargo from leaking out of a vessel's tank. We agree with both comments. The purpose of TLPM devices is not to stop a leak, but to inform the crew of a cargo leak from a tank otherwise not noticed, and so that spill abatement procedures can be initiated. The requirement is for an alarm to actuate when the cargo tank level has increased or decreased by one percent. Large flow rate spills are not likely to be helped by the use of the TLPM equipment. Requiring the use of a TLPM device does not replace the standard practices associated with tank vessels or the good seamanship practices. It is up to the vessel's master

to deem which actions are appropriate responses to the alarm's actuation.

Commenters acknowledged that the Coast Guard has been ordered by the U.S. Court of Appeals to promptly satisfy the statutory mandates of section 4110 of the Oil Pollution Act of 1990. While they support the ideas of requiring leak detection of cargo tanks on tank vessels, the respondents believe that both the IMO and the Coast Guard have already promulgated rules addressing the statute. The Coast Guard disagrees. Both the U.S. Court of Appeals and Section 4110 are clear on the specific requirements the Coast Guard shall implement. Currently there are no other regulations or rules regulating TLPM devices, even though there are rules and regulations concerning overfill devices, high level alarms and cargo gauging systems, however, none of these provide the functionality of a TLPM device.

Additional commenters questioned the Coast Guard's interpretation of the statute. The statute says that the Coast Guard is to issue regulations establishing requirements concerning the use of devices that measure oil levels in cargo tanks or devices that monitor cargo tank pressure level. The respondents addressed the wording of the statute by saying that it does not say ''require the use'' or ''require the installation of''. The respondents believe that because the statute mandates the development of regulations ''concerning the use'' of a TLPM device, the Congress did not intend to require the installation and use of these devices. The Coast Guard disagrees. There is nothing in the act itself or the legislative history that would support such interpretation. In fact, the legislative history is to the contrary, supporting the installation of TLPM devices on tank vessels.

Performance Standards

We also received 107 comments addressing the performance standards. Several of the commenters pointed out their inability to locate a monitoring device that will satisfy the requirements of this rule. The comments continued by stating that the leak detection standard should be written in a way that would help to avoid false alarms. One comment suggested requiring an alarm to sound if the level in any cargo tank drops three percent over a period of 30 minutes. The respondent believes that this requirement would help to prevent false alarms. Another comment recommended developing a monitoring standard that is not based solely on measuring the percentage of the cargo in the cargo tank. The respondent believes that this type of measurement lends to false alarms. One comment detailed scenarios, such as draft restrictions en route to the discharge port or specific gravity of product, limiting the amount of cargo loaded into any tank, resulting in the need to reset or recalibrate each tank loaded. The respondent argues that this would be time consuming and has the potential of creating errors. Another comment stated the unlikelihood of obtaining the required accuracy by averaging liquid level data with computer software. The respondent believes that such a system would be dependent upon perfectly tight tanks, because even the slightest leak would compromise the effectiveness of the system.

Since no TLPM device currently exists that meets our standards the actual type of system designed and installed is dependent on the manufacturer of the system and the vessel operator. We believe that the various concerns expressed in the comment letters, such as false alarms, cargo tank re-calibration, and accuracy requirements can be addressed through the system design.

In the NPRM we proposed that the TLPM device must be able to properly function in a heavy sea state. We received comments addressing this standard. One comment recommended that we define ''heavy seas''. Another comment asked us to develop a test case for operation in heavy seas. Commenters urged that the leak detection device must be able to make calculative adjustments for operating conditions and tank environments, such as cargo sloshing, changes in barometric pressure, and vapor space temperature. One of the respondents suggested basing the software used to detect these changes on the Finite Element Method modeling and study.

The Coast Guard agrees that ''heavy seas'' is not an explicit sea condition. To clarify the intent of our standard, we have replaced the phrase ''heavy seas'' with ''sea state 5'' as defined in The American Practical Navigator, commonly known as Bowditch. We will also add to our regulations a definition for sea state 5 so that the sea condition by which a TLPM must properly operate is clearly understandable.

We received comments addressing the proposed requirements for audible and visual alarm indicators that must be distinctly identifiable as cargo tank level or pressure monitoring alarms that can be seen and heard on the navigation bridge of the tank ship or towing vessel as well as on the cargo deck area. One comment suggested that the alarm for inland tank barges should be a simple visual strobe light that can be seen from the bridge of the towing vessel. The comment also recommended that the visual strobe light alarm should be powered by replaceable batteries, possible using a wireless system. Another comment recommended that inland tank barges without a normal source of power be allowed to use an alarm for all tanks on the barge and allowed to use a common shore alarm receptacle.

We also received comments requesting guidance on how a signal from a tank barge will be transmitted to the vessel towing the barge. One comment urged the Coast Guard to develop a communication standard from existing standards. Another comment suggested a radio signal as a possible method of an unmanned barge to communicate with the alarm on the towing vessel. Still another comment acknowledged the possible use of cable connections. This respondent also pointed out that it would be extremely difficult to ensure a reliable dry connection that will remain connected through out the entire voyage.

Another comment urged the Coast Guard to develop training requirements for crewmembers on a towing vessel. The comment stated that during a single voyage it is common practice for a barge to be towed by several different towing vessels. The respondent argues that not all of the crew of those different towing vessels will be trained to operate the various components of each TLPM manufactured, nor will all of the devices be compatible with one another.

The requirement remains the same as stated in the NPRM. An audible and visual alarm indicators must be distinctly identifiable as cargo tank level or pressure monitoring alarms. The alarms must be seen and heard on the navigation bridge of the tank ship or towing vessel as well as on the cargo deck area. The requirement is to have an alarm to indicate to the vessel's master that there is the potential cargo tank leak. The basic design of this indicator and its system are to be determined by the manufacturer of the device and the vessel operator. Enhancements or variations to the system, such as its ability to be compatible with multiple leak detection indicators and others cited above, are left to the discretion of the manufacturer of the device or the operator of the vessel.

One comment urged the Coast Guard to set testing standards by which the operator of a vessel can test the TLPM device and the alarm system to ensure that it is properly working. The respondent also urged that we set procedures for the operator of the vessel

to follow when responding to the actuation of a leak detection alarm. We disagree with the suggestions. The master will deem which actions are appropriate to perform whenever an alarm is actuated, using standard practices of good seamanship.

Safety Concerns When Responding to Alarms

We received 21 comments expressing concerns for the safety of a towing vessel and its crew when responding to an alarm that had been activated by a TLPM device on a tank barge being towed by the vessel. One issue raised was the risk to navigational safety posed by a distracted wheelman trying to navigate bridges or narrow channels while attempting to monitor as many as 100 leak detection indicators warning of the potential cargo tank leak. Another issue raised was the risk of collision and injury when maneuvering the towing vessel alongside a barge in order to place a crewmember on board the barge to check for the presence of a leak. A third comment plainly stated that no company should risk the lives of its crew by placing a repair team or investigation team on board a barge.

The alarm requirement remains the same as stated in the NPRM. The Coast Guard agrees that the safety of a vessel's crew should always come first when evaluating how to best respond to any alarm. An audible and visual alarm indicator must be distinctly identifiable as cargo tank level or pressure monitoring alarm. The alarm must be seen and heard on the navigation bridge of the tank ship or towing vessel as well as on the cargo deck area. The requirement is to have an alarm to indicate to the vessel's master that there is the potential cargo tank leak. Once the alarm is actuated, it is up to the vessel's master to deem which actions are an appropriate response.

We received a comment concerned about the numerous risks associated with supplying power to a tank barge. Since no TLPM device currently exists that meets our standards, the actual system designed and installed is dependent on the manufacturer of the system and the vessel operator. In the NPRM, we assumed that these devices on a barge to be battery powered, such as the batteries used to provide power for navigation lights. However, we did not mandate that power come from a battery.

Costs and Benefits Presented in the Regulatory Analysis of the NPRM

We received 249 comments addressing the costs and benefits detailed in the regulatory analysis of this rulemaking. One comment disagreed with the analysis including economic costs for foreign vessels. The respondent believes by including these costs the cost-effectiveness contains inflated values. The respondent recommended that the cost assumptions and cost-effectiveness criteria be revised.

Within the same comment letter, the respondent urged that we include the benefits of reducing oil spillage from foreign ships in the U.S. waters. The respondent recommended including the benefits in the cost-effectiveness data, despite their prior recommendation to delete the foreign-flag vessel data. The respondent plainly recommended that the methodology used to calculate the cost-effectiveness be corrected.

The purpose of the regulatory analysis is to estimate the impact of the rule on society. It is reasonable to assume that the costs incurred by foreign-flag vessels operating in U.S. water will eventually be passed on to consumers in the U.S. through the price of goods brought to our ports on a foreign-flag vessel. Regarding the benefits, this rule will be enforced on international vessels while transiting U.S. waters, and it is reasonable to expect a reduction of oil spilled into our waters by foreign-flag vessels.

Another comment addressed assumptions made about foreign-flag vessels. The respondent believed that the analysis should not use labor rates of the U.S. to calculate cost for a foreign-flag tank vessel to install a TLPM device. We disagree. Labor rates of other countries vary too greatly to suggest a global labor rate. We used the labor rates of the U.S. as the best proxy available. We consider this assumption to be reasonable.

We received comments objecting to what one respondent called ''devastating real-world impacts'' on the single-hull tank vessels and their companies. One commenter said he could not accept the cost of installing a TLPM device on his fleet, which is scheduled for retirement from service. He believes that these costs will not be recovered from the companies expected earnings before his fleet is retired.

Our regulatory analysis shows that this rule is costly to the maritime industry. As mandated by the Court and section 4110(b) of OPA 90, we must establish regulations concerning the installation and use of TLPM devices.

Some commenters were more specific with their cost estimates for this rulemaking on the single-hull tank vessel owner. One commenter believes that the costs would be $20,000 per cargo tank for the device, equipment, and installation. Other commenters believed that the cost estimates generated in the regulatory analysis for the device, equipment, and installation were too low, whereas still other commenters believed that our cost estimates were accurate.

Of all the cargo level measuring devices that could meet the requirements of this rule when properly modified, we priced each device then disregarded the most and least expensive devices. We developed our cost estimate by identifying the mean cost of the remaining devices. Therefore, our cost estimate fell in the center of the price range of the devices.

One comment stated the higher one (1) percent accuracy standard for each TLPM device equates to more expensive equipment. The comment went further by stating the higher accuracy standard also increases the chances of false alarms. The comment recommended that a 1 percent standard be imposed on tank ships and a three (3) percent standard be imposed on tank barges.

The Coast Guard disagrees with this comment. In our analysis we found that the costs of TLPM devices that could meet the requirements of this rule with an accuracy of 3 percent versus 1 percent to be essentially equal. Specifically, the cost to a tank barge for purchasing the device and equipment and having it installed will not differ if the device has an accuracy standard of either 3 or 1 percent. We elected to require the 1 percent standard due to the added benefits this standard brings to the environment. As far as the potential for the 1 percent standard to cause a greater number of false alarms, no such device exists to our knowledge. Therefore, the design of the device and its effectiveness is to be determined by the vessel operator and the manufacturer of the TLPM device. Such concerns could and should be taken into consideration during the development of such devices.

We received three comments requesting that additional analysis be incorporated into the regulatory evaluation of this rulemaking. The first comment wished to include in our benefits the oil spills that may be prevented in a worst-case scenario where a captain's unawareness of a leak on board his vessel may cause the loss of the entire vessel, cargo and crew. We disagree with the comment. The purpose of this rulemaking is to provide early detection of leaks coming from single-hull tank vessels. Installing and using a TLPM device will not prevent worst-case casualties. Having an alarm will not provide new information to the crew of a vessel suffering a catastrophic

casualty. Therefore, the benefits of this rule can only be estimated for cases where TLPM devices provide early indications of potential cargo leaks that lead to a reduction of oil spilled.

One of the comments wanted the costs of this rule to be viewed in a context of the costs of all rules mandated by OPA 90 as a whole. We agree that this comparison should be part of the regulatory analysis. The comparison can already be found in the ''Regulatory Evaluations'' sections of the NPRM and in this final rule.

The third comment requested the cost associated with equipping or configuring an electrical power supply on tank barges be included in the analysis. We agree that these costs should be included in the cost and benefit analysis of this rulemaking, which is why we included them in our analysis. These costs can be found in the analysis for the proposed rule, which is part of the docket for this rulemaking. The data will also be placed in the final regulatory analysis for this final rule and will also appear in the DMS docket for review.

One commenter believed that a computer would have to be installed as a component of the TLPM device for this rulemaking to be successful. The commenter said that a computer would be able to detect all variables and conditions both on and off of the vessel to accurately calculate the contents of the tank. The commenter believed this is the only way to succeed, and that we should adjust our analysis to include the costs for a computing component in each TLPM device. The Coast Guard disagrees with this comment; designing TLPM devices with computers may not be the only design. Seeing that no TLPM device that meets our standards currently exists, the actual type of system designed and installed is dependent on the manufacturer of the system and the vessel operator.

In addition, we are not revising our analysis to include the cost for a computer component on all TLPM devices. Our analysis looks at the costs of several sensors that could be modified with ''off the shelf components'' to meet the requirements of this rulemaking. We disregarded the most expensive and the less expensive device assuming that consumers would not purchase either of them. We averaged the costs of the remaining devices and performed our analysis using the device closest in cost to the mean cost of the devices as a basis. The device we used as a basis did not have a computer component.

General

We received a few comments that touch on issues not directly related to the requirements and analysis proposed in the NPRM. One comment requested that we set a moratorium on our proposed rule and allow the industry to prepare for the replacement of single-hull tank vessels with double-hull tank vessel by 2015. Two comments explained that retrofitting TLPM devices on single-hull tank vessels that are scheduled for retirement might result in earlier retirements of the vessels. Early retirement, says one of the commenters, would create a tonnage shortage that may impact the nation's commerce and its security. The commenter presented data from the Shipbuilders Council of America. The data claims that by the year 2004, 28 percent of existing tank vessel capacity, and 45 percent of all large ocean-going tank barge capacity will be lost.

We considered these comments, but are constrained by the Court to establish regulations concerning the installation and use of TLPM devices. The data attributed to the Shipbuilders Council of America is based on Maritime Administration (MARAD) data that reflects a subset of the population that this rulemaking will affect. In particular, that data only includes tank vessels over 10,000 dead weight tons (DWT). Our phase-out data includes tank vessels of all sizes.

We received a comment noting that our summarization of the Intertanko decision from the Supreme Court, found in the Federalism section in the NPRM preamble, omitted discussion of the savings clause regarding liability requirements under OPA 90. We note that this was omitted merely because it is inapplicable to the subject matter of this rule.

We received a comment from a mariner who has installed video cameras to monitor the respondent's fleet and facilities for security. The respondent asked if this monitoring system would satisfy our TLPM requirement. While this may be good practice, the monitoring system described would not satisfy our requirements because it presents many of the same visibility problems that occur by just looking out at the wake of the vessel. TLPM devices, however, would not be faced with problems of visibility.

Regulatory Evaluation

Assessment

This rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Transportation [44 FR 11040, (February 26, 1979)]. A final Assessment is available in the docket as indicated under **ADDRESSES**. A summary of the Assessment follows:

When fully implemented, the measures outlined in this notice should reduce environmental and property damages resulting from oil pollution. The net cost-effectiveness of the rule is approximately $190,000 per barrel of pollution avoided. This means that it will cost society approximately $190,000 to keep each barrel of oil out of the water.

The present value of the total cost over the 12-year period of analysis (2003–2014) is approximately $166.4 million. All the costs will be incurred during the five-year phase-in period. We realize that there may be incidental costs incurred after the phase-in period, but we consider these to be *de minimis*.

Over the 12-year period of analysis, we estimate that TLPMs would help reduce the amount of oil spilled in U.S. waters. The benefits derived for this rule is 874 barrels of oil not spilled.

Comparison With Other OPA 90 Rulemakings

It is useful to compare the cost, benefit, and cost effectiveness of this rule with other rulemakings mandated by the Oil Pollution Act of 1990. The Coast Guard published over 40 rules in the 1990s under OPA 90. Once the majority of these rules were in place, the Coast Guard conducted a Programmatic Regulatory Assessment (PRA) to analyze the multiple effects of these rules on marine safety and the environment. We selected a ''core group'' of 11 of the most important and significant OPA 90 rules to serve as a proxy for the entire suite of rules. The PRA assessed cost effectiveness of the core group by accounting for the overlapping effects of these rules. Without addressing these overlapping effects, we would have double-counted the true benefit and effect of these 11 significant rules. As with this rule, benefit was estimated as the barrels of oil not spilled or spilled and recovered from the marine environment.

The cost (Present Value $1996), benefit (PV barrels), and cost-effectiveness (PV $/barrel) of the 11 core group rules is presented in the table below:

Rule	PV cost (1996 $billions)	PV benefit (1996 barrels)	Cost effectiveness ($/barrel)
All 11 core group rules	$10.600	1,221,000	$8,700
Financial responsibility*	−0.106	525,000	−200
Lightering of single hull vessels	0.007	6,000	1,200
Facility response plans	0.179	59,000	3,000
Spill source control and containment	0.200	57,000	3,500
Operational measures for single hulls	0.102	28,000	3,700
Licenses, certificates, documents	0.062	14,000	4,500
Overfill devices	0.183	6,000	29,100
Deck spill control	0.013	<1,000	31,100
Vessel response plans	3.252	50,000	64,600
Double hulls	6.411	94,000	68,100
Equipment and personnel in Prince William Sound, AK	0.325	3,000	108,900

*Cost and cost effectiveness was negative for this rule because avoided cost (value of avoided injuries, deaths, and cargo loss) exceeded the capital and labor cost.

When compared to the other major OPA 90 rulemakings, this rule is less cost-effective. The overall cost effectiveness of the 11 core group rules in OPA 90 is approximately $8,700 per barrel not spilled. The cost effectiveness of this rule is $190,000 per barrel in 2002 dollars ($168,330 per barrel expressed in 1996 dollars). We estimate that the amount of oil prevented from entering the environment due to the 11 major OPA 90 rulemakings is 1,221,000 barrels over the period of analysis (1996–2025). The amount of oil we estimate that will be prevented from entering the environment due to this rule is 874 barrels over the period of the analysis. In percentage terms, the pollution that will be averted due to this rule represents less then one tenth of one percent of the total pollution averted from the 11 major OPA 90 rulemakings.

When comparing this rule to the cost and benefit estimates above, caveats should be noted. The assessment period for the OPA 90 PRA was 1996–2025, while the assessment period for this rule is 2003–2014. This is not overly problematic because after 1 January 2015, the rule will no longer affect single-hull vessels because they are scheduled to be phased-out by 2015. The cost and benefit of the rule after 2015, therefore, is expected to be zero. Extending the assessment period for the proposed rule to 2025 to align with the OPA 90 PRA would not noticeably change the results. Finally, the cost, benefit, and cost effectiveness estimates presented above represent an entire system of overlapping rulemakings. The cost effectiveness of each core group rule is the effectiveness when analyzed concurrently with all the other core group rules to assure benefit is not double-counted. For this reason, the overall benefit of the rule does not equal the sum of the benefits from all the rules because the amount of the overlapping benefit is not included in the individual benefit of the individual rule. The proposed rule is a stand-alone rulemaking and is analyzed as such.

A copy of the OPA 90 PRA is available in the docket [US Coast Guard, 2001. *OPA 90 Programmatic Regulatory Assessment (PRA): Benefit, Cost, and Cost Effectiveness of Eleven Major Rulemakings of the Oil Pollution Act of 1990.* Volpe National Transportation Center, May 2001.]

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.

From our analysis (copy available in the docket), we conclude that requiring TLPM devices to be installed on single-hull tank vessels may have a significant economic impact on a substantial number of small entities. Consequently, by establishing a five-year phase-in period for the systems, we provide flexibility and accommodation for small entities affected. This gives small entities the time needed to explore markets, plan, and schedule installations during normal downtimes.

We estimate that 181 entities will be affected by this rule, 124 of which we consider to be small entities. Approximately 26 percent of the affected entities are in either petroleum wholesale or navigational services to shipping. The respective North American Industry Classification System codes are 422720 and 488330. We estimate that 55 percent of the small entities will have more than a 5 percent reduction in annual revenues during the installation of TLPM devices.

More details about the impacts of this rule on small businesses are discussed in the Final Regulatory Flexibility Analysis. As stated above, the Oil Pollution Act states that TLPM requirements must be established for tank vessels. As a result, we do not have the discretion to exempt small business tank vessel owners from the requirements of this proposed rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. The NPRM provided small businesses, organizations or governmental jurisdictions a Coast Guard contact to ask questions concerning this rule's provisions or options for compliance.

After the effective date of this rule, a small entity compliance guide will be made available in the public docket for this rulemaking project. The compliance guide will explain the required action of small businesses to comply with this final rule.

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

Collection of Information

This proposed 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.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S. Ct. 1135 (March 6, 2000).) This rule on the performance standards and use of TLPM devices fall into the category of vessel equipment and operation. Because the States may not regulate within these categories, preemption under Executive Order 13132 is not an issue.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order. Although it is a ''significant regulatory action'' under Executive Order 12866, this rule 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.

The distribution of petroleum in the U.S. is an efficient, but complex, system involving the movement of crude oil into U.S. refineries from domestic and foreign sources and the movement of product out of refineries, primarily by pipeline and tank vessels. In order to explain this critical issue, it is helpful to discuss the specific segments that comprise the national waterborne distribution system of petroleum.

The Maritime Administration describes the U.S. waterborne petroleum trade as five distinct and interrelated market segments: Domestic product tankers, coastal tank barges, domestic crude carriers, foreign tankers (imports), and inland tank barges.

Domestic product tankers compete with tank barges in medium haul (500–1,500 mile) coastal trades; product tankers supplement crude carriers in West Coast crude oil trades; and product tankers and tank barges lighter (transfer) cargoes from crude carriers to oil terminals. While tank barges compete with domestic product tankers in medium haul trades, they complement tankers and pipelines by transshipping products in short-haul trades.

Foreign product tankers compete indirectly with domestic product tankers through import trades, and provide product shipments to Middle Atlantic and Northeast states directly from a foreign port rather than from another domestic port. The Jones Act, which reserves U.S. coastwise shipments for U.S.-flag vessels, should not be viewed, therefore, as absolute protection for domestic product tankers.

Over the period 1994 to 1999, the role of pipelines, foreign tankers and coastal tank barges has grown significantly in U.S. petroleum trades. Based on recent pipeline upgrades, year-end 2000 newbuilding orders and OPA 90 phase-out schedules, these trends should continue over the next five years.

Domestic Product Tankers

The primary domestic product tanker trades—U.S. Gulf/Atlantic, U.S. Gulf/West Coast, and intra West Coast have declined over the period 1994 to 1999. The declines can be attributed to a decline in Alaska crude oil production, increases in pipeline shipments, increases in product imports, increases in local refinery production of reformulated gas, and increases in medium-haul (500–1,500 mile) tank barge shipments. These trends are expected to continue over the next five years.

Product tanker freight markets have been efficient in allocating capacity to U.S. domestic and import trades. To meet their distribution requirements, oil companies have used foreign product tankers (imports) and/or domestic tank barges in lieu of domestic product tankers. The domestic product tanker fleet will continue to decline over the next five years reflecting an aging fleet, OPA 90 phase-out requirements, and high newbuilding prices/operating costs relative to charter rates.

Coastal Tank Barges

The market for coastal tank barge services can be divided into two broad segments: Short-haul trades (< 500 miles), in which tank barge services complement tanker and pipeline services; and 500+ mile trades in which tank barge services substitute for tanker services. In 1999, long-haul ton-miles were about 3.5 times short-haul ton-miles.

Coastal tank barge traffic (ton-miles) will continue recent trends and grow at 2–3 percent per year over the next five years, reflecting fleet productivity increases and the substitution of large tank barges (10,000+ DWT) for product

tankers in the 500+ mile coastal petroleum products trades.

The coastal tank barge fleet will not be significantly affected by OPA 90 double-hull requirements until 2005, when there will be a substantial impact (a decrease of 0.5 million DWT capacity) on the 10,000+ DWT fleet.

As of year-end 2000 there were nine large coastal tank barges (0.2 million DWT) on order for delivery in 2001 and 2002. For tank barges, the order book does not show deliveries beyond the next 2 years. There are, however, pending contracts for seven additional newbuildings and eight retrofits.

Domestic Crude Carriers

The Alaska crude oil trades are the primary source of demand for U.S. crude carriers. These trades are examples of ''Industrial Shipping'' in which shippers (oil companies) bear market risks by owning or time chartering tankers. In 1999, ninety-nine percent of the Alaska crude oil trades were controlled by oil companies or oil company affiliates. As a result, Alaska crude oil production, U.S. crude carrier capacity, and coastal crude oil traffic tend to move together over time.

Based on the Energy Information Agency's forecast for Alaska crude oil production, Alaska/U.S. West Coast crude oil trades will fall from 85 billion ton-miles in 1999 to 64 billion ton-miles in 2005, reducing crude carrier demand by about 500 thousand DWT or four 125,000 DWT tankers.

As of year-end 2000, there were eight newbuilding double-hull crude carriers (1.2 million DWT) on order, 0.2 million DWT more than the capacity scheduled to be phased-out under OPA–90 double-hull requirements by 2005. However, owners have typically retired crude carriers well before their OPA 90 phase-out dates. The average age of the 22 U.S. crude carriers removed from service in the last five years was 21-years, or an average of 4 years before their OPA 90 phase out dates. As of year-end 2000, 17 of the 21 active U.S. crude carriers were older than 21 years. Thus, it is reasonable to expect that owners will retire redundant crude carriers as newbuildings enter service.

Foreign Tankers

The U.S. relies on the foreign-flag segment of the international tanker fleet to deliver virtually all of its petroleum imports. At year-end 2000, the foreign-flag tanker fleet eligible to operate in U.S. trades was about 237 million DWT, or 80 percent of the international fleet. This tonnage was eligible to operate in U.S. petroleum trades either because it had a double hull or had not yet reached its OPA 90 phase-out date. Over time, additional capacity will be reaching its OPA 90 phase-out date and dropping out of the U.S. petroleum trade. In the next five years, an additional 34 million DWT of foreign-flag capacity will become ineligible to operate in U.S. trades. There is no risk of any shortage of tankers available to serve U.S. import trades, however, because—

- Newbuilding deliveries have been about 20 million DWT per year in the late 1990s and should continue at about that rate over the next five years.
- Based on 2000 data, only 42 percent of the tanker capacity eligible for U.S. trades actually served U.S. trades. That is, there is a substantial pool of existing vessels that can move into U.S. trades; and
- Tankers calling at the LOOP (Louisiana Offshore Oil Port) and four Gulf of Mexico lightering areas are exempt from OPA 90 double-hull rules, though they would not be exempted from this rule. In 2000, 40 percent of the 150,000+ DWT foreign-flag tanker calls to the U.S. were at these five areas.

Inland Tank Barges

Inland tank barge capacity should decline by 1 to 2 percent per year over the next five years. The decline reflects an expected decline in inland tank barge traffic, fleet attrition, tank barge replacements tied to affreightment contracts (traffic), and fleet productivity increases (*i.e.*, new barges are more productive, require less maintenance/drydocking time) than those they replace.

The expected decline in inland tank barge traffic (0.5–1.0 percent per year) reflects a substitution of natural gas (shipped by pipeline) for fuel oils (shipped by barge) by electric utilities.

In 1999, charter rates for inland tank barges were generally above full-employment, newbuilding breakeven rates. Charter rates should remain above full-employment breakeven rates over the next five years, reflecting fleet attrition, industry consolidation, and fleet replacement tied to freight contracts (traffic).

Comments

The comments we received to the NPRM did not lead us to believe that this rule is likely to have a significant adverse effect on the supply, distribution or use of energy. For a summary of the comments and Coast Guard responses, please read the ''Discussion of Comments and Changes'' section in this rule.

We specifically requested comments regarding the effect of this rule on niche markets. We wanted to know of any markets where there might be one small company serving the entire market, and what effect would be if that company dropped out of existence as a result of this rule. We did not receive comments addressing this concern. This along with our review of the distribution segments above, leads us to believe that this rule is not likely to have a significant adverse effect.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(d), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This final rule is categorically excluded because it concerns equipping tank vessels with tank level or pressure monitoring devices. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 155

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR parts 155 and 156 and 46 CFR part 32 as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for 33 CFR part 155 and the note following citation are revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793. Sections 155.100 through 155.130, 150.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) are also issued under 33 U.S.C. 1903(b). Sections 155.480, 155.490, 155.750(e), and 155.775 are also issued under 46 U.S.C. 3703. Section 155.490 also issued under section 4110(b) of Pub. L. 101–380.

Note: Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR parts 30 through 40, 150, 151, and 153.

2. In § 155.200, add the definition for ''Sea state 5'' in alphabetic order to read as follows:

§ 155.200 Definitions.

* * * * *

Sea state 5, the equivalent of Beaufort number or force 6, is a sea condition with winds speeds of 22 to 27 knots and classified as ''strong breeze'', and with waves measuring 2.5 to 4 meters in height and classified as ''rough''.

* * * * *

3. Add § 155.490 to read as follows:

§ 155.490 Tank level or pressure monitoring devices.

(a) *Applicability.* The tank level or pressure monitoring (TLPM) device requirements of this section apply to—

(1) U.S.-flag single-hull tank vessels carrying oil or oil residue as cargo; and

(2) Foreign-flag single-hull tank vessels carrying oil or oil residue as cargo when operating in the navigable waters of the United States and the exclusive economic zone (EEZ) when bound to or from a port or place in the United States.

(b) By October 17, 2007, each vessel required under paragraph (a) of this section to meet the requirements of this section, must have a tank level or pressure monitoring device that is permanently installed on each cargo tank and meets the requirements of this section.

(c) Each device must meet the following requirements:

(1) Be intrinsically safe as per 46 CFR 111.105;

(2) Indicate any loss of power or failure of the tank level or pressure monitoring device and monitor the condition of the alarm circuitry and sensor by an electronic self-testing feature;

(3) Alarm at or before the cargo in the cargo tank either increases or decreases by a level of one percent from the cargo quantity in the tank after securing cargo transfer operations;

(4) Operate in conditions up to sea state 5, moisture, and varying weather conditions; and

(5) Have audible and visual alarm indicators which are distinctly identifiable as cargo tank level or pressure monitoring alarms that can be seen and heard on the navigation bridge of the tank ship or towing vessel and on the cargo deck area.

(d) Double-hull tank vessels are exempt from the requirements of this section.

(e) This section does not apply to tank vessels that carry asphalt as their only cargo.

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

4. The authority citation for 33 CFR part 156 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3703a, 3715; E.O. 11735, 3 CFR 1971–1975 Comp., p. 793. Section 156.120(bb) and (ee) are also issued under 46 U.S.C. 3703.

5. In § 156.120 add paragraph (ee) as follows:

§ 156.120 Requirements for transfer.

* * * * *

(ee) Each tank level or pressure monitoring device required under 33 CFR 155.490 must be activated and monitored whenever the tank is not actively being subjected to cargo operations.

46 CFR

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

6. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, 3719; E.O. 12234, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also issued under the authority of Sec. 4109, Pub. L. 101–308, 104 Stat. 515.

§ 32.22T [Removed]

7. Remove subpart 32.22T.

Dated: September 11, 2002.

Thomas H. Collins,

Admiral, Coast Guard, Commandant.

[FR Doc. 02–23621 Filed 9–16–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 02–019]

RIN 2115–AA97

Security Zone; Naval Submarine Base San Diego, San Diego Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily expanding the geographical boundaries of the permanent security zone at Naval Submarine Base San Diego, California at the request of the U.S. Navy. The additional area created by this temporary rule will accommodate the Navy's placement of an anti-small boat barrier boom on the perimeter of the zone. Entry into this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast.

DATES: This rule is effective from 12:01 a.m. on September 11, 2002 to 11:59 p.m. on February 11, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP San Diego 02–019, and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego California 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. While the Navy has been implementing many force protection measures since the attack on the U.S.S. Cole and the attacks of September 11, 2001, the Chief of Naval Operations has recently emphasized the need for the expanded use of anti-small boat barrier booms around Navy vessels in U.S. ports to protect against attacks similar to the one launched against the U.S.S. Cole. In addition, the Office of Homeland Security through its web site has described the current nationwide threat level as ''Elevated.'' According to the Office of Homeland Security, an Elevated Condition is declared when there is a significant risk of terrorist attacks. The Coast Guard believes that issuing an NPRM for this temporary rule and thereby delaying implementation of the expanded security zone would be against the public interest during this elevated state of alert.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of the Naval vessels, their crew, and national security.

Furthermore, in order to protect the interests of national security, the Coast Guard is promulgating this temporary regulation to provide for the safety and security of U.S. Naval vessels in the navigable waters of the United States.

As a result, the establishment and enforcement of this security zone is a function directly involved in and necessary to military operations. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

The Coast Guard has plans to make the expansion of the security zone permanent. Towards that end, the Coast Guard will initiate notice and comment rulemaking before issuing any final rule.

Background and Purpose

The Coast Guard is expanding the current security zone (33 CFR 165.1103) to allow the U.S. Navy to put an anti-small boat barrier boom at Naval Submarine Base San Diego. The expansion of this security zone is needed to ensure the physical protection of naval vessels moored in the area by providing adequate standoff distance. The expansion of this security zone will also prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Submarine Base San Diego and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. In addition, the Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the U.S.S. COLE and the terrorist attacks of September 11, 2001. The expansion of this security zone will safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port, Commander, U.S. Naval Base San Diego, or the Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast. Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: Seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years. The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Regulatory Evaluation

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

The implementation of this security zone is necessary for the protection of the United States' national security interests. The size of the zone is the minimum necessary to allow for safe placement of the anti-small boat boom while providing adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing in close proximity to the Naval Submarine Base. Any hardships experienced by persons or vessels wishing to approach the Naval Submarine Base are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public. The expansion of the security zone will not impact navigation in the shipping channel.

Small Entities

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

This security zone will not have a significant impact on a substantial number of small entities because these security zones are only closing small portions of the navigable waters adjacent to Naval Base San Diego. In addition, there are no small entities shoreward of the security zone. For these reasons, and the ones discussed in the previous section, the Coast Guard certifies, under 5 U.S.C. 605(b), that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

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 and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.1103 [Suspended]

2. Temporarily suspend § 165.1103 from 12:01 a.m. on September 11, 2002 to 11:59 p.m. on February 11, 2003.

3. Add new temporary § 165.T11–049 to read as follows:

§ 165.T11–049 Security Zone: Naval Submarine Base San Diego, San Diego Bay, CA.

(a) *Location.* The following area is a security zone: The water area adjacent to Naval Submarine Base, San Diego, California, enclosed by a line connecting points commencing at a point on the shoreline of Ballast Point, at 32°41′11.2″ N, 117°13′57.0″ W. (Point A), thence northerly to 32°41′31.8″ N, 117°14′00.6″ W. (Point B), thence southwesterly to 32°41′32.7″ N, 117°14′03.2″ W. (Point C), thence westerly to 32°41′30.5″ N, 117°14′17.5″ W. (Point D), thence generally southeasterly along the shoreline of the Naval Submarine Base to the point of beginning, (Point A).

(b) *Effective period.* This temporary section is effective from 12:01 a.m. on September 11, 2002 to 11:59 p.m. on February 11, 2003.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: August 28, 2002.

Robert McFarland,

Lieutenant Commander, Coast Guard, Acting Captain of the Port, San Diego, California.

[FR Doc. 02–23510 Filed 9–16–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 02–018]

RIN 2115–AA97

Security Zone; Naval Base Coronado, San Diego Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily expanding the geographical boundaries of the permanent security zone at Naval Base Coronado, California (33 CFR 165.1104) at the request of the U.S. Navy. The additional area created by this temporary rule will accommodate the Navy's placement of an anti-small boat barrier boom within the zone. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP) San Diego, the Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, Navy Region Southwest, or the Commanding Officer, Naval Base Coronado.

DATES: This rule is effective from 12:01 a.m. on September 11, 2002 to 11:59 p.m. on February 11, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket COTP San Diego 02–018, and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego California 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. While the Navy has been implementing many force protection measures since the attack on the U.S.S. Cole and the attacks of September 11, 2001, the Chief of Naval Operations has recently emphasized the need for the expanded use of anti-small boat barrier booms around Navy vessels in U.S. ports to protect against attacks similar to the one launched against the U.S.S. Cole. In addition, the Office of Homeland Security through its web site has described the current nationwide

threat level as ''Elevated.'' According to the Office of Homeland Security, an Elevated Condition is declared when there is a significant risk of terrorist attacks. The Coast Guard believes that issuing an NPRM for this temporary rule, and thereby delaying implementation of the expanded security zone, would be against the public interest during this elevated state of alert.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of the Naval vessels, their crew, and national security.

Furthermore, in order to protect the interests of national security, the Coast Guard is promulgating this temporary regulation to provide for the safety and security of U.S. Naval vessels in the navigable waters of the United States. As a result, the establishment and enforcement of this security zone is a function directly involved in and necessary to military operations. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

The Coast Guard has plans to make the expansion of the security zone permanent. Towards that end, the Coast Guard will initiate notice and comment rulemaking before issuing any permanent rule.

Background and Purpose

The Coast Guard is expanding the security zone to allow the U.S. Navy to put in place an anti-small boat barrier boom at Naval Base Coronado. The expansion of this security zone is needed to ensure the physical protection of naval vessels moored in the area by providing adequate standoff distance. The expansion of this security zone will also prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Base Coronado and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. In addition, the Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the U.S.S. COLE and the terrorist attacks of September 11, 2001. The expansion of this security zone will safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port, Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, U.S. Naval Base San Diego, or the Commander, Naval Base Coronado. Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years. The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Regulatory Evaluation

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

The implementation of this security zone is necessary for the protection of the United States' national security interests. The size of the zone is the minimum necessary to allow for safe placement of the anti-small boat boom while providing adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing in close proximity to the Naval Base. Any hardships experienced by persons or vessels wishing to approach the Naval Base are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public. The expansion of the security zone will not impact navigation in the shipping channel.

Small Entities

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

This security zone will not have a significant impact on a substantial number of small entities because these security zones are only closing small portions of the navigable waters adjacent to Naval Base Coronado. In addition, there are no small entities shoreward of the security zone. For these reasons, and the ones discussed in the previous section, the Coast Guard certifies, under 5 U.S.C. 605(b), that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

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 and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.1104 [Suspended]

2. Temporarily suspend § 165.1104 from 12:01 a.m. on September 11, 2002 to 11:59 p.m. on February 11, 2003.

3. Add new temporary § 165.T11–048 to read as follows:

§ 165.T11–048 Security Zone: Naval Base Coronado, San Diego Bay, CA.

(a) *Location.* The following area is a security zone: on the waters along the northern shoreline of Naval Base Coronado, the area enclosed by a line connecting points beginning at 32°42′ 53.0″ N, 117°11′ 45.0W (Point A); thence running northerly to 32°42′ 55.5″ N, 117°11′45.0″ W, (Point B); thence running easterly to 32°42′ 55.8″ N, 117°11′ 29.2″ W, (Point C); thence southeasterly to 32°42′ 49.0″ N, 117°11′ 17.0″ W (Point D); thence southeasterly to 32°42′ 41.5″ N, 117°11′ 04.5″ W (Point E) thence running southerly to 32°42′ 37.5″ N, 117°11′ 07.0″ W (Point F); thence running southerly to 32°42′ 28.5″ N, 117°11′ 11.0″ W (Point G); thence running southeasterly to 32°42′ 22.0″ N, 117°10′ 48.0″ W (Point H); thence running southerly to 32°42′ 13.0″ N, 117°10′ 51.0″ W (Point I); thence running generally northwesterly along the shoreline of Naval Base Coronado to the beginning point.

(b) *Effective period.* This temporary section is effective from 12:01 a.m. on September 11, 2002 to 11:59 p.m. on February 11, 2003.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, Navy Region Southwest, or the Commanding Officer, Naval Base Coronado. Section 165.33 also contains other general requirements.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: August 28, 2002.

Robert McFarland,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, San Diego, California.

[FR Doc. 02–23511 Filed 9–16–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL39

Priorities for Outpatient Medical Services and Inpatient Hospital Care

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends VA's medical regulations to establish that in scheduling appointments for non-emergency outpatient medical services and admissions for inpatient hospital care, VA will give priority to veterans with service-connected disabilities rated 50 percent or greater and veterans needing care for a service-connected disability. The Veterans' Eligibility Reform Act of 1996 authorizes VA to ensure that these two categories of veterans receive priority access to this type of care. The intended effect of this interim final rule is to carry out that authority.

DATES: *Effective Date*: September 17, 2002.

Comment Date: Comments must be received on or before November 18, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AL39.'' All comments received will be

available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Amy Hertz, Office of Policy and Planning (105D), at (202) 273–8934 or Roscoe Butler, Chief Policy & Operations, Health Administration Service (10C3), at (202) 273–8302. These individuals are in the Veterans Health Administration of the Department of Veterans Affairs, and are located at 810 Vermont Avenue, NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: The Veterans' Eligibility Reform Act of 1996, Public Law No. 104–262 (Eligibility Reform Act) amended title 38, United States Code, to authorize VA to provide needed inpatient hospital care and outpatient medical services to most veterans. That law also directs VA to establish a national patient enrollment system to manage the provision of that care and services. The law directs VA to enroll veterans for care in accordance with priorities set forth in the statute, and requires that most veterans formally enroll with VA in order to receive care from VA.

However, the law also specifically provides that the Secretary shall provide care to certain veterans without their needing to enroll. Included are veterans with service-connected disabilities rated 50 percent or greater and veterans needing care for a service-connected disability. Allowing those veterans to receive care without regard to enrollment effectively gives them priority over all other veterans. The legislative history of the Eligibility Reform Act also includes references to Congress' intent that these two groups of veterans, those with a very high claim to VA services, should have priority access to care.

VA established an enrollment system through rules promulgated at 38 CFR 17.36 and 17.37. Those rules provide that veterans with disabilities rated 50 percent or greater, and veterans needing care for a service-connected disability, need not enroll to receive care from VA. The rules do not, however, afford those two groups of veterans with special priority access to VA outpatient medical services or inpatient hospital care, as authorized by law. This interim final rule rectifies that matter and expressly provides for that priority access. Moreover, it provides such priority to these veterans regardless of whether they are enrolled in the VA health care system.

Administrative Procedure Act

Since hundreds of thousands of our core constituency veterans are currently on waiting lists causing delays in their receiving treatment, we have found good cause to dispense with the notice-and-comment and delayed effective date provisions of the Administrative Procedure Act (5 U.S.C. 553). Compliance with such provisions would be impracticable and contrary to the public interest.

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 sector 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).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment would 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 amendment would not directly affect any small entities. Only individuals could be directly affected. 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.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: August 9, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.49 is revised to read as follows:

§ 17.49 Priorities for Outpatient Medical Services and Inpatient Hospital Care.

In scheduling appointments for outpatient medical services and admissions for inpatient hospital care, the Under Secretary for Health shall give priority to:

(a) Veterans with service-connected disabilities rated 50 percent or greater based on one or more disabilities or unemployability; and

(b) Veterans needing care for a service-connected disability.

(Authority: 38 U.S.C. 101, 501, 1705, 1710.)

[FR Doc. 02–23312 Filed 9–16–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[FRL–7374–6]

RIN 2060–AK29

Revisions To Clarify the Scope of Sufficiency Monitoring Requirements for Federal and State Operating Permits Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: The EPA is promulgating this interim final rule to clarify the scope of the monitoring required in operating permits issued by State and local permitting authorities or by EPA under title V of the Clean Air Act (Act). Specifically, this interim final rule clarifies that under the sufficiency monitoring rules, all title V permits

must contain monitoring sufficient to assure compliance as required under sections 504(a), 504(b), 504(c), and 114(a)(3) of the Act, in cases where the periodic monitoring rules are not applicable. The EPA believes this interim final rule is necessary to address claims of confusion on the part of some source owners and operators, permitting authorities and citizens as to the scope of EPA's title V monitoring regulations while EPA conducts a notice-and-comment rulemaking to consider adopting as a final rule the same changes made by this interim final rule.

EFFECTIVE DATE: This interim final rule is effective on September 17, 2002 until November 18, 2002.

ADDRESSES: Documents relevant to this action are available for inspection at the Docket Office, Attention: Docket No. A–93–50, U.S. EPA, 401 M Street SW., Room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 7:30 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents relevant to the promulgation of the operating permit program regulations at parts 70 and 71 are available for inspection at the same location under Docket Nos. A–90–33 and A–93–50 for part 70, and A–93–51 for part 71.

FOR FURTHER INFORMATION CONTACT: For further information, contact Mr. Jeff Herring, U.S. EPA, Information Transfer and Program Implementation Division, C304–04, Research Triangle Park, North Carolina 27711, telephone number (919) 541–3195, facsimile number (919) 541–5509, electronic mail address: *herring.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially affected by this action include facilities currently required to obtain title V permits by State, local, tribal, or Federal operating permits programs.

World Wide Web (WWW). After signature, the final rule will be posted on the policy and guidance page for newly proposed or final rules of EPA's Technology Transfer Network (TTN) at *http://www.epa.gov/ttn/oarpg/t5.html.* For more information, call the TTN Help line at (919) 541–5384.

Outline. The contents of the preamble are listed in the following outline:

I. Background
- A. The Legal Basis for Requiring Title V Monitoring
- B. Court Rulings About Title V Monitoring
- C. The EPA's Adjudicatory Orders in *Pacificorp* and *Fort James*

II. Revisions to the Title V Monitoring Requirements
- A. Why Is EPA Revising §§ 70.6(c)(1) and 71.6(c)(1)?
- B. What Interim Final Revisions Are Being Made?
- C. How Does This Interim Final Rule Affect the Scope of the Current Title V Monitoring Requirements?

III. Related Actions

IV. Interim Final Rule
- A. Need for an Interim Final Rule
- B. Scope of This Interim Final Rule

V. Administrative Requirements
- A. Executive Order 12866—Regulatory Planning and Review
- B. Unfunded Mandates Reform Act
- C. Executive Order 13132: Federalism
- D. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- E. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) 5 U.S.C. 601 *et seq.*
- F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- G. National Technology Transfer and Advancement Act
- H. Paperwork Reduction Act
- I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- J. Judicial Review
- K. Congressional Review Act

I. Background

A. The Legal Basis for Requiring Title V Monitoring

By enacting title V as part of the 1990 Act Amendments, Congress sought to enhance sources' compliance with the Act in two important ways. First, Congress required that every major stationary source of air pollution and certain other sources obtain a single, comprehensive operating permit to assure compliance with all emission limitations and other substantive Act requirements that apply to the source. 42 U.S.C. 7661a(a), 7661c(a). Second, Congress required that all title V sources conduct monitoring of their emissions that is sufficient to assure compliance with applicable requirements under the Act and also certify compliance with such applicable requirements. 42 U.S.C. 7661c(a), 7661c(c). The Senate Report summarized: ''EPA must require reasonable monitoring * * * requirements that are adequate to assure compliance.'' S. Rep. No. 101–228, at 350 (1989) (reprinted in 1990 U.S.C.C.A.N. 3385, 3733).

Three provisions of title V set forth Congress's requirements for monitoring by title V sources. Section 504(c) of the Act requires that each permit ''shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.'' 42 U.S.C. 7661c(c). Section 504(a) requires that each permit ''shall include enforceable emission limitations and standards * * * and such other conditions as are necessary to assure compliance with applicable requirements.'' 42 U.S.C. 7661c(a). Section 504(b) contains discretionary authority for EPA to prescribe by rule ''procedures and methods for determining compliance and for monitoring * * * '' 42 U.S.C. 7661(b). In addition, section 114(a)(3) directs EPA to require ''enhanced monitoring'' at all major stationary sources. 42 U.S.C. 7414(a)(3).

The EPA's title V regulations at §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B) require that

> [w]here the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), [each permit must contain] periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to [§ 70.6(a)(3)(iii) or § 71.6(a)(3)(iii)]. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of [§ 70.6(a)(3)(i)(B) or § 71.6(a)(3)(i)(B)].

Furthermore, §§ 70.6(c)(1) and 71.6(c)(1) require that each part 70 and 71 permit contain, ''[c]onsistent with paragraph (a)(3) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.'' 40 CFR part 64, the Compliance Assurance Monitoring (CAM) rule, as well as the title V regulations discussed above, implements the statutory ''enhanced monitoring'' requirement. *See* 62 FR 54900, October 22, 1997.

B. Court Rulings About Title V Monitoring

Two opinions issued by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) have addressed the monitoring required of title V sources. Specifically, the court reviewed EPA's CAM rule in *Natural Resources Defense Council* v. *EPA,* 194 F.3d 130 (D.C. Cir. 1999) (*NRDC*), and reviewed EPA's periodic monitoring guidance under title V in *Appalachian Power Co.* v. *EPA,* 208 F.3d 1015 (D.C. Cir. 2000) (*Appalachian Power*). In *NRDC,* the Natural Resources Defense Council argued that the CAM rule was

inadequate to meet the statutory mandate that all major sources be subject to enhanced monitoring because it excluded units without control devices, units below a 100-ton cutoff, and certain other categories. 194 F.3d at 135.[1] The court disagreed, and upheld the CAM rule and EPA's general enhanced monitoring program. 194 F.3d at 135–37. The court pointed out that certain sources exempt from CAM were subject to ''other specific rules.'' Id.[2] The court then reasoned that all other major sources were subject to one of two ''residual rules'' under part 70: either the periodic monitoring rule at § 70.6(a)(3)(i)(B), or the sufficiency rule at 70.6(c)(1). *Id.* at 135–36. The court recognized that ''[w]hile the part 70 rules are not as specific as CAM, they have the same bottom line—a major source must undertake 'monitoring * * * sufficient to assure compliance.''' *Id.* at 136.[3]

In *Appalachian Power,* a different panel of the D.C. Circuit set aside EPA's ''Periodic Monitoring Guidance''[4] after finding that it had in effect amended part 70's periodic monitoring rule at § 70.6(a)(3)(i)(B) by interpreting that rule too broadly to cover situations where the underlying applicable requirement called for some kind of ''periodic'' testing or monitoring, but such monitoring was not sufficient to assure compliance. 208 F.3d at 1028. The *Appalachian Power* court held that in its current form, the periodic monitoring rule authorized sufficiency reviews of monitoring and testing in an existing emissions standard, and enhancement of that monitoring or testing through the permit, only when that standard ''requires no periodic testing, specifies no frequency, or requires only a one-time test.'' *Id.* The panel did not address the separate ''sufficiency'' requirement of § 70.6(c)(1) or the earlier decision in *NRDC,* except to note that it disagreed with EPA's argument that the court in the earlier decision read the periodic monitoring rule in the same way as the Agency. Id. at 1027 n. 26. The *Appalachian Power* court set aside the Periodic Monitoring Guidance, reasoning that the Guidance was ''final agency action'' that broadened the scope of the periodic monitoring rule without complying with the rulemaking procedures required by 42 U.S.C. 7607(d). Id. at 1023, 1028.

C. The EPA's Adjudicatory Orders in Pacificorp and Fort James

Following the *NRDC* and *Appalachian Power* decisions, EPA was called upon to clarify the scope of the title V monitoring requirements in two adjudicatory orders responding to petitions requesting that the Administrator object to title V permits under section 505(b)(2) of the Act.[5] *In the Matter of Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants,* Petition No. VIII–00–1 (November 16, 2000) (*Pacificorp*) (available on the Internet at *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/woc020.pdf); In the Matter of Fort James Camas Mill*, Petition No. X–1999–1 (Dec. 22, 2000) (*Fort James*) (available on the Internet at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/fortjamesdecision1999.pdf).* Notice of these decisions was published in the **Federal Register**. See 66 FR 85, January 2, 2001 (*Pacificorp*); 66 FR 13529, March 6, 2001 (*Fort James*).

The first order, *Pacificorp,* responded to a petition in which Wyoming Outdoor Council requested that the Administrator object to two title V permits issued by the State of Wyoming. The petition alleged, in relevant part, that the permits, which required only a quarterly Method 9 visual observation, were deficient because they failed to assure compliance with the 20 percent opacity limit in the Wyoming State Implementation Plan (SIP). The Administrator's response summarized the monitoring requirements of the Act and part 70, quoting from sections 114(a)(3), 504(a) and 504(c), and from §§ 70.6(a)(3)(i)(B) and 70.6(c)(1). Id. The response then summarized the *NRDC* and *Appalachian Power* decisions. *Pacificorp* at 16–18. In particular, the Administrator observed that the *NRDC* panel had based its holding that EPA had satisfied the statutory mandates to require adequate monitoring for all permits at major sources on the two ''residual rules'' in part 70: §§ 70.6(a)(3)(i)(B) and 70.6(c)(1). Id. at 16–17 (citing *NRDC,* 194 F.3d at 135–37). She also observed that the *Appalachian Power* panel had held that § 70.6(a)(3)(i)(B) must be read narrowly to apply only when the underlying emission standard ''requires no periodic testing, specifies no frequency, or requires only a one-time test.'' *Pacificorp* at 18 (quoting *Appalachian Power,* 208 F.3d at 1028). Finally, she observed that the *Appalachian Power* panel did not address 70.6(c)(1), or the earlier decision in *NRDC* (except to note that it disagreed with EPA's contention that the *NRDC* panel had read § 70.6(a)(3)(i)(B) in the same broad fashion as had EPA). *Pacificorp* at 18 (citing *Appalachian Power,* 208 F.3d at 1028 n. 26).

The Administrator then set forth her understanding of the current monitoring requirements by harmonizing the *NRDC* and *Appalachian Power* decisions. Specifically, the Administrator stated that in light of those decisions, where an applicable requirement requires no ''periodic'' testing or monitoring at all, ''section 70.6(c)(1)'s requirement that monitoring be sufficient to assure compliance will be satisfied'' by meeting the more substantive requirements of § 70.6(a)(3)(i)(B). Where, in accordance with *Appalachian Power,* the latter periodic monitoring provision does not apply because there is some ''periodic'' monitoring but it is not sufficient to assure compliance, the ''separate regulatory standard'' in § 70.6(c)(1) governs instead and requires enhancement of existing monitoring ''as necessary to be sufficient to assure compliance.'' *Pacificorp* at 18–19.

Based on this understanding, the Administrator found that since the Wyoming SIP called for quarterly Method 9 visual readings, and this was ''periodic,'' then in accordance with *Appalachian Power* ''the provisions of § 70.6(a)(3)(i)(B) do not apply.'' She then found that such monitoring:

[1] For example, CAM exempts acid rain program requirements under title IV of the Act. See § 64.2(b)(1)(iv).

[2] 2 For example, sources exempt from acid rain requirements under CAM (see supra n. 1) are subject to state-of-the-art monitoring under Act section 412 and 40 CFR part 75.

[3] The entire relevant passage reads as follows:

Specifically, EPA demonstrated that many of the major stationary sources exempt from CAM are subject to other specific rules, and if they are not, they are subject to the following two residual rules: (1) ''[The permit shall contain] periodic monitoring sufficient to yield reliable data * * * that are representative of the source's compliance with the permit * * * '' 40 C.F.R. 70.6(a)(3)(i)(B); (2) ''All part 70 permits shall contain the following elements with respect to compliance: (1) Consistent with paragraph (a)(3) of this section, compliance certification, testing, [and] monitoring * * * requirements sufficient to assure compliance with the terms and conditions of the permit'' Id. § 70.6(c)(1).

While the part 70 rules are not as specific as CAM, they have the same bottom line—a major source must undertake ''monitoring * * * sufficient to assure compliance.'' Like CAM, the monitoring protocols will be developed on a unit-by-unit basis. Such monitoring is sufficiently ''enhanced'' over the pre-1990 situation to satisfy the statutory requirement. See Compliance Assurance Monitoring, 62 FR 54900, 54904, October 22, 1997. Id.

[4] ''Periodic Monitoring Guidance,'' signed by Eric V. Schaeffer, Director, Office of Regulatory Enforcement, and John S. Seitz, Director, Office of Air Quality Planning and Standards, September 15, 1998.

[5] Section 505(b)(2) authorizes any person to petition the Administrator to object to a title V permit within 60 days after the expiration of EPA's 45-day review period and directs the Administrator to grant or deny such petitions and to issue an objection if the petitioner demonstrates that the permit is not in compliance with the applicable requirements of the Act. 42 U.S.C. 7661d(b)(2).

is not sufficient to ''assure compliance'' with the 20 [percent] opacity limit in the Wyoming SIP within the meaning of § 70.6(c)(1) and sections 504(a) and 504(c) of the Clean Air Act, and does not constitute enhanced monitoring within the meaning of section 114(a)(3) of the Act.

Id. at 19. The Administrator granted the petition in part and denied it in part. *See* 66 FR 85, January 2, 2001.

The Administrator subsequently responded to another citizen petition to object alleging numerous monitoring deficiencies in a permit issued by the State of Washington, the *Fort James* order. As in *Pacificorp,* the petition raised monitoring issues, and the Administrator ruled similarly. She explained that where it was clear that there was no underlying monitoring of a ''periodic'' nature, § 70.6(a)(3)(i)(B) applied and decided the claims accordingly. Where there was some underlying monitoring that could be considered periodic, she applied the general sufficiency standard in § 70.6(c)(1) and decided the claims on that basis. The petition was granted in part and denied in part. *See Fort James* at 5–9; 66 FR 13529, March 6, 2001.

II. Revisions to the Title V Monitoring Requirements

A. Why Is EPA Revising §§ 70.6(c)(1) and 71.6(c)(1)?

This interim final rule responds to assertions by some industry representatives that the *NRDC* and *Appalachian Power* court decisions have created uncertainty and confusion on the part of some source owners and operators, permitting authorities and citizens as to the scope of the title V monitoring requirements. The EPA also is undertaking this interim final rule and the related actions described below consistent with the defense of pending litigation, *Utility Air Regulatory Group* v. *EPA,* No. 01–1204 (DC Cir.) (*UARG*) [6] While EPA has harmonized the *NRDC* and *Appalachian Power* decisions to clarify the title V monitoring requirements in the *Pacificorp* and *Fort James* orders, some industry representatives and others have maintained that EPA's understanding as stated in the orders is based on an overbroad reading of §§ 70.6(c)(1) and 71.6(c)(1). Under EPA's current title V regulations, these parties have asserted, §§ 70.6(c)(1) and 71.6(c)(1) cannot be read to require ''sufficient'' monitoring where 70.6(a)(3)(i)(B) or § 71.6(a)(3)(i)(B) does not apply (e.g., where the permit already contains some monitoring that can be considered ''periodic'' but that is not sufficient to assure compliance with the permit's terms and conditions) because §§ 70.6(c)(1) and 71.6(c)(1) as currently written expressly provide that monitoring sufficient to assure compliance be ''[c]onsistent with [70.6(a)(3) or § 71.6(a)(3)].'' In short, these parties interpret this prefatory language to mean that §§ 70.6(c)(1) and 71.6(c)(1) must have the same limited meaning as §§ 70.6(a)(3) and 71.6(a)(3), respectively, because ''consistent with [§ 70.6(a)(3) or § 71.6(a)(3)]'' means ''identical to the scope and content of [§ 70.6(a)(3) or § 71.6(a)(3)].'' Under this view, §§ 70.6(a)(3) and 71.6(a)(3) require that inadequate but ''periodic'' monitoring must be accepted without enhancement.

The EPA disagrees with these assertions that the prefatory ''consistent with'' language limits the scope of §§ 70.6(c)(1) and 71.6(c)(1). Indeed, interpreting ''consistent with'' to mean ''identical to'' as some parties have suggested would render the second clause of §§ 70.6(c)(1) and 71.6(c)(1), which requires monitoring ''sufficient to assure compliance,'' superfluous, and would imply that the *NRDC* court's discussion of § 70.6(c)(1) was redundant. By contrast, EPA has reasonably interpreted ''consistent with'' to mean ''compatible with [§ 70.6(a)(3) or § 71.6(a)(3)].'' Under EPA's interpretation, §§ 70.6(c)(1) and 71.6(c)(1) are separate sources of regulatory authority from §§ 70.6(a)(3) and 71.6(a)(3), and §§ 70.6(c)(1) and 71.6(c)(1) independently require that all monitoring in title V permits be sufficient to assure compliance with the permits' terms and conditions. As EPA explained in the *Pacificorp* and *Fort James* orders, EPA believes that the ''consistent with'' language means that the broadly applicable, but bare sufficiency provisions at § 70.6(c)(1) [or § 71.6(c)(1)] will be satisfied by compliance with the substantive monitoring requirements of § 70.6(a)(3)(i)(B) [or § 71.6(a)(3)(i)(B)] where the latter periodic monitoring provision applies. In other words, where § 70.6(a)(3)(i)(B) [or § 71.6(a)(3)(i)(B)] applies, its more specific requirements (e.g., reliable data from the relevant time period that are representative of the source's compliance) are deemed sufficient to assure compliance, and where § 70.6(a)(3)(i)(B) [or § 71.6(a)(3)(i)(B)] does not apply, the general sufficiency requirement at § 70.6(c)(1) [or § 71.6(c)(1)] comes into play. *See Pacificorp* at 18–19; *Fort James* at 9.

The EPA's interpretation of the prefatory ''consistent with'' language in §§ 70.6(c)(1) and 71.6(c)(1) is a reasonable one and is indeed the better interpretation, because it gives meaning to the second clause of §§ 70.6(c)(1) and 71.6(c)(1), advances the statutory monitoring requirements, and harmonizes the *NRDC* and *Appalachian Power* decisions with each other. Nonetheless, EPA recognizes that further clarification through rulemaking would be useful. In addition, EPA has received numerous requests from permitting authorities and citizens requesting clarification of the title V monitoring requirements, including a letter from eighty-one environmental and public health organizations asking EPA to revise the part 70 regulations to address monitoring in light of the court's decision in *Appalachian Power.*

B. What Interim Final Revisions Are Being Made?

By promulgating this interim final rule, EPA is suspending, for sixty days, the underscored prefatory language to §§ 70.6(c)(1) and 71.6(c)(1) providing that all title V permits contain, *''[c]onsistent with paragraph (a)(3) of this section,* compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.'' The suspension of the prefatory language will expressly uncouple the sufficiency monitoring provisions, §§ 70.6(c)(1) and 71.6(c)(1), from the periodic monitoring provisions, §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), and make more clear the regulatory distinction between the two sets of provisions. Specifically, the suspension will clarify the respective scopes of the periodic monitoring and sufficiency monitoring provisions, eliminating any possible confusion under the current regulations as to when a title V permit must contain monitoring sufficient to assure compliance. The EPA notes that despite this suspension, EPA is retaining its interpretation, set forth in the *Pacificorp* and *Fort James* orders, that where § 70.6(a)(3)(i)(B) or § 71.6(a)(3)(i)(B) applies, it satisfies the

[6] The EPA's interpretation of §§ 70.6(c)(1) and 71.6(c)(1) as they currently written has been challenged in litigation pending before the D.C. Circuit. Specifically, the Utility Air Regulatory Group (UARG) has sought judicial review of the interpretation set out by EPA in the *Fort James* order and restated in an ''Instruction Manual'' dated January 2001 that was posted on EPA's web site to assist those completing permit application forms under the part 71 federal operating permit program. Pursuant to section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), UARG also has sought review of the final part 70 and part 71 regulations by alleging ''grounds arising after'' the time allowed for seeking judicial review. In its brief defending its current interpretation, EPA informed the court of its intention to issue this interim final rule and the companion proposed rule described below. See *UARG.*

general sufficiency requirement of § 70.6(c)(1) or § 71.6(c)(1).

The suspension of the prefatory language codifies the understanding set forth in the *Pacificorp* and *Fort James* orders, where the Administrator characterized § 70.6(c)(1) as a ''separate regulatory standard'' from § 70.6(a)(3)(i)(B). The suspension is also consistent with the court's holding in *NRDC* that §§ 70.6(a)(3)(i)(B) and 70.6(c)(1) together ensure that a major source must undertake ''monitoring * * * sufficient to assure compliance'' where the CAM rule or other more specific rules governing major sources do not require such monitoring. 194 F.3d at 136. Finally, the suspension is consistent with the court's decision in *Appalachian Power,* which, as noted above, did not construe § 70.6(c)(1). *See* 208 F.3d at 1027 n.26.

Under this interim final rule, the periodic monitoring and sufficiency monitoring provisions will work together as follows. Where an applicable requirement does not require any periodic testing or monitoring, permit conditions are required to establish ''periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit.'' Sections 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B). In contrast, where the applicable requirement already requires ''periodic'' testing or monitoring but that monitoring is not sufficient to assure compliance, the separate regulatory standard at § 70.6(c)(1) or § 71.6(c)(1) applies instead to require monitoring ''sufficient to assure compliance with the terms and conditions of the permit.'' Furthermore, where § 70.6(a)(3)(i)(B) or § 71.6(a)(3)(i)(B) applies, it satisfies the general sufficiency requirement of § 70.6(c)(1) or § 71.6(c)(1).

C. How Does This Interim Final Rule Affect the Scope of the Current Title V Monitoring Requirements?

This interim final rule does not affect the scope of the title V monitoring requirements as previously construed by the D.C. Circuit in *NRDC* and *Appalachian Power,* or as set forth in EPA's *Pacificorp* and *Fort James* orders. Rather, the purpose of this interim final rule is simply to clarify that under §§ 70.6(c)(1) and 71.6(c)(1), all title V permits must include monitoring sufficient to assure compliance with the permits' terms and conditions, as required by Act sections 504(a), 504(b), 504(c), and 114(a)(3). As stated above, the purpose is to eliminate any possible confusion about the scope of the sufficiency monitoring provisions at §§ 70.6(c)(1) and 71.6(c)(1) that may arise due to their prefatory references to the periodic monitoring provisions at §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B).

III. Related Actions

The EPA intends to conduct two additional rulemakings related to this interim final rule. First, elsewhere in today's **Federal Register**, EPA is proposing to revise §§ 70.6(c)(1) and 71.6(c)(1) to make the same changes as this interim final rule through an expedited notice-and-comment rulemaking process. The EPA is soliciting comments on that proposal. The EPA intends that the proposed changes would be promulgated as a final rule and would become effective when this interim final rule sunsets. In addition, EPA intends to initiate a second notice-and-comment rulemaking process to consider more comprehensively means of meeting the statutory monitoring requirements.

IV. Interim Final Rule

A. Need for an Interim Final Rule

The EPA is using the good cause exception under the Administrative Procedure Act (APA) to take the actions set forth in this interim final rule without prior notice and comment. *See* 5 U.S.C. 553(b)(3)(B). Section 553(b) of the APA generally requires that any rule to which it applies be issued only after the public has received notice of, and had an opportunity to comment on, the proposed rule. However, section 553(b)(3)(B) exempts from those requirements any rule for which the issuing agency for good cause finds that providing prior notice-and-comment would be impracticable, unnecessary, or contrary to the public interest. Thus, any rule for which EPA makes such a finding is exempt from the notice-and-comment requirements of section 553(b).

The EPA believes that the circumstances here provide good cause to take the actions set forth in this interim final rule without prior notice and comment, because providing prior notice and comment would be unnecessary and contrary to the public interest. In light of the short time period that this interim final rule will be in effect and the parallel, expedited notice-and-comment rulemaking to consider promulgating the same changes to §§ 70.6(c)(1) and 71.6(c)(1) as a final rule to provide clarification beyond the near term, EPA believes that soliciting public comment on this interim final rule is unnecessary. The public will have an opportunity to comment on the proposal for the parallel rulemaking, published elsewhere in today's issue of the **Federal Register**. Furthermore, EPA believes that soliciting public comment on this interim final rule would be contrary to the public interest because it is in the public interest to eliminate any possible confusion surrounding the scope of the sufficiency monitoring provisions, §§ 70.6(c)(1) and 71.6(c)(1), as soon as possible given the importance of monitoring to carrying out title V's mandates that all title V permits assure compliance with all applicable requirements under the Act.

The EPA is also using the APA's good cause exception to make this interim final rule immediately effective. See 5 U.S.C. 553(d)(3). Section 553(d) of the APA generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, section 553(d)(3) provides that if the issuing agency has made a finding of good cause and published its reasoning with the rule, the rule may take effect earlier. The EPA has determined that good cause exists to revise §§ 70.6(c)(1) and 71.6(c)(1) in this interim final rule without prior notice-and-comment, because prior notice-and-comment would be unnecessary and contrary to the public interest for the reasons stated above. Based on this determination, EPA is making this interim final rule immediately effective.

B. Scope of This Interim Final Rule

This interim final rule is limited to the removal of the prefatory phrase ''[c]onsistent with paragraph (a)(3) of this section'' from §§ 70.6(c)(1) and 71.6(c)(1) in order to clarify the scope of these provisions. This interim final rule does not address any other issues related to title V monitoring, such as the type of monitoring required under the periodic monitoring provisions, §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), or under the sufficiency monitoring provisions, §§ 70.6(c)(1) and 71.6(c)(1). As indicated above, EPA is proposing elsewhere in today's **Federal Register** to revise §§ 70.6(c)(1) and 71.6(c)(1) to make the same changes as this interim final rule through an expedited notice-and-comment rulemaking process. The EPA is soliciting public comment on that proposal. The EPA expects to consider comments on other issues relating to title V monitoring during the comprehensive rulemaking that is also planned and described above.

V. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must

determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (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, adversely affecting in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in 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 entitlement, grants, user fees, or loan programs of 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.

Under Executive Order 12866, it has been determined that this proposed rule is a ''significant regulatory action'' and is therefore subject to OMB review. Today's proposed rule raises important legal and policy issues associated with the court's decisions in *Appalachian Power* and *NRDC* and EPA's adjudicatory orders in *Pacificorp* and *Fort James.* Therefore, this action is a ''significant regulatory action.''

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may 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.'' A ''Federal mandate'' is defined to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate.'' [2 U.S.C. 658(6)]. A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' [2 U.S.C. 658(5)(A)(i)], except for, among other things, a duty that is ''a condition of Federal assistance.'' [2 U.S.C. 658(5)(A)(i)(I)]. A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions [2 U.S.C. 658(7)(A)].

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply where they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined under the regulatory provisions of title II of the UMRA that this interim final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Today's interim final rule imposes no new requirements but rather clarifies existing requirements. Because we have made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act (APA) or any other statute [*see* section IV.A. (''Need for an Interim Final Rule'') of this preamble], and because it is merely intended to clarify existing requirements, it is not subject to sections 202 and 205 of the UMRA.

In addition, EPA has determined that this interim final contains no regulatory requirements that might significantly or uniquely affect small governments because it imposes no new requirements and imposes no additional obligations beyond those of existing regulations. Therefore, today's interim final rule is not subject to the requirements of section 203 of the UMRA.

C. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government.''

This interim final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule will not impose any new requirements but rather will clarify existing requirements. Accordingly, it will not alter the overall relationship or distribution of powers between governments for the part 70 and part 71 operating permits programs. Thus, Executive Order 13132 does not apply to this interim final rule.

D. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This interim final rule 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 in Executive Order 13175. Today's action does not significantly or uniquely affect the communities of Indian tribal governments. As discussed

above, today's action imposes no new requirements that would impose compliance burdens beyond those that would already apply. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

E. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

Today's interim final rule is not subject to the RFA, which generally requires an agency to prepare a regulatory flexibility analysis of any rule that will have ''a significant economic impact on a substantial number of small entities.'' The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because EPA is using the good cause exception under section 553(b)(3)(B) of the APA to take the actions set forth in this interim final rule without prior notice and comment. See section IV.A., (''Need for an Interim Final Rule'') of this preamble for more information on the good cause exemption cited for this interim final rule.

Although this interim final rule is not subject to the RFA, EPA has nonetheless has assessed the potential of this rule to adversely impact small entities subject to the rule and concluded that it will have no adverse impact on small entities because it adds no new requirements, and merely clarifies existing requirements.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines is (1) ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risk, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This interim final rule is not subject to Executive Order 13045 because it is not ''economically significant'' under Executive Order 12866 and it does not establish an environmental standard intended to mitigate health and safety risks.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The NTTAA does not apply to this interim final rule because it does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Paperwork Reduction Act

This interim final rule does not impose any new information collection requirements beyond those already required under existing part 70 and part 71 rules. Therefore, revision to the existing information collection request documents for these rules is not required. The information collection requirements for parts 70 and 71 were previously approved by OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The existing ICR for part 70 is assigned ICR number 1587.05 and OMB number 2060–0243; for part 71, the ICR number is 1713.04 and the OMB number is 2060–0336. A copy of these ICRs may be obtained by mail to: Director, Collection Strategies Division (2822), Office of Environmental Information, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This interim final rule is not a ''significant energy action,'' as defined in to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. As noted earlier, this action would simply clarify existing requirements and would not impose any new requirements, and thus would not affect the supply distribution, or use of energy.

J. Judicial Review

Section 307(b)(1) of the Act indicates which Federal Courts of Appeals have venue for petitions for review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the D. C. Circuit: (i) When the agency action consists of ''national applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

This interim final rule is of nationwide scope and effect for purposes of section 307(b)(1) because it revises EPA's part 70 and 71 operating permits programs. Thus, any petitions for review of this interim final rule must be filed in the D. C. Circuit within 60 days from September 17, 2002.

K. Congressional Review Act

The Congressional Review Act (CRA), 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.

Section 808 of the CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of September 17, 2002. *See* section IV.A. (''Need for an Interim Final Rule'') of this preamble. The EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the

Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This interim final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 70

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

40 CFR Part 71

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 4, 2002.

Christine Todd Whitman,

Administrator.

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

PART 70—[Amended]

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

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

2. In § 70.6(c)(1) the phrase ''Consistent with paragraph (a)(3) of this section,'' is suspended.

PART 71—[Amended]

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

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

2. In § 71.6(c)(1) the phrase ''Consistent with paragraph (a)(3) of this section,'' is suspended.

[FR Doc. 02–23587 Filed 9–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0057; FRL–7275–3]

Objections to Tolerances Established for Certain Pesticide Chemicals; Additional Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of final rule objections; additional extension of comment period.

SUMMARY: On February 25, 2002, March 19, 1002, and May 7, 2002, the National Resources Defense Council (NRDC) filed objections with EPA regarding final rules establishing certain tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for specific pesticide/crop usage. NRDC's objections concern a number of issues under section 408 of the FFDCA including the additional 10x safety factor for the protection of infants and children and aggregate exposure to pesticide chemical residues. Due to difficulties in posting electronic copies of the NRDC objections onto EPA's web page, EPA is extending the comment period from September 17, 2002 to October 16, 2002 to allow adequate time for public comment.

DATES: Comments, identified by the docket ID number OPP–2002–0057, must be received on or before October 16, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0057 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Peter Caulkins, Registration Division, (MC7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305–6550; fax number: (703) 305–6920; e-mail address: *caulkins.peter@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

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

Categories	NAICS codes	Example of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0057. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfrpart180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select search, then key in the appropriate docket ID number.

C. How and To Whom Do I Submit Comments?

You may submit your comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0057 in the subject line of the first page of your response. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *opp-docket@epa.gov,* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6, Suite 8, or ASCII file format. All comments in electronic form must be identified by docket control number OPP–2002–0057. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want To Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the final rule or collection activity.
7. Make sure to submit your comments by the deadline in this final rule extension.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action Is EPA Taking?

On February 25, 2002, March 19, 2002, and May 7, 2002, the Natural Resources Defense Council (NRDC) filed objections with EPA regarding final rules establishing certain tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for the following eight pesticides:

1. Imidacloprid;
2. Mepiquat;
3. Bifenazate;
4. Zeta-cypermethrin
5. Diflubenzuron;
6. Halosulfuron methyl;
7. Pymetrozine; and
8. 2,4-D.

NRDC's objections concern a number of issues under section 408 of the FFDCA including the additional 10x safety factor for the protection of infants and children and aggregate exposure to pesticide chemical residues. On June 19, 2002 (67 FR 41628) (FRL–7167–7), the Agency announced the availability of, and sought public comment on these objections. EPA has received requests to extend the comment period. In the **Federal Register** of August 16, 2002 (67 FR 53505) (FRL–7193–6), EPA extended the comment period until September 17, 2002. The objections are available on EPA's Web site at *http://www.epa.gov/opprd001/nrdc_objections/* .

Due to difficulty in posting NRDC's tolerance objections onto the EPA web page, EPA is extending the comment period on the NRDC objections to October 16, 2002.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Tolerances.

Authority: 21 U.S.C. 346(a).

Dated: September 12, 2002.

James Jones,

Acting Director, Office of Pesticide Programs.

[FR Doc. 02–23595 Filed 9–12–02; 1:46 pm]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 28, 109, 122, 131, 169, 185, and 199

[USCG–2001–11118]

RIN 2115–AG28

Liferaft Servicing Intervals

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its commercial vessel regulations to provide consistency in the requirements for servicing of inflatable liferafts and inflatable buoyant apparatus (IBA). This rule will eliminate an unnecessary burden on vessel operators and will eliminate confusion among the public and Coast Guard field personnel. The rule will defer the first servicing of a new liferaft or IBA to 2 years after initial packing on all commercial vessels not certificated under the International Convention for the Safety of Life at Sea (SOLAS).

DATES: This final rule is effective September 30, 2002.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2001–11118 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this

docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Kurt Heinz, Coast Guard, telephone 202–267–1444; e-mail *kheinz@comdt.uscg.mil.* If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 5, 2002, we published a notice of proposed rulemaking (NPRM) entitled ''Liferaft Servicing Intervals'' in the **Federal Register** (67 FR 9939).

On March 14, 2002, the **Federal Register** (67 FR 11549) published a correction for the table entitled ''Current and Proposed Intervals for Initial Servicing of Liferafts on Commercial, Non-Solas Vessels'' that was in the preamble of the NPRM.

Background and Purpose

This rule amends the Coast Guard's commercial vessel regulations to provide consistency in the requirements for servicing of inflatable liferafts and IBAs. It harmonizes the servicing intervals specified in the vessel regulations in 46 CFR subchapters I–A, K, R, T, and W with the general requirement in the liferaft regulations at 46 CFR 160.151–57 in subchapter Q, consistent with the stated intent of that regulation. This rule will eliminate the confusion caused by ambiguous or conflicting provisions in the various commercial vessel regulations, and reduce the burden on the public by avoiding potential unnecessary servicing of new inflatable liferafts.

In addition, to maintain internal consistency, the rule revises §§ 169.513(b) and 169.531 in 46 CFR subchapter R (sailing school vessels) to update requirements for obsolete types of liferafts that are no longer manufactured. The revised sections require comparable types of liferafts that are approved and manufactured under current regulations, but allow existing liferafts on the vessel to remain in use as long as they are in good and serviceable condition. Additional conforming editorial changes to the commercial fishing industry vessel regulations in 46 CFR subchapter C, and to subchapter L, harmonize the specific wording between the various individual vessel subchapters to the extent possible.

Because of its unique structure, subchapter W, which contains liferaft-servicing requirements referenced by various subchapters, necessitated a slightly different approach than the other vessel subchapters. Amendments were made to two sections in subchapter W, 46 CFR 199.190 and 199.620, which included a correction of an existing error in table 199.620(a). You can find additional background information on this rule in the preamble of the NPRM (67 FR 9939, March 5, 2002).

As authorized by 5 U.S.C. 553(d)(1) and (3), we are making this rule effective September 30, 2002—less than 30 days after its publication in the **Federal Register**. This final rule relieves a regulatory burden by deferring the first servicing of a new liferaft or IBA to 2 years on all commercial vessels not certificated under the International Convention for the Safety of Life at Sea (SOLAS). In addition, good cause exists for making the rule effective before October 1, 2002, because by doing so we ensure that the rule will be codified in 46 CFR this October rather than October 2003.

Discussion of Comments

The Coast Guard received two letters commenting on the proposed rule. One letter was from a liferaft servicing facility, and the other was from the Ferry Division of a state Department of Transportation. No public hearing was requested and none was held. We did not make any changes to the rule based on the comments we received.

The comment received from a state public ferry agency, while noting that it probably fell outside of the scope of the rulemaking, suggested that the servicing interval for inflatable liferafts and inflatable buoyant apparatus on non-SOLAS vessels on inland routes should be extended from annually, as currently required, to once every 2 years. The letter cited as justification that most items of equipment packed inside liferafts have a service life of at least 3 years, and that the risk of incidental damage and wear from removing the survival craft from its container for annual servicing is greater than the risk of extending the service interval.

The Coast Guard agrees that the suggestion is outside the scope of the rulemaking. Moreover, the suggestion is not supported by any currently available data. The requirement for annual servicing is supported by decades of satisfactory operational experience. Contrary to the assertion that removing the unit from its container annually for servicing imposes unnecessary wear and tear and increases the possibility of incidental damage, there is evidence that unfolding, inflating, and repacking the liferaft may actually serve to avoid degradation of the fabric coating at the creases.

A comment from a liferaft servicing facility suggested that the meaning of ''installation date'' needed to be clarified. This term, however, is not used anywhere in the existing or proposed rules.

Servicing intervals are measured throughout from the time the liferaft was ''serviced or first packed,'' with extensions permitted for time the liferaft spends indoors in controlled temperature storage. Thus, the significant date is not the date of installation, but rather the date the liferaft leaves controlled indoor storage. Whether the appropriate servicing interval is one year (for a SOLAS raft, or any other raft that is not new) or two years (for a new raft on a non-SOLAS ship), the time period for the appropriate servicing interval starts at the time the raft leaves controlled indoor storage as specified in 46 CFR 160.151–57(n)(2)–(3). We are working with the liferaft industry to explore methods to improve implementation of the sticker requirements for liferafts held in storage, with the goal of maximizing the effectiveness of the sticker system for both vessel operators and enforcement personnel.

The same letter suggested that in order to accommodate the proposed rules, manufacturers of liferafts and liferaft components would need to change their instructions to servicing facilities, since in many cases equipment items (*e.g.*, repair cements, batteries) require annual replacement. This is already addressed, however, in 46 CFR 160.151–57(n)(1)(i), which specifies that in order to apply the extended service interval for a new liferaft, dated survival equipment in the liferaft must not expire before the expiration date of the servicing expiration sticker. Each manufacturer has the option of providing suitable equipment to allow for the extension of the initial servicing interval.

A comment from the servicing facility agreed with the extension of servicing intervals to coincide with scheduled vessel inspections, but suggested that a vessel operator should have to demonstrate reasonable justification, and request and obtain approval in writing of the extension from the Officer in Charge, Marine Inspection (OCMI). Since the grounds for the extension are clear and specific in the rule, we disagree that any justification, beyond evidence that an inspection for certification is scheduled within 5 months of the servicing expiration date, is needed. Consequently, we do not see any need to impose an administrative

burden on both the vessel operator and the OCMI to obtain an extension, which should, in fact, be automatic if the specified condition is met.

A final comment from the servicing facility suggested that the extension of the servicing interval for liferafts should specifically exclude extension of the replacement of a hydrostatic release unit used with the liferaft. The comment noted that some vessel operators conveniently assume that the two are serviced together. While we agree that the extension of servicing intervals permitted by this rule applies only to liferafts or IBAs, and not to any hydrostatic release units used in their securing arrangements, we do not agree that it is necessary to specify in the rule those items to which it does not apply. Hydrostatic release units have their own servicing or replacement dates, and can be easily replaced by a vessel operator without removing the liferaft or IBA they secure.

We are adopting our proposed rule as our final rule without any changes.

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 benefits and costs under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) 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, l979). A Regulatory Evaluation supporting this conclusion is available in the docket as indicated under **ADDRESSES.** A summary of that analysis follows:

Assessment: We analyzed benefits and costs of deferring the first liferaft servicing to 2 years (instead of 1 year) after initial packing for any non-SOLAS vessel subject to the liferaft servicing requirements in subchapters I–A, K, R, T, or W. There are 5,965 vessels that will be affected, for which we assumed a zero population growth rate. Furthermore, we assumed that vessels would carry 25-person liferafts with an average lifespan of 12 years, and that the number of liferafts carried by each vessel would be a function of the crew size and the passenger capacity of each vessel.

Benefits: The total present value benefit for this rule for the 10-year period will be $7,700,824 (7 percent discount rate). Owners and operators of affected vessels will accrue benefits as reduced operating costs. These benefits are a function of (1) the number of liferafts that will no longer be required to be serviced the first year after manufacture and (2) the fees imposed by the servicing companies.

In addition, we recognize that other benefits of the rule exist but cannot be quantified, particularly the easing of confusion of both the public and Coast Guard personnel caused by vague and conflicting provisions. Furthermore, vessel owners will benefit by eliminating the opportunity cost of time associated with liferaft servicing during the first year after manufacture. Therefore, the total benefits may be higher if the qualitative benefits were represented in monetary terms.

Costs: This rule will not impose costs on vessel owners and operators. In view of the stringent production testing and inspections to which new liferafts are subjected, and the lack of any history over the last 10 years of operational problems associated with new liferafts where servicing has been deferred, the Coast Guard does not believe the rule will have any adverse impact on the safety of liferafts and IBAs.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) and Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, we have considered whether this rule will 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.

Since this rulemaking will not impose costs on owners or operators of affected vessels there are no economic impacts on small entities. The rule provides benefits as reduced maintenance time and operating costs for all entities by deferring the first liferaft servicing from 1 year to 2 years after initial packing.

The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities because there are no costs to vessel owners/operators associated with the rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Kurt Heinz at 202–267–1444. We asked for comments during the NPRM rulemaking process. We did not receive comments specifically related to small business 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 regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

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)(d), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rule resolves inconsistencies in required intervals for liferaft servicing and therefore will not have any impact on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 109

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 122

Alcohol and alcoholic beverages, Drugs, Hazardous materials, Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 131

Hazardous materials transportation, Marine safety, Navigation (water), Offshore supply vessels, Oil and gas exploration, Operations, Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 185

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 199

Cargo vessels, Incorporation by reference, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 28, 109, 122, 131, 169, 185, and 199 as follows:

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

1. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; 49 CFR 1.46.

2. In § 28.140, revise paragraphs (b) and (c), and table 28.140 to read as follows:

§ 28.140 Operational readiness, maintenance, and inspection of lifesaving equipment.

* * * * *

(b) Each item of lifesaving equipment, including unapproved equipment, must be maintained and inspected in accordance with:

(1) Table 28.140 in this section;

(2) The servicing procedure under the subpart of this chapter applicable to the item's approval; and

(3) The manufacturer's guidelines.

(c) An inflatable liferaft or inflatable buoyant apparatus must be serviced no later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), and whenever the container is damaged or the container straps or seals are broken. It must be serviced at a facility specifically approved by the Commandant for the particular brand.

* * * * *

TABLE 28.140.—SCHEDULED MAINTENANCE AND INSPECTION OF LIFESAVING EQUIPMENT

Item	Interval		Regulation
	Monthly	Annually	
(1) Inflatable wearable personal flotation device (Type V commercial hybrid).		Servicing	28.140
(2) Personal flotation devices, exposure suits and immersion suits.		Inspect, clean and repair as necessary	28.140
(3) Buoyant apparatus and life floats		Inspect, clean and repair as necessary	28.140
(4) Inflatable liferaft		Servicing [1]	28.140
(5) Inflatable buoyant apparatus		Servicing [1]	28.140
(6) Hydrostatic release		Servicing [1]	28.140
(7) Disposable hydrostatic release		Replace on or before expiration date	28.140
(8) Undated batteries		Replace	28.140

TABLE 28.140.—SCHEDULED MAINTENANCE AND INSPECTION OF LIFESAVING EQUIPMENT—Continued

Item	Interval		Regulation
	Monthly	Annually	
(9) Dated batteries [2] and other items		Replace on or before expiration date	25.26–5, 28.140
(10) EPIRB	Test		25.26–5

[1] For a new liferaft or inflatable buoyant apparatus, the first annual servicing may be deferred to two years from the date of first packing if so indicated on the servicing sticker.
[2] Water activated batteries must be replaced whenever they are used.

PART 109—OPERATIONS

3. The authority citation for part 109 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 6101, 10104; 49 CFR 1.46.

4. In § 109.301, revise paragraph (g)(3) to read as follows:

§ 109.301 Operational readiness, maintenance, and inspection of lifesaving equipment.

* * * * *

(g) * * *

(3) An inflatable liferaft must be serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, subpart 160.151, of this chapter—

(i) No later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the unit, provided that the delay does not exceed 5 months; and

(ii) Whenever the container is damaged or the container straps or seals are broken.

* * * * *

PART 122—OPERATIONS

5. The authority citation for part 122 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

6. In § 122.730, revise paragraphs (a) and (b) to read as follows:

§ 122.730 Servicing of inflatable liferafts, inflatable buoyant apparatus, inflatable life jackets, and inflated rescue boats.

(a) An inflatable liferaft or inflatable buoyant apparatus must be serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, subpart 160.151, of this chapter—

(1) No later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(2) Whenever the container is damaged or the container straps or seals are broken.

(b) Each inflatable lifejacket and hybrid inflatable lifejacket or work vest must be serviced:

(1) Within 12 months of its initial packing; and

(2) Within 12 months of each subsequent servicing, except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months.

* * * * *

PART 131—OPERATIONS

7. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 10104; E.O. 12234, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

8. In § 131.580, revise paragraphs (a) and (b) to read as follows:

§ 131.580 Servicing of inflatable liferafts, inflatable lifejackets, inflatable buoyant apparatus, and inflated rescue boats.

(a) An inflatable liferaft or inflatable buoyant apparatus must be serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, subpart 160.151, of this chapter—

(1) No later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(2) Whenever the container is damaged or the container straps or seals are broken.

(b) Each inflatable lifejacket and hybrid inflatable lifejacket or work vest must be serviced:

(1) Within 12 months of its initial packing; and

(2) Within 12 months of each subsequent servicing, except that servicing may be delayed until the next scheduled inspection of the OSV, provided that the delay does not exceed 5 months.

* * * * *

PART 169—SAILING SCHOOL VESSELS

9. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3307, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 1.46; § 169.117 also issued under the authority of 44 U.S.C. 3507.

10. In § 169.513, revise paragraph (b) to read as follows:

§ 169.513 Types of primary equipment.

* * * * *

(b) *Inflatable liferafts.* (1) Each inflatable liferaft must be a SOLAS A inflatable liferaft approved under part 160, subpart 160.151, of this chapter, except that inflatable liferafts on vessels operating on protected or partially protected waters may be SOLAS B inflatable liferafts approved under part 160, subpart 160.151, of this chapter.

(2) Each approved inflatable liferaft on the vessel on September 30, 2002, may be used to meet the requirements of this part as long as it is continued in use on the vessel, and is in good and serviceable condition.

* * * * *

11. Remove § 169.531.

§ 169.531 [Removed]

12. In § 169.837, revise paragraph (b)(4) to read as follows:

§ 169.837 Lifeboats, liferafts, and lifefloats.

* * * * *

(b) * * *

(4) Each inflatable liferaft has been serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, part 160.151, of this chapter—

(i) No later than the month and year on its servicing sticker affixed under 46

CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(ii) Whenever the container is damaged or the container straps or seals are broken.

PART 185—OPERATIONS

13. The authority citation for part 185 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; Executive Order 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

14. In § 185.730, revise paragraphs (a) and (b) to read as follows:

§ 185.730 Servicing of inflatable liferafts, inflatable buoyant apparatus, inflatable life jackets, and inflated rescue boats.

(a) An inflatable liferaft or inflatable buoyant apparatus must be serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, subpart 160.151, of this chapter—

(1) No later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(2) Whenever the container is damaged or the container straps or seals are broken.

(b) Each inflatable lifejacket and hybrid inflatable lifejacket or work vest must be serviced:

(1) Within 12 months of its initial packing; and

(2) Within 12 months of each subsequent servicing, except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months.

* * * * *

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

15. The authority citation for part 199 continues to read as follows:

Authority: 46 U.S.C. 3306, 3307, 3703; 49 CFR 1.46.

16. In § 199.190, revise paragraph (g)(3) to read as follows:

§ 199.190 Operational readiness, maintenance, and inspection of lifesaving equipment.

* * * * *

(g) * * *

(3) An inflatable liferaft or inflatable buoyant apparatus must be serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, subpart 160.151, of this chapter—

(i) No later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(ii) Whenever the container is damaged or the container straps or seals are broken.

* * * * *

17. In § 199.620, in paragraph (a), revise table 199.620(a) and add a new paragraph (q) as follows:

§ 199.620 Alternatives for all vessels in a specified service.

* * * * *

TABLE 199.620(A).—ALTERNATIVE REQUIREMENTS FOR ALL VESSELS IN A SPECIFIED SERVICE

Section or paragraph in this part:	Service and reference to alternative requirement section or paragraph				
	Oceans	Coastwise	Great Lakes	Lakes, bays and sounds	Rivers
199.70(a): Lifebuoy approval series	199.620(b) [1]	199.620(b) [1]	199.620(b)	199.620(b)	199.620(b).
199.70(b): Lifejacket approval series	199.620(c) [2]	199.620(c) [2]	199.620(c)	199.620(c)	199.620(c).
199.70(b)(1): Number of lifejackets carried	No Alternative	199.620(d)	199.620(d)	199.620(d)	199.620(d).
199.70(b)(4)(i): Lifejacket light approval series	No Alternative	199.620(e)	199.620(e)	Not Applicable	Not Applicable.
199.100(b): Manning of survival craft	No Alternative	No Alternative	No Alternative	No Alternative	199.620(o).
199.110(f): Embarkation ladder	199.620(f)	199.620(f)	199.620(f)	199.620(f)	199.620(f).
199.130(b): Survival craft stowage position	No Alternative	No Alternative	199.620(g)	199.620(g)	199.620(g).
199.170: Line-throwing appliance approval series	199.620(h) [2]	199.620(h) [3]	Not Applicable	Not Applicable	Not Applicable.
199.175: Lifeboat, rescue boat, and rigid liferaft equipment.	199.620(i) [4]	199.620(i)	199.620(j)	199.620(j)	199.620(j).
199.180 Training and drills	199.620(p)	199.620(p)	199.620(p)	199.620(p)	199.620(p).
199.190: Spares and repair equipment	199.620(n)	199.620(n)	199.620(n)	199.620(n)	199.620(n).
199.190(g)(3): Service Intervals for inflatable liferaft or inflatable buoyant apparatus.	199.620(q)	199.620(q)	199.620(q)	199.620(q)	199.620(q).
199.201(a)(2) or 199.261: Inflatable liferaft equipment.	199.620(l) [4]	199.620(l)	199.620(l)	199.620(l)	199.620(l).
199.201(a)(2) or 199.261: Liferaft approval series	No Alternative	199.620(k)	199.620(k)	199.620(k)	199.620(k).

[1] Alternative applies if lifebuoy is orange.
[2] Alternative applies only to cargo vessels that are less than 500 tons gross tonnage.
[3] Alternative applies to cargo vessels that are less than 500 tons gross tonnage and to all passenger vessels.
[4] Alternative applies to passenger vessels limited to operating no more than 50 nautical miles from shore.

* * * * *

(q) For a new liferaft or inflatable buoyant apparatus, the first annual servicing may be deferred to two years after initial packing if so indicated on the servicing sticker.

Dated: September 11, 2002.

Jeffrey P. High,

Acting Assistant Commandant, Marine Safety, Security and Environmental Protection.

[FR Doc. 02–23563 Filed 9–16–02; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 02–0901]

Freedom of Information Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission is modifying a section of the Commission's rules that implements the Freedom of Information Act (FOIA) Fee Schedule. This modification pertains to the charge for recovery of the full, allowable direct costs of searching for and reviewing records requested under the FOIA and the Commission's rules, unless such fees are restricted or waived. The fees are being revised to correspond to modifications in the rate of pay approved by Congress.

EFFECTIVE DATE: September 17, 2002.

FOR FURTHER INFORMATION CONTACT: Shoko B. Hair, Freedom of Information Act Officer, Office of Performance Evaluation and Records Management, Room 5–C406, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1379 or via Internet at *shair@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission is modifying § 0.467(a) of the Commission's rules. This rule pertains to the charges for searching and reviewing records requested under the FOIA. The FOIA requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidelines issued by the Office of Management and Budget (OMB). In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines. However, because the FOIA requires that each agency's fees be based upon its direct costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. The Commission based its FOIA Fee Schedule on the grade level of the employee who processes the request. Thus, the Fee Schedule was computed at a Step 5 of each grade level based on the General Schedule effected January 1987 (including 20 percent for personnel benefits). The Commission's rules provide that the Fee Schedule will be modified periodically to correspond with modifications in the rate of pay approved by Congress. *See* 47 CFR 0.467(a)(1) note.

In an Order adopted on August 13, 2002 and released on September 6, 2002 (DA–02–0901), the Managing Director revised the schedule of fees set forth in 47 CFR 0.467 for the recovery of the full, allowable direct costs of searching for and reviewing agency records requested pursuant to the FOIA and the Commission's rules, 47 CFR 0.460, 0.461. The revisions correspond to modifications in the rate of pay, which was approved by Congress.

These modifications to the Fee Schedule do not require notice and comment because they merely update the Fee Schedule to correspond to modifications in rates of pay, as required under the current rules.

Accordingly, pursuant to the authority contained in § 0.231(b) of the Commission's rules, 47 CFR 0.231 (b), *it is hereby ordered,* that, effective on September 17, 2002, the Fee Schedule contained in § 0.467 of the Commission's rules, 47 CFR 0.467, is amended, as described herein.

List of Subjects in 47 CFR Part 0

Freedom of information.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 0 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 155, unless otherwise noted.

2. Section 0.467 (a)(1) is amended by revising the last sentence, the table in paragraph (a)(1) and its note, and paragraph (a)(2) to read as follows:

§ 0.467 Search and review fees.

(a)(1) * * * The fee is based on the grade level of the employee(s) who conduct(s) the search or review, as specified in the following schedule:

Grade	Hourly fee
GS–1	10.72
GS–2	11.66
GS–3	13.15
GS–4	14.76
GS–5	16.51
GS–6	18.41
GS–7	20.46
GS–8	22.66
GS–9	25.03
GS–10	27.56
GS–11	30.28
GS–12	36.29
GS–13	43.15
GS–14	51.00
GS–15	59.99

Note: These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

(2) The fees in paragraph (a)(1) of this section were computed at Step 5 of each grade level based on the General Schedule effective January 2002 and include 20 percent for personnel benefits.

* * * * *

[FR Doc. 02–23562 Filed 9–16–02; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 67, No. 180

Tuesday, September 17, 2002

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–34–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Limited BN2T and BN2T–4R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Pilatus Britten-Norman Limited (Pilatus Britten-Norman) BN2T and BN2T–4R series airplanes. This proposed AD would require you to repetitively inspect the left and right engine-mounting frame for cracks and replace the frame if cracks are found. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this proposed AD are intended to detect and correct cracks in the left and right engine-mounting frame, which could lead to engine mount failure. Such failure could result in separation of the engine from the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before October 21, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–34–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–34–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

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

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

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

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–34–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all Pilatus Britten-Norman BN2T and BN2T–4R Series airplanes. The CAA reports that the manufacturer has reported six occurrences of cracks in the left and right turbine engine-mounting frame detected during routine inspections by operators of aircraft used on parachute drop or pilot training operations.

What Are the Consequences if the Condition Is Not Corrected?

These cracks could lead to engine mount failure with consequent separation of the engine from the airplane.

Is There Service Information That Applies to This Subject?

Britten-Norman has issued Service Bulletin No. SB 282, Issue 2, dated June 1, 2002.

What Are The Provisions of This Service Information?

The service bulletin includes procedures for:

—Inspecting the left and right turbine engine-mount frame for cracks; and
—Replacing the frame if cracks are found.

What Action Did the CAA Take?

The CAA classified this service bulletin as mandatory and issued British AD Number 002–05–2002, not dated, in order to ensure the continued airworthiness of these airplanes in the United Kingdom.

Was This In Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in the United Kingdom and are type certificated for operation in

the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

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

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

What Has FAA Decided?

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Pilatus Britten-Norman BN2T and BN2T–4R series airplanes of the same type design that are on the U.S. registry;

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

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

What Would This Proposed AD Require?

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

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 6 airplanes in the U.S. registry.

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

We estimate the following costs to accomplish each proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 workhours × $60 per hour = $240	No cost for parts	$240	6 × $240 = $1,440

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

Labor cost	Parts cost	Total cost per airplane
30 workhours × $60 per hour = $1,800 per frame	$5,400	$7,200

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pilatus Britten-Norman Limited: Docket No. 2002–CE–34–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models BN2T, and BN2T–4R airplanes, all serial numbers, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the left and right engine-mounting frame, which could lead to engine mount failure. Such failure could result in separation of the engine from the airplane.

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

Actions	Compliance	Procedures
(1) Inspect the left and right turbine engine-mounting frame, part number (P/N) NB–20–6853, or FAA-approved equivalent part number, for cracks.	Initially upon accumulating 1,000 hours time-in-service (TIS) on the engine mounting frame or within the next 50 hours TIS after the effective date of this AD, whichever occurs later. If no cracks are found on the initial inspection, repetitively inspect every 100 hours TIS.	In accordance with Britten-Norman Service Bulletin No. SB 282, Issue 2, dated June 1, 2002.

Actions	Compliance	Procedures
(2) If cracks are found during any inspection required in paragraph (d)(1) of this AD, replace the mounting frame with a new frame, P/N NB–20–6853, or FAA-approved equivalent part number.	Prior to further flight after the inspection in which any crack and/or damage is found. After installing the new frame, inspect as required as paragraph (d)(1) of this AD.	In accordance with Britten-Norman Service Bulletin No. SB 282, Issue 2, dated June 1, 2002.

Note 1: When you replace the engine-mounting frame, this AD requires you to inspect per paragraph (d)(1) of this AD upon accumulating 1,000 hours TIS.

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

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

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

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

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

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in British AD 002–05–2002, not dated.

Issued in Kansas City, Missouri, on September 6, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–23514 Filed 9–16–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–36–AD]

RIN 2120–AA64

Airworthiness Directives; Britten Norman (Bembridge) Limited BN2A Mk. III Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Britten Norman (Bembridge) Limited (Britten Norman) BN2A Mk. III series airplanes. This proposed AD would require you to repetitively inspect the rear engine-mounting frame for cracks and replace the frame if cracks are found. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this proposed AD are intended to detect and correct cracks in the rear engine-mounting frame, which could lead to engine mount failure. Such failure could result in separation of the engine from the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before October 24, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–36–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–36–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Britten Norman (Bembridge) Limited Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

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

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

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with

the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–36–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all Britten Norman BN2A Mk. III series airplanes. The CAA reports that the manufacturer has reported three occurrences of cracks in the rear engine-mounting frame detected by operators during routine inspections.

What Are the Consequences if the Condition Is Not Corrected?

These cracks could lead to engine mount failure with consequent separation of the engine from the airplane.

Is There Service Information That Applies to This Subject?

Britten Norman has issued Service Bulletin No. SB 281, Issue 1, dated May 1, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—Inspecting the rear engine-mount frame for cracks; and

—Replacing the frame if cracks are found.

What Action Did the CAA Take?

The CAA classified this service bulletin as mandatory and issued British AD Number 001–05–2002, not dated, in order to ensure the continued airworthiness of these airplanes in the United Kingdom.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

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

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

What Has FAA Decided?

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Britten Norman BN2A Mk. III series airplanes of the same type design that are on the U.S. registry;

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

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

What Would This Proposed AD Require?

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

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 7 airplanes in the U.S. registry.

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

We estimate the following costs to accomplish each proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 workhours × $60 per hour = $240	No cost for parts	$240	7 × $240 = $1,680

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

Labor cost	Parts cost	Total cost per airplane
30 workhours × $60 per hour = $1,800	$10,000	$11,800

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Britten Norman (Bembridge) Limited: Docket No. 2002–CE–36–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 airplanes, all serial numbers, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the rear engine-mounting frame, which could lead to engine mount failure with consequent separation of the engine from the airplane.

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

Actions	Compliance	Procedures
(1) Inspect the rear engine-mounting frame, part number (P/N) NB51–H–1021, or FAA-approved equivalent part number, for cracks.	Initially upon accumulating 1,000 hours time-in-service (TIS) on the engine mounting frame or within the next 50 hours TIS after the effective date of this AD, whichever occurs later. If no cracks are found on the initial inspection, repetitively inspect every 200 hours TIS.	In accordance with Britten-Norman Service Bulletin No. SB 281, Issue 1, dated May 1, 2002.
(2) If cracks are found during any inspection required in paragraph (d)(1) of this AD, replace the mounting frame with a new frame, P/N NB51–H–1021, or FAA-approved equivalent part number.	Prior to further flight after the inspection in which any crack and/or damage is found. After installing the new frame, inspect as required in paragraph (d)(1) of this AD.	In accordance with Britten-Norman Service Bulletin No. SB 281, Issue 1, dated May 1, 2002.

Note 1: When you replace the engine-mounting frame, this AD requires you to inspect per paragraph (d)(1) of this AD upon accumulating 1,000 hours TIS.

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

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

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

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

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

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Britten Norman (Bembridge) Limited Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in British AD 001–05–2002, not dated.

Issued in Kansas City, Missouri, on September 9, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–23515 Filed 9–16–02; 8:45 am]

BILLING CODE 4910–13–P

BROADCASTING BOARD OF GOVERNORS

22 CFR Part 507

Sunshine Act

AGENCY: The Broadcasting Board of Governors.

ACTION: Notice of proposed rulemaking.

SUMMARY: This regulation proposes to establish rules for implementing open meetings under the Sunshine Act for the Broadcasting Board of Governors (BBG or Agency).

DATES: Comments must be submitted on or before October 2, 2002.

ADDRESSES: Send comments concerning the proposed rule to Carol M. Booker, Legal Counsel, Broadcasting Board of Governors, 330 Independence Avenue, SW., Washington, DC 20237.

FOR FURTHER INFORMATION CONTACT: Carol M. Booker, Legal Counsel, at (202) 401–3736.

SUPPLEMENTARY INFORMATION: Pub. L. 103–236, the United States Broadcasting Act of 1994, created the BBG within the United States Information Agency (USIA). By law, the bipartisan board consisted of nine members—eight members who were appointed by the President, by and with the advice and consent of the Senate, and the USIA Director.

On October 21, 1998, President Clinton signed Pub. L. 105–277, the Omnibus Consolidated Emergency Supplemental Appropriations Act for Fiscal Year 1999. Contained as Division G of this legislation was the Foreign Affairs Reform and Restructuring Act of 1998, which reorganized the foreign affairs agencies of the U.S. Government. Under this reorganization, the Broadcasting Board of Governors became an independent Federal entity on October 1, 1999. Under the reorganization of the foreign affairs

agencies, the responsibilities of the Board remained intact, and the membership of the Board remained the same, except that the USIA Director was replaced by the Secretary of State.

The BBG has responsibility for oversight of all United States sponsored, non-military broadcasting to foreign countries. The BBG oversees the operations of the International Broadcasting Bureau (IBB), which includes the worldwide broadcasting services of the Voice of America (VOA), WORLDNET, the Office of Cuba Broadcasting (OCB), Engineering and Technical Operations. The BBG also oversees two grantee organizations, Radio Free Europe/Radio Liberty (RFE/RL) and Radio Free Asia (RFA). The Board members also serve as the members of the Board of Directors of both RFE/RL and RFA.

The Board's authorities include, among others:

- To review and evaluate the mission and operation of, and assess the quality, effectiveness, and professional integrity of, all such activities within the broad foreign policy objectives of the United States;
- To make and supervise grants for broadcasting and related activities of RFE/RL and RFA;
- To review, evaluate and determine, at least annually, the addition or deletion of language services; and
- To allocate funds appropriated for international broadcasting activities among the various elements of the IBB and grantees, subject to reprogramming notification.

In total, the BBG broadcasting entities transmit more than 2,000 hours of weekly programming in 61 languages to more than 100 million weekly listeners worldwide.

The Sunshine Act (5 U.S.C. 552b) is a Federal Law that requires meetings of Federal Agencies to remain public and in most cases the time, place and subject matter of the meeting should be announced prior to its occurrence.

In accordance with 5 U.S.C. 605(b), the BBG certifies that the rules do not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered significant regulatory action within the meaning of section 3(f) of Executive Order 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Dated: August 23, 2002.

Carol M. Booker,

Legal Counsel, Broadcasting Board of Governors.

List of Subjects in 22 CFR 507

Sunshine Act.

Accordingly, 22 CFR part 507 is proposed to be added to read as set forth below:

PART 507—RULES FOR IMPLEMENTING OPEN MEETINGS UNDER THE SUNSHINE ACT FOR THE BROADCASTING BOARD OF GOVERNORS

Sec.

507.1 General Policies.
507.2 Definitions.
507.3 Requirement for open meetings.
507.4 Grounds on which meetings may be closed.
507.5 Procedures for announcing meetings.
507.6 Procedures for closing meetings.
507.7 Reconsideration of opening or closing a meeting.
507.8 Recording keeping of closed meetings.

Authority: Pub. L. 93–129, 87 Stat. 956, 5 U.S.C. 552b.

§ 507.1 General policies.

The Broadcasting Board of Governors will provide the public with the fullest practical information regarding its decision making process while protecting the rights of individuals and its abilities to carry out its responsibilities.

§ 507.2 Definitions.

The following definitions apply:

(a) The term *agency* includes any establishment in the executive branch of the government headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency. The Broadcasting Board of Governors is a government agency headed by a nine-member board, eight of whom are appointed by the President with the advice and consent of the Senate, and the ninth being the Secretary of State. Therefore, the Broadcasting Board of Governors is an ''agency'' under these terms.

(b) The term *meeting* means the deliberation of this Board where such deliberations determine or result in the joint conduct or disposition of official Board business.

(c) The term *member* means an individual who belongs to the Board who has been appointed by the President and confirmed by the Senate or is the Secretary of State.

§ 507.3 Requirement of open meetings.

Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in § 507.4 every portion of every meeting of the agency shall be open to public observation.

§ 507.4 Grounds on which meetings may be closed.

The Board shall open every portion of every meeting of the agency for public observation except where the agency determines that such portion or portions of the meeting or the disclosure of such information is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and

(2) In fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practice of the agency;

(c) Disclose matters specifically exempted from disclosure by statute: *Provided,* that such statute:

(1) Requires that the matters be withheld from the public in such manner as to leave no discretion on the issue, or

(2) Established practical criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial on an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. This shall not apply in any instance where the Board has already disclosed to the public the content or the nature of its proposed action, or where the Board is required by law to make such disclosures on its own initiative prior to taking final Board action on such proposal; or

(i) Specifically concern the Board's issuance of a subpoena, or the Board's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the Board of a particular case of formal agency adjudication, or otherwise involving a determination on the record after opportunity for a hearing.

§ 507.5 Procedures for announcing meetings.

(a) In the case of each meeting, the Board shall make public, at least one week before the meeting, the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the Board to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the Board determine by a recorded vote that such meeting must be called at an earlier date, in which case the Board shall make public announcement of the time, place, subject matter of such meeting and whether it is open or closed to the public, at the earliest practical time.

(b) Immediately following the public announcement, the Board will publish it in the **Federal Register**.

§ 507.6 Procedures for closing meetings.

(a) The closing of a meeting shall occur only when:

(1) A majority of the membership of the Board votes to take such action. A separate vote of the Board members shall be taken with respect to each Board meeting, a portion or portions of which are proposed to be closed to the public pursuant to § 507.4, or with respect to any information which is proposed to be withheld under § 507.4. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held not more than thirty days after the initial meeting in such series. The vote of each Board member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interest may be directly affected by a portion of the meeting requests that the Board close such a portion to the public for any of the reasons referred to in § 507.4 (e), (f) or (g), the Board, upon request of any of its Board members, shall take a recorded vote, whether to close such portion of the meeting.

(b) Within one day of any vote taken, the Board shall make publicly available a written copy of such vote reflecting the vote of each member on the question and full written explanation of its action closing the entire or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation.

(c) The Board shall announce the time, place and subject matter of the meeting at least eight (8) days before the meeting.

(d) For every closed meeting, the Board's Legal Counsel shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Board.

§ 507.7 Reconsideration of opening or closing a meeting.

The time or place of a Board meeting may be changed following the public announcement only if the Board publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or a portion of a meeting, to the public, may be changed following the public announcement only if a majority of the Board members determines by a recorded vote that Board business so requires and that no earlier announcement of the change was possible, and the Board publicly announces such change and the vote of each member upon such change at the earliest practicable time.

§ 507.8 Recording keeping of closed meetings.

(a) The Board shall maintain an electronic recording of the proceedings of each meeting, or portion of a meeting, closed to the public.

(b) The Board, after review by the Chairman, shall make promptly available to the public in a place easily accessible to the public, a complete transcript or electronic record of the discussion of any item on the agenda, or any item of testimony of any witness received at the Board meeting, except for such item or items of such discussion or testimony as the Board determines to contain information which may be withheld under § 507.4. Copies of such record, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication. The Board shall maintain a complete transcript or electronic copy of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Board proceeding with respect to which the meeting or portion was held, whichever occurs later.

[FR Doc. 02–23484 Filed 9–16–02; 8:45 am]

BILLING CODE 8610–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2000–3C]

Public Performance of Sound Recordings: Definition of a Service

AGENCY: Copyright Office, Library of Congress.

ACTION: Request for comment.

SUMMARY: The Copyright Office of the Library of Congress is providing an opportunity to all interested persons to file comments to a motion requesting a stay of its final rule which clarifies that transmissions of a broadcast signal over a digital communications network are not exempt from copyright liability under section 114(d)(1)(A) of the Copyright Act.

DATES: Oppositions are due no later than Tuesday, September 24, 2002. Replies are due no later than Friday, September 27, 2002.

ADDRESSES: An original and five copies should be hand delivered to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone:

(202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On December 11, 2000, the Copyright Office issued a final rule to clarify that the transmission of a sound recording as part of a retransmission of an AM/FM broadcast signal over a digital communications network, such as the Internet, is subject to the limited digital performance right provided by section 106(6) of the Copyright Act, title 17 of the United States Code, and is not exempt under section 114(d)(1)(A)—the provision that specifically exempts a ''nonsubscription broadcast transmission.'' 65 FR 77292 (December 11, 2000).

Broadcasters have challenged the Copyright Office's final rule and its interpretation of the relevant statutory provisions. On January 25, 2001, Bonneville International Corp., Clear Channel Communications, Inc., Cox Radio, Inc., Emmis Communications Corp., Entercom Communications Corp., Susquehanna Radio Corp. and the National Association of Broadcasters (hereinafter, ''Broadcasters'') filed suit in the United States District Court for the Eastern District of Pennsylvania, seeking a declaratory ruling that the Office's rule was invalid. On cross summary judgment motions, the district court upheld the Copyright Office's interpretation of the statutory exemption, finding the interpretation both reasonable and permissible. *Bonneville Int'l, et al.* v. *Peters*, 153 F. Supp. 2d 763 (E.D. Pa. 2001). An appeal of the district court's decision is currently pending in the Third Circuit. *See Bonneville, et al.* v. *Peters*, Case No. 01–3720 (3d Cir.).

Under the Office's interpretation of the section 114(d)(1)(A) exemption, FCC-licensed broadcasters who retransmit their AM/FM programming over the Internet may publicly perform the sound recordings that are part of that programming under the section 114 statutory license provided that the licensee pays the appropriate copyright royalty fees and abides by the terms of the statutory license. The rates and terms for use of this license and for the statutory license for making ephemeral phonorecords for the purpose of facilitating digital transmissions were recently adopted by the Library of Congress. *See* Final Order and Rule, Docket No. 2000–9 CARP DTRA1&2, 67 FR 45239 (July 8, 2002). Under these rules, the first payment of copyright royalty fees for those operating under the section 112 and section 114 statutory licenses is due October 20, 2002.

Broadcasters, however, would like to stay the application of the Copyright Office's interpretation of section 114(d)(1)(A). To this end, Bonneville International Corp., Clear Channel Communications, Inc., Cox Radio, Inc., Emmis Communications Corp., Entercom Communications Corp., Salem Communications Corp., Susquehanna Radio Corp. and the National Association of Broadcasters (hereinafter, ''Movants'') filed a motion for stay [1] with the Copyright Office on September 11, 2002, asking ''the Register of Copyrights to stay the Register's December 11, 2000 final rule, 65 FR 77330 (December 11, 2000), to the extent that its application would otherwise require thousands of radio stations across the nation to pay retrospective royalties covering a four year period on October 20, 2002 and thereafter to make royalty payments on a monthly basis for broadcasting transmissions that Broadcasters contend are exempt from any such obligation pursuant to 17 U.S.C. 114(d)(1)(A).''

Because this rule was promulgated through a notice and comment proceeding in accordance with the Administrative Procedure Act, title 5 of the United States Code, Chapter 5, Subchapter II and Chapter 7, the Copyright Office is publishing this notice to announce the receipt of the motion to stay the December 11, 2000, final rule and to provide any person with an interest in this proceeding with an opportunity to comment on the motion.

Oppositions are due in the Copyright Office no later than close of business on Tuesday, September 24, 2002. Replies are due no later than Friday, September 27, 2002.

Dated: September 13, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02–23731 Filed 9–16–02; 8:45 am]

BILLING CODE 1410–31–M

[1] A copy of the motion to stay has been posted to the Copyright Office website at: *http://www.loc.gov/copyright/carp/motiontostay.pdf.* Alternatively, copies of the motion are available in the Office of the General Counsel for copying.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[ME–68–7017b; FRL–7378–2]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Redesignation of the Portland, Maine Moderate Ozone Nonattainment Area to Attainment, Determination of Attainment and Approval of the Associated Maintenance Plan; or Determination of Nonattainment as of November 15, 1997 and Reclassification of the Portland, Maine Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing in the alternative either to redesignate the Portland, Maine moderate ozone nonattainment area (the Portland Area) to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS), or to determine that the Portland Area did not attain by November 15, 1997, and thus must be reclassified to serious. The Portland Area is comprised of three counties in Maine; Cumberland, Sagadahoc, and York. EPA is proposing to determine that the Portland Area has attained the NAAQS. This determination is based on three years of complete quality-assured ambient air monitoring data for the 1999–2001 ozone seasons. The EPA is also proposing to approve the maintenance plan, submitted by the Maine Department of Environmental Protection as a revision to the Maine State Implementation Plan (SIP). Approval of the maintenance plan would put into place a plan for maintaining the 1-hour ozone standard for the next 10 years in the Portland Area. EPA is also proposing to approve Maine's 1999 attainment inventory for the Portland Area into the Maine State Implementation Plan. This inventory establishes a 1999 ozone emission inventory of volatile organic compounds and oxides of nitrogen for the Portland nonattainment area in Maine.

In the alternative, EPA is proposing to find that the Portland Area did not attain the 1-hour ozone NAAQS by November 15, 1997, the date set forth in the Clean Air Act (CAA) for moderate nonattainment areas that have received a 1-year attainment date extension under section 181(a)(5) of the CAA. If EPA finalizes this finding, the CAA provides that the Portland Area would be reclassified, at least to a serious nonattainment area. EPA is also taking

comment on a proposed schedule for submittal of the SIP revisions required for serious areas should the Portland Area be reclassified and a requirement that Maine develop an attainment demonstration that provides for attainment as expeditiously as practicable. Finally, EPA is proposing to grant an extended effective date for the determination of nonattainment and reclassification to give time for facilities to plan compliance with new construction permitting requirements.

DATES: Written comments must be received on or before October 17, 2002.

ADDRESSES: Written comments (two copies, if possible) should be sent to: David B. Conroy at the EPA Region I (New England) Office, One Congress Street, Suite 1100–CAQ, Boston, Massachusetts 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the following addresses: U.S. Environmental Protection Agency, Region 1 (New England), One Congress St., 11th Floor, Boston, Massachusetts, telephone (617) 918–1664, and at the Maine Department of Environmental Protection, Bureau of Air Quality Control, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, Maine 04333–0017. Please telephone in advance before visiting.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, (617) 918–1664.

SUPPLEMENTARY INFORMATION: On July 9, 2002, the State of Maine submitted a request that EPA redesignate the Portland ozone nonattainment area (the Portland Area) to attainment. The State of Maine simultaneously submitted its proposed maintenance plan for the Portland Area and requested that EPA parallel process its approval of that plan as a SIP revision. The State of Maine also submitted a 1999 attainment emission inventory for the Portland Area and requested that EPA parallel process its approval of that inventory as a SIP revision. Maine's redesignation request is based on the area attaining the 1-hour ozone NAAQS for the period 1999–2001.

On August 1, 2002, Maine Department of Environmental Protection (Maine DEP) held a public hearing on its proposed redesignation request, maintenance plan, and 1999 attainment inventory for the Portland Area. By letter dated August 14, 2002, EPA transmitted its comments to the Maine DEP on these SIP elements. EPA gave Maine DEP comments designed to refine Maine's submission, and DEP expects to address these comments prior to finalization and submission to EPA of the redesignation request, maintenance plan, and 1999 attainment inventory for incorporation into the SIP. But the SIP revision that Maine has proposed includes all the basic elements of what EPA is proposing to approve.

On August 13 and 14, 2002, however, the ozone monitor for Kennebunkport, Maine had preliminary ozone data readings over the 1-hour NAAQS. These two exceedances may result in Maine violating the NAAQS for the period 2000–2002. Although these monitor readings have yet to be quality assured,[1] EPA has preliminary evidence that this area has violated the NAAQS for the period 2000–2002, and therefore, may no longer qualify for redesignation. Pursuant to a consent decree in *Sierra Club and GASP* v. *Whitman,* No. 1:00CV02206 (D.D.C), EPA is obligated to act this fall to determinate whether the Portland Area attained as of its attainment date, or, alternatively, to approve a request to redesignate the Portland Area. Therefore, in the alternative EPA is proposing not to approve this redesignation request and to instead determine, pursuant to section 182(b) of the CAA, that the Portland Area failed to attain the 1-hour ozone NAAQS by its attainment date of November 15, 1997. This finding, if it becomes final, would result in the reclassification of the Portland moderate area to serious, as explained in more detail below.

In this document, EPA will cover the following:

I. What action is EPA proposing to take on the determination of attainment, the redesignation request, the maintenance plan and the 1999 attainment inventory?

II. Why is EPA taking this action on the redesignation request and maintenance plan?

III. What is the background for this redesignation action?

IV. What would be the effect of the redesignation?

V. What criteria must be met to redesignate an area to attainment?

VI. What about the attainment demonstration, reasonable further progress, reasonably available control measure requirements and other requirements of section 172(c)(9)?

VII. What is EPA's analysis of the State of Maine's redesignation request and maintenance plan?

VIII. What is an attainment emission inventory and why is EPA proposing to approving it?

IX. What action is EPA proposing in the alternative to approving the redesignation request, maintenance plan and 1999 attainment inventory?

I. What Action Is EPA Proposing To Take on the Determination of Attainment, the Redesignation Request, the Maintenance Plan and the 1999 Attainment Inventory?

Pursuant to a request from the State of Maine, EPA is proposing to determine that the Portland moderate area is attaining the 1-hour ozone NAAQS and to redesignate the Portland moderate ozone area from nonattainment to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS). We are also proposing to approve the Portland Area's proposed maintenance plan submitted by Maine DEP for approval by EPA as a SIP revision. This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its SIP. If the proposed maintenance plan is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made EPA will approve the state's maintenance plan, if EPA concludes that the area continues to attain the NAAQS. Before EPA can approve this plan, Maine must finally adopt the Portland Area's maintenance plan and formally submit that plan to EPA for incorporation into the SIP. EPA is also proposing to approve the proposed 1999 attainment inventory for the Portland Area into the Maine State Implementation Plan. This request will establish the 1999 ozone emission inventories of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) emissions for the Portland ozone nonattainment area in Maine.

II. Why Is EPA Taking This Action on the Redesignation Request and Maintenance Plan?

EPA is proposing to take this action based on its evaluation of the SIP elements submitted by the State and to preserve the option of approving this plan if EPA determines that the redesignation request and maintenance plan meet the requirements of the Clean Air Act (CAA).

III. What Is the Background for This Redesignation Action?

On November 15, 1990, the CAA amendments were enacted. Pursuant to section 107(d)(4)(A), on November 6, 1991 (56 FR 56694), the Maine counties of Cumberland, Sagadahoc, and York

[1] Maine DEP and EPA are currently this data and performing the appropriate quality assurance and review procedures. Maine DEP and EPA are also evaluating whether exceptional events (*e.g.,* forest fires) led to the elevated readings recorded during the August 13–14, 2002 time period.

were designated as the Portland moderate ozone nonattainment area.

The Portland Area has recorded three years of complete quality-assured, violation-free ambient air quality monitoring data for the 1999 to 2001 ozone seasons, thereby demonstrating that the area has attained the 1-hour ozone NAAQS for that period. On July 9, 2002, Maine DEP submitted a request that EPA redesignate the Portland Area from nonattainment to attainment of the 1-hour ozone standard. The Maine DEP also requested that EPA parallel process its approval of the maintenance plan in concert with the State of Maine's procedures for amending its SIP.

Preliminary ozone data from 2002, however, may indicate that the Portland Area is once again violating the 1-hour ozone NAAQS. Maine DEP and EPA are currently evaluating these data and performing the appropriate quality assurance and review procedures. If the Portland Area is indeed violating the 1-hour ozone NAAQS, EPA will not proceed to finalize approval of our determination of attainment, Maine's redesignation request, maintenance plan and 1999 attainment inventory.

IV. What Would Be the Effect of This Redesignation?

The redesignation would change the official designation of the Maine counties of Cumberland, Sagadahoc, and York from nonattainment to attainment for the 1-hour ozone standard. It would also put into place a plan for maintaining the 1-hour ozone standard for the next 10 years. This maintenance plan includes contingency measures to address future violations of the 1-hour ozone NAAQS.

V. What Criteria Must Be Met To Redesignate an Area to Attainment?

The Act provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under Section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175(A); and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

The EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 on April 16, 1992 (57 FR 13498) and supplemented on April 28, 1992 (57 FR 18070). The EPA has provided further guidance on processing redesignation requests in the following documents:

(1) ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994, (Nichols, October 1994).

(2) ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide, (CO) Nonattainment Areas,'' D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

(3) ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993.

(4) ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act Deadlines,'' John Calcagni, Director, Air Quality Management Division, October 28, 1992. (Calcagni, October 1992).

(5) ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992.

(6) ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' G.T. Helms, Chief Ozone/Carbon Monoxide Programs Branch, June 1, 1992.

(7) State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498), April 16, 1992.

VI. What About the Attainment Demonstration, Reasonable Further Progress, Reasonably Available Control Measure Requirements and Other Requirements of Section 172(c)(9)?

As mentioned above EPA is proposing to determine that the Portland Area has attained the one-hour ozone NAAQS. On the basis of this determination of attainment, EPA is also proposing to determine that certain attainment demonstration requirements (section 182(b)(1)), along with certain other related requirements, of Part D of Title I of the Clean Air Act, specifically the section 172(c)(1) requirements and the section 172(c)(9) contingency measure requirements, are no longer applicable to the Portland Area. The EPA believes it is reasonable to interpret the provisions regarding attainment demonstrations, along with certain other related provisions, so as not to require State Implementation Plan (SIP) submissions, as described below, if an ozone nonattainment area subject to those requirements is in fact in attainment of the ozone standard (attainment of the NAAQS is demonstrated with three years of complete, quality-assured, air quality monitoring data). *See* 65 FR 3630, 3631–32 (Jan. 24, 2000). The EPA is basing this determination upon the most recent three years of complete, quality-assured, ambient air monitoring data for the 1999 to 2001 ozone seasons that demonstrate that the ozone NAAQS has been attained in the Portland Area. Maine had also attained during the 1998–2000 three-year period. EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS) for the Portland nonattainment area in the State of Maine from 1999 through 2001. On the basis of that review EPA proposes to conclude that Portland has attained the 1-hour ozone standard during the period from 1999–2001.[2]

The design value for the Portland nonattainment area, computed using ozone monitoring data for 1999 through 2001 is 0.12 ppm. The average annual number of expected exceedances is 0.7 for that same time period. An area is considered in attainment of the standard if the average annual number of expected exceedances is less than or equal to 1.0. Thus, based on 1999 through 2001, the Portland Area did not record violations of the 1-hour air quality standard for ozone.

Subpart 2 of part D of Title I of the Clean Air Act contains various air quality planning and SIP submission requirements for ozone nonattainment areas. The EPA believes it is reasonable to interpret provisions regarding reasonable further progress (RFP) and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area, subject to those requirements, is monitoring attainment of the ozone standard. EPA

[2] As noted above, EPA will evaluate whether the Portland Area continues to attain based on 2000–2002 data before finalizing this action.

has interpreted the general provision of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum dated May 10, 1995 from John S. Seitz, Director, Office of Air Quality Planning and Standards to the Regional Air Division Directors, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' EPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner. *See Sierra Club* v. *EPA,* 99 F. 3d 1551 (10th Cir. 1996).

The attainment demonstration requirements of section 182(b)(1) require that the plan provide for ''such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act.'' If an area has in fact monitored attainment of the standard, EPA concludes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I where EPA stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached,'' (57 FR at 13564, see also September 1992 Calcagni memorandum at page 6). Upon attainment of the NAAQS, the focus of state planning efforts shifts to maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to other related provisions of subpart 2, including the contingency measure requirements of section 172(c)(9) of the Clean Air Act. The EPA has previously interpreted the contingency measure requirements of section 172(c)(9) as no longer being applicable once an area has attained the standard since those ''contingency measures are directed at ensuring RFP and attainment by the applicable date'' (57 FR 13564).

The state must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the 1-hour ozone standard must be consistent with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the 1-hour ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

Furthermore, the determinations of these actions will not shield an area from future EPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas (*see* section 110(a)(2)(D)). EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) to require such emission reductions as necessary and appropriate to deal with transport situations. Therefore, the requirements of section 172(c)(1) and 182(b)(1) concerning the submission of the ozone attainment demonstration and reasonably available control measure requirements and the requirements of section 172(c)(9) concerning contingency measures for reasonable further progress or attainment will not be applicable to the area (*i.e.* EPA is proposing to find that the requirements of section 182(b)(1) and related requirements of section 172(c)(1) and 172(c)(9) do not apply to the area), if the Agency ultimately approves Maine's redesignation request.

VII. What Is EPA's Analysis of the State of Maine's Redesignation Request and Maintenance Plan?

1. The Area Must Be Attaining the 1-Hour Ozone NAAQS

For ozone, an area may be considered attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and appendix H, based upon three complete consecutive calendar years of quality assured monitoring data. A violation of the 1-hour ozone NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1.05 per year at a monitoring site. A daily exceedance occurs when the maximum hourly ozone concentration during a given day is 0.125 parts per million (ppm) or higher. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in AIRS. The monitors should have remained at the same location the duration of the monitoring period required for demonstrating attainment. The Maine DEP submitted ozone monitoring data for the April through September ozone season from 1999 to 2001. These data have been quality assured and recorded into AIRS. During the 1999 to 2001 time period, the design value is 0.12 ppm. The average annual number of expected exceedances is 0.7 for that same time period. Maine also monitored attainment of the standard from 1998–2000. Information concerning these monitors and monitoring data is available in the docket for this action. Therefore, the first criterion of section 107(d)(3)(E) has been satisfied based on 1999–2001 data. EPA will evaluate whether this is still true based on the available 2000–2002 data before final approval is granted.

2. The Area Must Have a Fully Approved SIP Under Section 110(k); and the Area Must Have Met All Applicable Requirements Under Section 110 and Part D

General SIP elements are delineated in section 110(a)(2) of Title I, part A. These requirements include but are not limited to the following: submittal of a SIP that has been adopted by the state after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program, provisions for part C, Prevention of Significant Deterioration (PSD), and part D, New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring and reporting; and provisions for public and local agency participation. For the purposes of redesignation, the Maine SIP was reviewed to ensure that all requirements under the amended CAA were satisfied through approved SIP provisions for the Portland Area. EPA has concluded that the State of Maine's SIP for the Portland Area satisfies all of the Section 110 SIP requirements of the CAA.

Before the Portland Area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D. Under part D, an area's classification determines the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under Table 1 of section 181(a). As described in the General Preamble for the Implementation of Title 1, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501, April 16, 1992). The Portland Area was classified

as moderate ozone nonattainment. Therefore, in order to be redesignated, the State of Maine must meet the applicable requirements of subpart 1 of part D—specifically section 172(c) and 176, as well as the applicable requirements of subpart 2 of part D.

With regard to the section 172(c) requirements, EPA has determined that the redesignation request received from Maine DEP for the Portland Area has satisfied all the relevant submittal requirements under section 172(c) necessary for the area to be redesignated.

Under section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved. under title 23 U.S.C. or the Federal Transit Act (''transportation conformity''), as well as to all other federally supported or funded projects (''general conformity''). Section 176 further provides that state conformity revisions must be consistent with federal conformity regulations that the CAA required the EPA to promulgate. The EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions, to comply with the conformity provision of the CAA continues to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of federally approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under federal rules if state rules are not yet approved, the EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. Consequently, EPA may approve the ozone redesignation request for the Portland Area without a fully approved conformity SIP. See Detroit, Michigan, carbon monoxide redesignation published on June 30, 1999 (64 FR 35017), Cleveland-Akron-Lorain ozone redesignation published on May 7, 1996 (61 FR 20458), and Tampa, Florida, published on December 7, 1995 (60 FR 52748). EPA did approve the State of Maine's general conformity SIP on September 23, 1997 (62 FR 49608). *Wall* v. *EPA,* 265 F. 3d 426, 438–440 (6th Cir. 2001).

By proposing approval of the maintenance plan for the Portland Area, EPA is also proposing to approve the 2012 Motor Vehicle Emissions Budgets (MVEB) and find them adequate for maintenance of the one-hour ozone NAAQS. The proposed Year 2012 Motor Vehicle Emissions Budgets are 16.654 tons per summer weekday for volatile organic compounds, and 26.450 tons per summer day for oxides of nitrogen. Upon promulgation of the final approval of the maintenance plan for the Portland Area, the MVEB's for both VOC and NO_X contained in the plan shall be the applicable budgets that must be used for purposes of demonstrating transportation conformity. These budgets shall replace the VOC budget of the 15% plan as well as the so-called ''NO_X Build/No Build Test'' currently being used to demonstrate transportation conformity in the Portland Area.

With regard to the section 182 requirements, the Portland Area is classified as moderate ozone nonattainment and therefore, the section 182(b) requirements apply. In accordance with the September 17, 1993 EPA guidance memorandum, the requirements which came due prior to the submission of the request to redesignate the area must be fully approved into the SIP before or at the time of the request to redesignate the area to attainment. Table 1 below contains the control programs being relied on in Maine's SIP, including the section 182(b) requirements that the Portland Area must meet. As detailed in Table 1, below, EPA has determined that Maine's SIP meets all the relevant requirements under section 182. Thus, EPA proposes to find that the Maine SIP for the Portland Area is fully approved and has met all applicable requirements under section 110 and Title I, Part D of the Act.

TABLE 1.—CONTROL MEASURES IN THE PORTLAND OZONE NONATTAINMENT AREA

Name of control measure	Type of measure	Approval status
On-board refueling vapor recovery	Federal Rule	Promulgated at 40 CFR 86.
Federal motor vehicle control program	Federal Rule	Promulgated at 40 CFR 86.
Federal non-road heavy duty diesel engines	Federal Rule	Promulgated at 40 CFR 89.
Federal non-road gasoline engines	Federal Rule	Promulgated at 40 CFR 90.
Automotive Refinishing	Federal Rule	Promulgated at 40 CFR 59, subpart B.
Consumer & commercial products	Federal Rule	Promulgated at 40 CFR 59, subpart C.
AIM Surface Coatings	Federal Rule	Promulgated at 40 CFR 59, subpart D.
Contingency Measures	Section 172(c)(9) CAA Requirement.	Not applicable based on the area attaining the NAAQS.
Base Year Emissions Inventory	Section 182 CAA Requirement.	SIP approved (62 FR 9081; 2/28/97).
Emissions Statements	Section 182 CAA Requirement.	SIP approved (60 FR 2524; 1/10/95).
New Source Review	Section 182 CAA Requirement.	SIP approved (61 FR 5690; 2/14/96).
15% VOC Reduction Plan and Attainment Demonstration	Section 182 CAA Requirement.	Not applicable based on the area attaining the NAAQS.
VOC RACT pursuant to sections 182(a)(2)(A) and 182(b)(2)(B) of CAA.	Section 182 CAA Requirement.	SIP approved (57 FR 3046; 2/13/92) (58 FR 15281; 3/22/93) (59 FR 31154; 6/17/94) (60 FR 33730; 6/29/95).
VOC RACT pursuant to sections 182(b)(2)(A) and (C) of CAA.	Section 182 CAA Requirement.	SIP approved (65 FR 20749; 4/18/00) (67 FR 35439; 5/20/02).
NO_X RACT	Section 182 CAA Requirement.	SIP approved at 40 CFR 52.1020(c)(46).
Vehicle inspection and maintenance program	Ozone Transport Region Requirement.	SIP approved (66 FR 1871; 1/10/01).

TABLE 1.—CONTROL MEASURES IN THE PORTLAND OZONE NONATTAINMENT AREA—Continued

Name of control measure	Type of measure	Approval status
Stage II Vapor Recovery	Ozone Transport Region Requirement.	SIP approved (61 FR 53636; 10/15/96).
Low RVP Gasoline	State Initiative	SIP approved (67 FR 10099; 3/6/02).

3. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

The improvement in air quality must be due to permanent and enforceable reductions in emissions resulting from the SIP, federal measures, and other state adopted measures. The improvement in air quality in the Portland Area is due to emissions reductions from reductions in point, stationary, area, and mobile sources. Point source reductions are due to implementation of RACT in federally enforceable rules, as well as additional NO_X controls implemented in upwind areas. Additional stationary area source controls were implemented for the following categories: automobile refinish coatings, consumer products, architectural and industrial maintenance coatings, municipal solid waste landfills, and stage II vapor recovery. Several programs were implemented to reduce highway vehicle emissions, such as the Federal Motor Vehicle Control Program (FMVCP), a Portland-specific summertime gasoline 7.8 psi volatility limit, and a motor vehicle inspection and maintenance program. Nonroad source programs include federal rules for large and small compression-ignition engines, small spark-ignition engines, and recreation spark-ignition marine engines.

Thus, EPA proposes to find that Maine has satisfied the criteria of section 107(d)(3)(E) that the improvement in air quality must be due to permanent and enforceable reductions in emissions resulting from the SIP, federal measures, and other state adopted measures.

4. The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan is a SIP revision which provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. The EPA memorandum, dated September 4, 1992 from John Calcagni, provides additional guidance on the required content of a maintenance plan. An ozone maintenance plan should address the following five areas: the attainment emissions inventory, maintenance demonstration, monitoring network, verification of continued attainment and a contingency plan. The attainment emissions inventory identifies the emissions level in the area which is sufficient to attain the 1-hour ozone NAAQS, and includes emissions during the time period which had no monitored violations. Maintenance is demonstrated by showing that future emissions will not exceed the level established by the attainment inventory. Provisions for continued operation of an appropriate air quality monitoring network are to be included in the maintenance plan. The state must show how it will track and verify the progress of the maintenance plan. Finally, the potential contingency measures ensure prompt correction of any violation of the ozone standard.

The Maine DEP included a 1999 emissions inventory as the attainment inventory. The maintenance plan provides emissions estimates from 1999 to 2012 for VOCs and NO_X (see Tables 2 and 3, below). The emissions in the Portland Area are projected to decrease from the 1999 levels. The results of the analysis show that the Portland Area is expected to maintain the air quality standard for at least 10 years into the future after redesignation.

TABLE 2.—VOC EMISSIONS FROM 1999 TO 2012 IN THE PORTLAND AREA

Source category	1999 attainment	2005 projected	2012 projected
Point sources	4.307	4.588	4.896
Area Sources	25.422	29.449	35.544
Mobile Sources	63.783	45.437	31.67
Totals	93.512	79.474	71.11

TABLE 3.—NO_X EMISSIONS FROM 1999 TO 2012 IN THE PORTLAND AREA

Source category	1999 attainment	2005 projected	2012 projected
Point sources	15.0	14.9	14.9
Area Sources	1.768	1.724	1.685
Mobile Sources	85.978	66.356	41.718
Totals	102.746	82.98	58.303

The State of Maine's plan commits to continue the operation of the monitors in the Portland Area in accordance with 40 CFR part 58. The State of Maine's plan also states that it will track maintenance by reviewing the air quality data during the maintenance period. As stated earlier, the plan also includes motor vehicle emission budgets to be used for transportation conformity purposes for the Portland Area upon the effective date of the final approval of the maintenance plan.

Section 175A(b) of the CAA also requires the Maine DEP to submit a revision of the SIP eight years after the original redesignation request is

approved to provide for maintenance of the NAAQS for an additional 10 years following the first 10 year period. The State of Maine recognizes that it is required to submit such a SIP revision 8 years after this request and maintenance plan are approved.

The contingency plan for the Portland Area consists of attainment tracking and contingency measures to be implemented in the event that a violation of the ozone NAAQS occurs in the Portland Area. Attainment tracking will be utilized in the Portland Area. The state will use air quality monitoring using the existing ozone monitoring network, and if a violation of the one-hour NAAQS is monitored at any ozone site within the Portland Area, the state will inform EPA that a violation has occurred, review data for quality assurance, and conduct a technical analysis including an analysis of meteorological conditions leading up to and during the exceedences contributing to the violation to determine local culpability. The state will submit a preliminary analysis to the EPA and afford the public the opportunity for review and comment. The State will also solicit and consider EPA's technical advice and analysis before making a final determination on the cause of the violation. The trigger date will be the date that the state certifies to the EPA that the air quality data are quality assured, and that the exceedences contributing to the violation are determined not to be attributable to transport from upwind areas which will be no later than 180 days after the violation is monitored. In the event EPA disagrees with the state's final determination and believes that the violation was not attributable to transport, but to the Portland Area's own emissions, authority exists under section 179(a) and 110(k), to require the area to implement contingency measure, and section 107, to redesignate the area to nonattainment.

If the triggering event, a violation of the ozone NAAQS determined not to be attributable to transport from upwind areas, is confirmed, the state will implement one or more appropriate contingency measures. The contingency measure(s) will be selected by the Governor or the Governor's designee within 6 months of a triggering event, (*i.e.*, a monitored one-hour ozone NAAQS violation determined not to be attributable to transport). Possible contingency measures are listed below.

Maine will utilize the model rules developed by the Ozone Transport Commission (OTC) as its principal contingency measures. In December 1999, EPA informed several jurisdictions in the Ozone Transport Region that their State Implementation Plans would not provide sufficient emission reductions to attain the one-hour ozone standard by 2005 and 2007. EPA indicated it would grant states additional time to implement new measures if those states pursued regional strategies to control ozone and its precursors. Within this context, the OTC agreed to begin addressing the emission shortfalls by developing model rules for its member states. These model rules will provide a consistent framework for air pollution regulation throughout the region.

On March 28, 2001, the OTC approved final model rules for the following source categories: consumer products; portable fuel containers; architectural and industrial maintenance coatings; solvent cleaning operations; mobile equipment repair and refinishing; and additional nitrogen oxides controls for industrial boilers, cement kilns, stationary reciprocating engines, and stationary combustion engines. Thus, EPA proposes to find that the contingency measures meet the provisions of the Act.

VIII. What Is the Attainment Emission Inventory and Why Is EPA Proposing To Approve It?

An attainment emissions inventory is an inventory of the ozone precursors VOC and NO_X prepared for a typical summer day during a year that coincides with one of the years that the requesting area monitored attainment of the one hour ozone standard. As discussed elsewhere in this notice, the Maine DEP recorded air quality monitoring data during 1998, 1999 and 2000 that indicated the Portland Area met the one hour ozone standard during that time-frame. Therefore, Maine DEP prepared a 1999 emission inventory for the Portland ozone nonattainment area, and submitted it as part of its July 9, 2002 redesignation request for this area. This portion of the notice discusses our review of the inventory, and is divided into three parts: (1) Background Information, (2) Summary of 1999 Inventory, and (3) Results of our Review.

1. Background Information

Under the CAA as amended in 1990, states have the responsibility to inventory emissions contributing to nonattainment of a NAAQS, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. Further information on emission inventories and their purpose can be found in the document, ''Emission Inventory Requirements for Ozone State Implementation Plans,'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991, and in a September 4, 1992 memorandum from John Calcagni, Director of EPA's Air Quality Management Division, entitled, ''Procedures for Processing Requests to Redesignate Areas to Attainment.'' Copies of these two documents are available from EPA-New England at the address listed in the address section of this notice.

Those states containing ozone nonattainment areas classified as marginal to extreme were required under section 182(a)(1) of the CAA to submit a 1990 base year emissions inventory of ozone precursors by November 15, 1992. Maine DEP submitted a 1990 base year emission inventory to EPA, which we approved by a direct final rule published in the **Federal Register** on February 28, 1997 (62 FR 9081). On July 9, 2002, Maine DEP submitted a proposed redesignation request to EPA for the Portland Area that contained a proposed 1999 attainment inventory for the area. Our analysis of the 1999 inventory appears below.

2. Summary of 1999 Inventory

The Clean Air Act requires states to observe certain procedural requirements in developing emission inventory submissions to the EPA. Section 110(a)(2) of the Clean Air Act provides that each emission inventory submitted by a state must be adopted after reasonable notice and public hearing.[3] On August 1, 2002, the Maine DEP held a public hearing on the state's proposed redesignation request for the Portland Area, which included the 1999 emission estimate of ozone precursors.

EPA reviewed Maine DEP's 1999 emission inventory for the Portland Area to determine whether it conformed with our guidance on preparation of stationary point, area, on-road mobile, off-road mobile and biogenic emission estimates. Each of these inventory sections is discussed below.

Point Sources: Maine DEP considers any facility that emits 10 tons per year (tpy) or more of VOC or NO_X a point source of emissions, and estimates emissions for such facilities primarily by using information contained in emission statement questionnaire sent

[3] Also section 172(c)(7) of the Clean Air Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

annually to these facilities. The questionnaires require the reporting of various process related parameters such as fuel and raw material consumption, and pollution control equipment efficiency. The DEP uses this information in conjunction with emission factors and stack test data to calculate emissions. The Maine DEP verifies the information reported on the questionnaires during inspections conducted at the facilities.

Area Sources: Maine DEP used EPA recommended procedures to estimate emissions from area sources, which are essentially small facilities which in their aggregate may emit substantial emissions, but do not do so individually (*e.g.*, gasoline stations, automobile refinishers, *etc*). Our recommended techniques generally suggest use of per capita or per employee emission factors in conjunction with levels of activity to determine approximate levels of emissions from these sources. Emissions from area sources contribute substantially to total VOC emissions, but not much to total NO_X emissions.

Non-road mobile sources: Non-road mobile sources are engines that operate in a wide variety of applications, including farm and construction equipment, lawn and garden equipment, marine vessels, aircraft, and locomotives. Maine DEP used EPA's draft non-road air emission estimation model to determine emissions from most equipment types in this sector. This model estimates emissions for all non-road equipment types except locomotives, aircraft, and commercial marine vessels, so Maine DEP calculated emissions from these sources separately. Although this model is still draft, it presents a better means of estimating emissions for this sector than previous guidance issued by EPA in 1991.

On-road mobile sources: Maine DEP calculated emissions from this sector using data on vehicle miles traveled (VMT) collected by the State's Department of Transportation (Maine-DOT), and the EPA's MOBILE6 emission factor model. Maine-DOT used a variety of means to estimate VMT in Maine, including use of traffic counts and household and mass transit surveys. Maine DEP used a combination of state specific and national default data as inputs to the MOBILE6 model.

Biogenic Sources: Biogenic sources are naturally occurring emissions from various forms of plant life. Maine DEP used the EPA's biogenic emission information system (BEIS) to calculate these emissions, which are primarily VOC emissions. Maine DEP used data from the National Weather Service as input to the BEIS model.

3. Results of Our Review

Maine DEP has submitted a complete inventory for the Portland Area containing point, area, on-road mobile, non-road mobile, and biogenic source data, and accompanying documentation of how these estimates were prepared. The September 4, 1992 memorandum from John Calcagni referenced above recommends that ozone attainment inventories consist of typical summer day estimates of VOC and NO_X emissions prepared in accordance with the current inventory guidance available at the time the attainment inventory is submitted. The current inventory guidance is the body of work produced by the Emissions Inventory Improvement Program (EIIP), which is a joint effort between EPA and representatives from various state environmental agencies. The emission estimates prepared by the Maine DEP are presented in table 4:

TABLE 4.—1999 OZONE SEASONAL EMISSIONS IN TONS PER DAY

	VOC	NO_X
Point	3.70	15.0
Area	26.0	1.8
On-road	36.8	65.0
Off-road	27.0	20.9
Biogenic	197.5	
Total	291.0	102.7

Maine DEP has prepared an emissions inventory that meets the recommendations outlined in the EIIP guidance for a comprehensive, accurate, and current inventory of actual ozone precursor emissions for the Portland nonattainment area. EPA proposes to fully approve the 1999 ozone emission inventory submitted by Maine for the Portland nonattainment area. The calculations and assumptions used to develop this inventory are explained in Maine DEP's submittal and are available in the record supporting this proposal.

IX. What Action Is EPA Proposing in the Alternative To Approving the Redesignation Request, Maintenance Plan and 1999 Attainment Inventory?

Under section 107(d)(1)(C) of the CAA, each ozone area designated nonattainment for the 1-hour ozone standard prior to enactment of the 1990 CAA amendments, such as the Portland Area, was designated nonattainment by operation of law upon enactment of the 1990 amendments. Under section 181(a) of the Act, each ozone area designated nonattainment under section 107(d) was also classified by operation of law as ''marginal,'' ''moderate,'' ''serious,'' ''severe,'' or ''extreme,'' depending on the severity of the area's air quality problem. The design value for an area, which characterizes the severity of the air quality problem, is represented by the highest design value at any individual monitoring site (*i.e.*, the highest of the fourth highest 1-hour daily maximums in a given three-year period with complete monitoring data). Ozone nonattainment areas with design values between .138 and .160, such as the Portland area, were classified as moderate.

In addition, under section 182(b)(1)(A) of the CAA, states containing areas classified as moderate nonattainment were required to submit SIPs to provide for certain controls, to show progress toward attainment, and to provide for attainment of the ozone standard as expeditiously as practicable but no later than November 15, 1996. Moderate area SIP requirements are found primarily in section 182(b) of the CAA.

With regard to reclassification for failure to attain, section 182(b)(2)(A) of the Clean Air Act provides in relevant part:

> Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. * * * [A]ny area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of —
>
> (i) the next higher classification for the area, or
>
> (ii) the classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

Furthermore, section 182(b)(2)(B) of the Act provides that:

> The Administrator shall publish a notice in the **Federal Register**, no later than 6 months following the attainment date, identifying the area that the Administrator has determined under subparagraph A as having failed to attain and identifying the reclassification, if any, described under subparagraph (a).

Section 182(b)(2) of the Act requires EPA to determine whether an ozone nonattainment area attained the one-hour ozone NAAQS by its statutory attainment date, or any extension provided for in the Act. If EPA is unable to approve Maine's redesignation request based on current attainment in the Portland Area, we propose in the alternative to find the Portland Area did not attain as of its required attainment date, November 15, 1997.

1. Proposed Determination of Nonattainment as of November 15, 1997

Table 5 lists the number of exceedances of the 1-hour ozone NAAQS for each monitor in the Portland nonattainment area for the period 1995–1997. The ozone design value for each monitor is also listed for the same period. For the three year period ending in 1997 (i.e., 1995–1997), the design value for the Portland Area was 0.126 ppm. Therefore, if EPA does not approve a redesignation for Portland pursuant to section 107(d)(3) of the CAA, EPA proposes to find that the Portland Area did not attain the 1-hour NAAQS by its extended attainment date of November 15, 1997, the statutory attainment deadline for this area.[4]

TABLE 5.—AIR QUALITY MONITORING DATA FOR THE PORTLAND AREA 1995–1997

Site ID	Monitoring site	Total exceedances 1995–1997	Annual average expected exceedances	Design value (ppm)
23–005–2003	Cape Elizabeth	3	1.0	0.121
23–023–0003	Phippsburg	4	1.5	0.125
23–031–2002	Kennebunkport	4	1.4	0.125
23–031–3002	Kittery	4	1.9	0.126

* Only monitors with three complete years of data were used for these calculations.

2. Reclassification

Section 181(b)(2)(A) of the CAA requires that, when an area is reclassified for failure to attain, its reclassification be the higher of the next higher classification or the classification applicable to the area's ozone design value at the time the notice of reclassification is published in the **Federal Register**. Section 181(b)(2)(A)(ii) provides that no area shall be reclassified as Extreme. The Portland Area is a moderate nonattainment area. Its design value at the time of its attainment date, November 15, 1997, was 0.126 ppm, and based on preliminary ozone data from 2002, that have not yet been quality-assured, its current design value appears to be 0.126 ppm. Therefore, if EPA finalizes the finding of failure to attain, the Portland Area would be reclassified, by operation of law, as a serious nonattainment area.

Section 182(i) states that the Administrator may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency for submission of the new requirements applicable to an area which has been reclassified. An area reclassified to serious is required to submit SIP revisions addressing the serious area requirements for the 1-hour ozone NAAQS in section 182(c).

If the Portland Area is reclassified to serious, EPA must also address the schedule by which Maine is required to submit SIP revisions meeting the serious area requirements. EPA is proposing to require that the state submit SIP revisions containing all the serious area requirements no later than 12 to 18 months after final action on the reclassification. EPA is soliciting comments pertaining to the time frame for SIP submission. This submission would include an attainment demonstration and all additional measures required by section 182(c) of the CAA. The additional measures include, but are not limited to, the following: (1) Stage II vapor recovery in the nonattainment area, (2) the new source review offset requirements would increase from 1.15 to 1 to 1.2 to 1, (3) the definition of a major source of NO_X would decrease from 100 tons per year to 50 tons per year,[5] and (4) additional rate of progress requirements.

Where an attainment date has already passed and thus is impossible to meet, EPA believes that the Administrator may adjust the date to assure fair treatment in accordance with Congressional intent. 64 FR 13390 (March 18, 1999), 66 FR 15587–88 (March 19, 2001). Since the statutory attainment date of 1999 for serious areas has already passed, EPA is proposing to require that Maine DEP submit an attainment demonstration for the Portland Area that provides for attainment as expeditiously as practicable. It is currently impossible for DEP to meet the 1999 attainment deadline. Therefore, the only reasonable course for setting an attainment date for the Portland Area is to require Maine to develop an attainment demonstration that provides for attainment as expeditiously as practicable. Once Maine submits that demonstration EPA will provide the public an opportunity to comment on whether the date Maine selects is as expeditious as practicable. EPA is asking for comment on how to address a new attainment date for the Portland Area.

Finally, EPA is proposing to grant an extended effective date for the reclassification of the Portland Area to a serious ozone nonattainment area if EPA finalizes the proposal to find that the area did not attain as of 1997. The approved Maine new source review (NSR) SIP includes provisions that would automatically impose more stringent requirements for the preconstruction permitting of major sources of ozone precursors and major modifications to major sources once an area in Maine is reclassified to serious pursuant to the Act. Maine's SIP will require a higher ratio of offsets for new or increased emissions of VOC or NO_X, by automatically imposing the 1:1.2 level of offsets for a serious areas upon redesignation. See Maine DEP Air Pollution Control Regs. c. 100(98), c. 113(2)(c)(1) and (2), and c. 115(V)(B)(2)(b). In light of the relative scarcity of offsets for increased emissions of VOC, facilities that must secure a NSR permit for construction or modification in the Portland Area may face a significant planning burden in securing the increased level of offsets required as a result of this reclassification. Therefore, EPA believes the regulated community needs time to prepare for compliance with this enhanced NSR requirement. EPA is proposing and believes it is reasonable to have an effective date of 100 days from the date of publication to provide sources with additional time to prepare for the impact of these new

[4] EPA granted a one-year extension of the attainment date for the Portland Area pursuant to Section 181(a)(5) of the CAA on April 16, 1997 (62 FR 18526).

[5] Note that Maine is the Ozone Transport Region and as such, the definition of a major source for volatile organic compounds is already 50 tons per year.

requirements. *See* 66 FR 27036 (May 16, 2001); 67 FR 53882 (Aug. 20, 2002).

Proposed Action

EPA is proposing to determine that the Portland Area has attained the one-hour ozone NAAQS from 1999–2001, to redesignate the Portland Area from nonattainment to attainment of the 1-hour ozone NAAQS, and to approve the proposed maintenance plan submitted by the State of Maine. By proposing approval of the Portland Area maintenance plan, EPA is also proposing to approve the year 2012 MVEBs (16.654 tons per summer weekday for volatile organic compounds, and 26.450 tons per summer day for oxides for nitrogen) contained in that plan as adequate for maintenance of the ozone NAAQS and for transportation conformity purposes. EPA also proposes to approve the proposed Portland Area 1999 attainment emission inventory into the SIP.

In the alternative, EPA is proposing to find pursuant to section 181(b)(2) that the Portland Area did not attain the 1-hour ozone NAAQS by November 15, 1997, the attainment date for the Portland Area. If EPA finalizes this finding and when it becomes effective, the Act requires that the Portland Area be reclassified as a serious nonattainment area. EPA is also taking comment on a proposed schedule for submittal of the SIP revisions required for serious areas should the Portland Area be reclassified. Additionally, EPA is taking comment on how to address the new attainment date for the Portland Area and our proposal that Maine develop an attainment demonstration that provides for attainment as expeditiously as practicable. Finally, EPA is proposing to grant an extended effective date for the determination of nonattainment and reclassification, to give time for facilities to prepare for compliance with new construction permitting requirements.

EPA is soliciting public comments on the issues discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice. Interested parties should submit comments by October 17, 2002.

This redesignation is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed maintenance plan is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will publish a Final Rulemaking Notice on the revisions. Before EPA can finally approve this plan Maine must finally adopt the SIP revision and submit it formally to EPA for incorporation into the SIP.

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. The Agency has determined that the determination of nonattainment would result in none of the effects identified in section 3(f) of the Executive Order. Under section 181(b)(2) of the CAA, the proposed determination of nonattainment is based upon air quality considerations and the resulting reclassifications must occur by operation of law. It does not, in and of itself, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, determinations of nonattainment and reclassification cannot be said to impose a materially adverse impact on state, local, or tribal governments or communities. For this reason, the proposed determination of nonattainment and reclassification 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). Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. This proposal 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 (RFA) (5 U.S.C. 601 *et seq.*). Determinations of nonattainment and the resulting reclassification of nonattainment areas pursuant to section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this proposed rulemaking only makes a factual determination, and does not directly regulate any entities. *See* 62 FR 60001, 60007–8, and 60010 (November 6, 1997) for additional analysis of the RFA implications of attainment determinations. Therefore, pursuant to 5 U.S.C. 605(b), certify that today's proposed action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes. 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 (UMRA) (Public Law 104–4). Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small governments. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. EPA believes, as discussed above, that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, the finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

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), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997),

because it is not economically significant.

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

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

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

Dated: September 9, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 02–23589 Filed 9–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[FRL–7374–5]

RIN 2060–AK29

Proposed Revisions To Clarify the Scope of Sufficiency Monitoring Requirements for Federal and State Operating Permits Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing this rule to clarify the scope of the monitoring required in operating permits issued by State and local permitting authorities or by EPA under title V of the Clean Air Act (Act). Specifically, this proposed rule would clarify that under the sufficiency monitoring rules, all title V permits must contain monitoring sufficient to assure compliance as required under sections 504(a), 504(b), 504(c), and 114(a)(3) of the Act, in cases where the periodic monitoring rules are not applicable. The EPA believes this proposed rule is necessary to address claims of confusion on the part of some source owners and operators, permitting authorities and citizens as to the scope of EPA's title V monitoring regulations.

DATES: *Comments.* We must receive written comments on or before October 17, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–93–50, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–93–50, U.S. EPA, 401 M St., SW., Room M–1500, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Docket. Documents relevant to this action are available for inspection at the Docket Office, Attention: Docket Number A–93–50, U.S. Environmental Protection Agency, 401 M Street, SW., Room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 7:30 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. Copies also may be mailed on request form the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying. Documents relevant to the promulgation of the operating permit program regulations at parts 70 and 71 are available for inspection at the same location under docket numbers A–90–33 and A–93–50 for part 70, and A–93–51 for part 71.

FOR FURTHER INFORMATION CONTACT: For further information, contact Mr. Jeff Herring, U.S. EPA, Information Transfer and Program Implementation Division (C304–04), Research Triangle Park, North Carolina 27711, telephone number (919) 541–3195, facsimile number (919) 541–5509, electronic mail (e-mail) address: *herring.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov.* Comments submitted by e-mail must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments also will be accepted on disks in WordPerfect® version 5.1, 6.1 or 8 file format. All comments and data submitted in electronic form must note the docket number: A–93–50. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Officer, U.S. EPA, Information Transfer and Program Implementation Division (C304–04), Research Triangle Park, North Carolina 27711, Attention: Mr. Jeff Herring. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or final rules at *http://www.epa.gov/ttn/oarpg/t5pfpr.html.* The TTN provides information and technology exchange in various areas of air pollution control. For more information, call the TTN help line at (919) 541–5384.

Regulated Entities. Categories and entities potentially affected by this action include facilities currently required to obtain title V permits by State, local, tribal, or Federal operating permits programs.

Outline. The contents of the preamble are listed in the following outline:

I. Background
  A. The Legal Basis for Requiring Title V Monitoring
  B. Court Rulings About Title V Monitoring
  C. The EPA's Adjudicatory Orders in *Pacificorp* and *Fort James*
II. Proposed Revisions to the Title V Monitoring Requirements
  A. Why Is EPA Proposing To Revise §§ 70.6(c)(1) and 71.6(c)(1)?

B. What Revisions Are Being Proposed?
C. How Would This Proposed Rule Affect the Scope of the Current Title V Monitoring Requirements?
III. Related Actions
IV. Scope of This Proposed Rule and Solicitation of Public Comments and Public Participation
V. Administrative Requirements
A. Executive Order 12866—Regulatory Planning and Review
B. Unfunded Mandates Reform Act
C. Executive Order 13132: Federalism
D. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
E. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
F. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
G. National Technology Transfer and Advancement Act
H. Paperwork Reduction Act
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

I. Background

A. The Legal Basis for Requiring Title V Monitoring

By enacting title V as part of the 1990 Act Amendments, Congress sought to enhance sources' compliance with the Act in two important ways. First, Congress required that every major stationary source of air pollution and certain other sources obtain a single, comprehensive operating permit to assure compliance with all emission limitations and other substantive Act requirements that apply to the source. 42 U.S.C. 7661a(a), 7661c(a). Second, Congress required that all title V sources conduct monitoring of their emissions that is sufficient to assure compliance with applicable requirements under the Act and also certify compliance with such applicable requirements. 42 U.S.C. 7661c(a), 7661c(c). The Senate Report summarized: ''EPA must require reasonable monitoring * * * requirements that are adequate to assure compliance.'' S. Rep. No. 101–228, at 350 (1989) (reprinted in 1990 U.S.C.C.A.N. 3385, 3733).

Three provisions of title V set forth Congress' requirements for monitoring by title V sources. Section 504(c) of the Act requires that each permit ''shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.'' 42 U.S.C. 7661c(c). Section 504(a) requires that each permit ''shall include enforceable emission limitations and standards * * * and such other conditions as are necessary to assure compliance with applicable requirements.'' 42 U.S.C. 7661c(a). Section 504(b) contains discretionary authority for EPA to prescribe by rule ''procedures and methods for determining compliance and for monitoring * * *'' 42 U.S.C. 7661(b). In addition, section 114(a)(3) directs EPA to require ''enhanced monitoring'' at all major stationary sources. 42 U.S.C. 7414(a)(3).

The EPA's title V regulations at §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B) require that

> [w]here the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), [each permit must contain] periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to [§ 70.6(a)(3)(iii) or § 71.6(a)(3)(iii)]. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of [§ 70.6(a)(3)(i)(B) or § 71.6(a)(3)(i)(B)].

Furthermore, §§ 70.6(c)(1) and 71.6(c)(1) require that each part 70 and 71 permit contain, ''[c]onsistent with paragraph (a)(3) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.'' 40 CFR part 64, the Compliance Assurance Monitoring (CAM) rule, as well as the title V regulations discussed above, implements the statutory ''enhanced monitoring'' requirement. *See* 62 FR 54900, October 22, 1997.

B. Court Rulings About Title V Monitoring

Two opinions issued by the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) have addressed the monitoring required of title V sources. Specifically, the Court reviewed EPA's CAM rule in *Natural Resources Defense Council* v. *EPA*, 194 F.3d 130 (DC Cir. 1999) (*NRDC*), and reviewed EPA's periodic monitoring guidance under title V in *Appalachian Power Co.* v. *EPA*, 208 F.3d 1015 (DC Cir. 2000) (*Appalachian Power*). In *NRDC*, the Natural Resources Defense Council argued that the CAM rule was inadequate to meet the statutory mandate that *all* major sources be subject to enhanced monitoring because it excluded units without control devices, units below a 100-ton cutoff, and certain other categories. 194 F.3d at 135.[1] The court disagreed, and upheld the CAM rule and EPA's general enhanced monitoring program. 194 F.3d at 135–37. The court pointed out that certain sources exempt from CAM were subject to ''other specific rules.'' *Id.*[2] The court then reasoned that all other major sources were subject to one of two ''residual rules'' under part 70: Either the periodic monitoring rule at § 70.6(a)(3)(i)(B), or the sufficiency rule at § 70.6(c)(1). *Id.* at 135–36. The court recognized that ''[w]hile the Part 70 rules are not as specific as CAM, they have the same bottom line—a major source must undertake 'monitoring * * * sufficient to assure compliance.'' *Id.* at 136.[3]

In *Appalachian Power*, a different panel of the D.C. Circuit set aside EPA's ''Periodic Monitoring Guidance''[4] after finding that it had in effect amended part 70's periodic monitoring rule at § 70.6(a)(3)(i)(B) by interpreting that rule too broadly to cover situations where the underlying applicable requirement called for some kind of ''periodic'' testing or monitoring, but such monitoring was not sufficient to assure compliance. 208 F.3d at 1028. The *Appalachian Power* court held that in its current form, the periodic monitoring rule authorized sufficiency reviews of monitoring and testing in an existing emissions standard, and enhancement of that monitoring or testing through the

[1] For example, CAM exempts acid rain program requirements under title IV of the Act. See § 64.2(b)(1)(iv).

[2] For example, sources exempt from acid rain requirements under CAM (see supra n. 1) are subject to state-of-the-art monitoring under section 412 of the Act and 40 CFR part 75.

[3] The entire relevant passage reads as follows:

> Specifically, EPA demonstrated that many of the major stationary sources exempt from CAM are subject to other specific rules, and if they are not, they are subject to the following two residual rules: (1) ''[The permit shall contain] periodic monitoring sufficient to yield reliable data * * * that are representative of the source's compliance with the permit.* * *'' 40 CFR 70.6(a)(3)(i)(B); (2) ''All part 70 permits shall contain the following elements with respect to compliance: (1) Consistent with paragraph (a)(3) of this section, compliance certification, testing, [and] monitoring * * * requirements sufficient to assure compliance with the terms and conditions of the permit.'' *Id.* § 70.6(c)(1).
>
> While the part 70 rules are not as specific as CAM, they have the same bottom line—a major source must undertake ''monitoring * * * sufficient to assure compliance.'' Like CAM, the monitoring protocols will be developed on a unit-by-unit basis. Such monitoring is sufficiently ''enhanced'' over the pre-1990 situation to satisfy the statutory requirement. See Compliance Assurance Monitoring, 62 FR 54900, 54904, October 22, 1997. *Id.*

[4] ''Periodic Monitoring Guidance,'' signed by Eric V. Schaeffer, Director, Office of Regulatory Enforcement, and John S. Seitz, Director, Office of Air Quality Planning and Standards, September 15, 1998.

permit, only when that standard ''requires no periodic testing, specifies no frequency, or requires only a one-time test.'' *Id.* The panel did not address the separate ''sufficiency'' requirement of § 70.6(c)(1) or the earlier decision in *NRDC*, except to note that it disagreed with EPA's argument that the court in the earlier decision read the periodic monitoring rule in the same way as the Agency. *Id.* at 1027 n. 26. The *Appalachian Power* court set aside the Periodic Monitoring Guidance, reasoning that the Guidance was ''final agency action'' that broadened the scope of the periodic monitoring rule without complying with the rulemaking procedures required by 42 U.S.C. 7607(d). *Id.* at 1023, 1028.

C. The EPA's Adjudicatory Orders in Pacificorp and Fort James

Following the *NRDC* and *Appalachian Power* decisions, EPA was called upon to clarify the scope of the title V monitoring requirements in two adjudicatory orders responding to petitions requesting that the Administrator object to title V permits under section 505(b)(2) of the Act.[5] *In the Matter of Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants*, Petition No. VIII–00–1 (November 16, 2000) (*Pacificorp*) (available on the Internet at *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/woc020.pdf); In the Matter of Fort James Camas Mill*, Petition No. X–1999–1 (December 22, 2000) (*Fort James*) (available on the Internet at: *http://www.epa.gov/region07/ programs/artd/air/title5/petitiondb/petitions/fortjamesdecision1999.pdf).* Notice of these decisions was published in the **Federal Register**. See 66 FR 85, January 2, 2001 (*Pacificorp*); 66 FR 13529, March 6, 2001 (*Fort James*).

The first order, *Pacificorp*, responded to a petition in which Wyoming Outdoor Council requested that the Administrator object to two title V permits issued by the State of Wyoming. The petition alleged, in relevant part, that the permits, which required only a quarterly Method 9 visual observation, were deficient because they failed to assure compliance with the 20 percent opacity limit in the Wyoming State Implementation Plan (SIP). The Administrator's response summarized the monitoring requirements of the Act and part 70, quoting from sections 114(a)(3), 504(a) and 504(c), and from §§ 70.6(a)(3)(i)(B) and 70.6(c)(1). *Id.* The response then summarized the *NRDC* and *Appalachian Power* decisions. *Pacificorp* at 16–18. In particular, the Administrator observed that the *NRDC* panel had based its holding that EPA had satisfied the statutory mandates to require adequate monitoring for all permits at major sources on the two ''residual rules'' in part 70: §§ 70.6(a)(3)(i)(B) and 70.6(c)(1). *Id.* at 16–17 (citing *NRDC*, 194 F.3d at 135–37). She also observed that the *Appalachian Power* panel had held that § 70.6(a)(3)(i)(B) must be read narrowly to apply only when the underlying emission standard ''requires no periodic testing, specifies no frequency, or requires only a one-time test.'' *Pacificorp* at 18 (quoting *Appalachian Power*, 208 F.3d at 1028). Finally, she observed that the *Appalachian Power* panel did not address § 70.6(c)(1), or the earlier decision in *NRDC* (except to note that it disagreed with EPA's contention that the *NRDC* panel had read § 70.6(a)(3)(i)(B) in the same broad fashion as had EPA). *Pacificorp* at 18 (citing *Appalachian Power*, 208 F.3d at 1028 n. 26).

The Administrator then set forth her understanding of the current monitoring requirements by harmonizing the *NRDC* and *Appalachian Power* decisions. Specifically, the Administrator stated that in light of those decisions, where an applicable requirement requires no ''periodic'' testing or monitoring at all, ''section 70.6(c)(1)'s requirement that monitoring be sufficient to assure compliance will be satisfied'' by meeting the more substantive requirements of § 70.6(a)(3)(i)(B). Where, in accordance with *Appalachian Power*, the latter periodic monitoring provision does not apply because there is some ''periodic'' monitoring but it is not sufficient to assure compliance, the ''separate regulatory standard'' in § 70.6(c)(1) governs instead and requires enhancement of existing monitoring ''as necessary to be sufficient to assure compliance.'' *Pacificorp* at 18–19.

Based on this understanding, the Administrator found that since the Wyoming SIP called for quarterly Method 9 visual readings, and this was ''periodic,'' then in accordance with *Appalachian Power* ''the provisions of 40 CFR 70.6(a)(3)(i)(B) do not apply.'' She then found that such monitoring: is not sufficient to ''assure compliance'' with the 20 [percent] opacity limit in the Wyoming SIP within the meaning of § 70.6(c)(1) and sections 504(a) and 504(c) of the Clean Air Act, and does not constitute enhanced monitoring within the meaning of section 114(a)(3) of the Act. *Id.* at 19. The Administrator granted the petition in part and denied it in part. (*See* 66 FR 85, January 2, 2001).

The Administrator subsequently responded to another citizen petition to object alleging numerous monitoring deficiencies in a permit issued by the State of Washington, the *Fort James* order. As in *Pacificorp*, the petition raised monitoring issues, and the Administrator ruled similarly. She explained that where it was clear that there was no underlying monitoring of a ''periodic'' nature, § 70.6(a)(3)(i)(B) applied and decided the claims accordingly. Where there was some underlying monitoring that could be considered periodic, she applied the general sufficiency standard in § 70.6(c)(1) and decided the claims on that basis. The petition was granted in part and denied in part. *See Fort James* at 5–9; 66 FR 13529, March 6, 2001.

II. Proposed Revisions to the Title V Monitoring Requirements

A. Why Is EPA Proposing To Revise §§ 70.6(c)(1) and 71.6(c)(1)?

This proposed rule responds to assertions by some industry representatives that the *NRDC* and *Appalachian Power* court decisions have created uncertainty and confusion on the part of some source owners and operators, permitting authorities and citizens as to the scope of the title V monitoring requirements. The EPA also is proposing this rule and undertaking the related actions described below consistent with the defense of pending litigation, *Utility Air Regulatory Group* v. *EPA*, No. 01–1204 (DC Cir.) (UARG).[6] While EPA has harmonized the *NRDC* and *Appalachian Power* decisions to clarify the title V monitoring requirements in the *Pacificorp* and *Fort James* orders, some industry representatives and others have maintained that EPA's understanding as

[5] Section 505(b)(2) authorizes any person to petition the Administrator to object to a title V permit within 60 days after the expiration of EPA's 45-day review period and directs the Administrator to grant or deny such petitions and to issue an objection if the petitioner demonstrates that the permit is not in compliance with the applicable requirements of the Act. 42 U.S.C. 7661d(b)(2).

[6] The EPA's interpretation of §§ 70.6(c)(1) and 71.6(c)(1) as they are currently written has been challenged in litigation pending before the DC Circuit. Specifically, the Utility Air Regulatory Group (UARG) has sought judicial review of the interpretation set out by EPA in the *Fort James* order and restated in an ''Instruction Manual'' dated January 2001 that was posted on EPA's web site to assist those completing permit application forms under the part 71 federal operating permit program. Pursuant to section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), The UARG also has sought review of the final part 70 and part 71 regulations by alleging ''grounds arising after'' the time allowed for seeking judicial review. In its brief defending its current interpretation, EPA informed the court of its intention to issue this proposed rule and the companion interim final rule described below. See *UARG.*

stated in the orders is based on an overbroad reading of §§ 70.6(c)(1) and 71.6(c)(1). Under EPA's current title V regulations, these parties have asserted that §§ 70.6(c)(1) and 71.6(c)(1) cannot be read to require ''sufficient'' monitoring where § 70.6(a)(3)(i)(B) or § 71.6(a)(3)(i)(B) does not apply (e.g., where the permit already contains some monitoring that can be considered ''periodic'' but that is not sufficient to assure compliance with the permit's terms and conditions) because §§ 70.6(c)(1) and 71.6(c)(1) as currently written expressly provide that monitoring sufficient to assure compliance be ''[c]onsistent with [§ 70.6(a)(3) or § 71.6(a)(3)].'' In short, these parties interpret this prefatory language to mean that §§ 70.6(c)(1) and 71.6(c)(1) must have the same limited meaning as §§ 70.6(a)(3) and 71.6(a)(3), respectively, because ''consistent with [§ 70.6(a)(3) or § 71.6(a)(3)]'' means ''identical to the scope and content of [§ 70.6(a)(3) or § § 71.6(a)(3)].'' Under this view, §§ 70.6(a)(3) and 71.6(a)(3) require that inadequate but ''periodic'' monitoring must be accepted without enhancement.

The EPA disagrees with these assertions that the prefatory ''consistent with'' language limits the scope of §§ 70.6(c)(1) and 71.6(c)(1). Indeed, interpreting ''consistent with'' to mean ''identical to'' as some parties have suggested would render the second clause of §§ 70.6(c)(1) and 71.6(c)(1), which requires monitoring ''sufficient to assure compliance,'' superfluous, and would imply that the *NRDC* court's discussion of § 70.6(c)(1) was redundant. By contrast, EPA has reasonably interpreted ''consistent with'' to mean ''compatible with [§ 70.6(a)(3) or § 71.6(a)(3)].'' Under EPA's interpretation, §§ 70.6(c)(1) and 71.6(c)(1) are separate sources of regulatory authority from §§ 70.6(a)(3) and 71.6(a)(3), and §§ 70.6(c)(1) and 71.6(c)(1) independently require that all monitoring in title V permits be sufficient to assure compliance with the permits' terms and conditions. As EPA explained in the *Pacificorp* and *Fort James* orders, EPA believes that the ''consistent with'' language means that the broadly applicable, but bare sufficiency provisions at § 70.6(c)(1) [or § 71.6(c)(1)] will be satisfied by compliance with the substantive monitoring requirements of § 70.6(a)(3)(i)(B) [or § 71.6(a)(3)(i)(B)] where the latter periodic monitoring provision applies. In other words, where § 70.6(a)(3)(i)(B) [or § 71.6(a)(3)(i)(B)] applies, its more specific requirements (e.g., reliable data from the relevant time period that are representative of the source's compliance) are deemed sufficient to assure compliance, and where § 70.6(a)(3)(i)(B) or [§ 71.6(a)(3)(i)(B)] does not apply, the general sufficiency requirement at § 70.6(c)(1) [or § 71.6(c)(1)] comes into play. *See Pacificorp* at 18–19; *Fort James* at 9.

The EPA's interpretation of the prefatory ''consistent with'' language in §§ 70.6(c)(1) and 71.6(c)(1) is a reasonable one and is indeed the better interpretation, because it gives meaning to the second clause of §§ 70.6(c)(1) and 71.6(c)(1), advances the statutory monitoring requirements, and harmonizes the *NRDC* and *Appalachian Power* decisions with each other. Nonetheless, EPA recognizes that further clarification through rulemaking would be useful. In addition, EPA has received numerous requests from permitting authorities and citizens requesting clarification of the title V monitoring requirements, including a letter from eighty-one environmental and public health organizations asking EPA to revise the part 70 regulations to address monitoring in light of the court's decision in *Appalachian Power.*

B. What Revisions Are Being Proposed?

The EPA is proposing to remove the underscored prefatory language to §§ 70.6(c)(1) and 71.6(c)(1) providing that all title V permits contain, ''*[c]onsistent with paragraph (a)(3) of this section*, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.'' The removal of the prefatory language would expressly uncouple the sufficiency monitoring provisions, §§ 70.6(c)(1) and 71.6(c)(1), from the periodic monitoring provisions, §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), and make more clear the regulatory distinction between the two sets of provisions. Specifically, the removal would clarify the respective scopes of the periodic monitoring and sufficiency monitoring provisions, eliminating any possible confusion under the current regulations as to when a title V permit must contain monitoring sufficient to assure compliance. The EPA notes that despite this proposed change, EPA would retain its interpretation, set forth in the *Pacificorp* and *Fort James* orders, that where § 70.6(a)(3)(i)(B) or § 71.6(a)(3)(i)(B) applies, it satisfies the general sufficiency requirement of § 70.6(c)(1) or § 71.6(c)(1).

The removal of the prefatory language would codify the understanding set forth in the *Pacificorp* and *Fort James* orders, where the Administrator characterized § 70.6(c)(1) as a ''separate regulatory standard'' from § 70.6(a)(3)(i)(B). The removal also would be consistent with the court's holding in *NRDC* that §§ 70.6(a)(3)(i)(B) and 70.6(c)(1) together ensure that a major source must undertake ''monitoring * * * sufficient to assure compliance'' where the CAM rule or other more specific rules governing major sources do not require such monitoring. 194 F.3d at 136. Finally, the removal would be consistent with the court's decision in *Appalachian Power*, which, as noted above, did not construe § 70.6(c)(1). See 208 F.3d at 1027 n.26.

Under this proposed rule, the periodic monitoring and sufficiency monitoring provisions would work together as follows. Where an applicable requirement did not require any periodic testing or monitoring, permit conditions would be required to establish ''periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit.'' Sections 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B). In contrast, where the applicable requirement already required ''periodic'' testing or monitoring but that monitoring was not sufficient to assure compliance, the separate regulatory standard at § 70.6(c)(1) or § 71.6(c)(1) would apply instead to require monitoring ''sufficient to assure compliance with the terms and conditions of the permit.'' Furthermore, where § 70.6(a)(3)(i)(B) or § 71.6(a)(3)(i)(B) applied, it would satisfy the general sufficiency requirement of § 70.6(c)(1) or § 71.6(c)(1).

C. How Would This Proposed Rule Affect the Scope of the Current Title V Monitoring Requirements?

This proposed rule would not affect the scope of the title V monitoring requirements as previously construed by the DC Circuit in *NRDC* and *Appalachian Power,* or as set forth in EPA's *Pacificorp* and *Fort James* orders. Rather, the purpose of this proposed rule is simply to clarify that under §§ 70.6(c)(1) and 71.6(c)(1), all title V permits must include monitoring sufficient to assure compliance with the permits' terms and conditions, as required by sections 504(a), 504(b), 504(c), and 114(a)(3) of the Act. As stated above, the purpose is to eliminate any possible confusion about the scope of the sufficiency monitoring provisions at §§ 70.6(c)(1) and 71.6(c)(1) that may arise due to their prefatory references to

the periodic monitoring provisions at §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B).

III. Related Actions

Two separate rulemakings are related to this proposed rule. First, elsewhere in today's **Federal Register**, in the rules section, EPA is promulgating an interim final rule to suspend, for sixty days, the same prefatory phrase in §§ 70.6(c)(1) and 71.6(c)(1) as would be removed by this proposed rule. The EPA intends that this proposed rule will be promulgated as a final rule and will become effective when the interim final rule sunsets. In addition, EPA intends to initiate a second, notice-and-comment rulemaking process to consider more comprehensively means of meeting the statutory monitoring requirements.

IV. Scope of This Proposed Rule and Solicitation of Public Comments and Public Participation

This proposed rule is limited to the removal of the prefatory phrase ''[c]onsistent with paragraph (a)(3) of this section'' from §§ 70.6(c)(1) and 71.6(c)(1) in order to clarify the scope of these provisions. This proposed rule does not address any other issues related to title V monitoring, such as the type of monitoring required under the periodic monitoring provisions, §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), or under the sufficiency monitoring provisions, §§ 70.6(c)(1) and 71.6(c)(1). As indicated above, EPA elsewhere in today's **Federal Register** is promulgating an interim final rule, effective immediately, to revise §§ 70.6(c)(1) and 71.6(c)(1) to suspend, for sixty days, the same prefatory phrase as this proposed rule would remove.

The EPA seeks full public participation in arriving at final decisions and is soliciting public comment on this proposed rule from all interested parties. The EPA expects to consider comments on other issues relating to title V monitoring during the separate, more comprehensive rulemaking that is also planned and described above.

V. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (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, adversely affecting in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in 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 entitlement, grants, user fees, or loan programs of 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.

Under Executive Order 12866, it has been determined that this proposed rule is a ''significant regulatory action'' and is therefore subject to OMB review. Today's proposed rule raises important legal and policy issues associated with the court's decisions in *Appalachian Power* and *NRDC* and EPA's adjudicatory orders in *Pacificorp* and *Fort James.* Therefore, this action is a ''significant regulatory action.'' Prior to promulgation of this rule, EPA will perform a regulatory impact analysis.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may 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.'' A ''Federal mandate'' is defined to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate.'' 2 U.S.C. 658(6). A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is ''a condition of Federal assistance.'' 2 U.S.C. 658(5)(A)(i)(I). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions [2 U.S.C. 658(7)(A)].

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply where they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined under the regulatory provisions of title II of the UMRA that today's proposed rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Today's proposed rule imposes no new requirements but rather clarifies existing requirements. Thus, today's proposed rule is not subject to the requirements of sections 202 or 205 of the UMRA.

In addition, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it imposes no new requirements and imposes no additional obligations beyond those of existing regulations. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

C. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, or on the distribution of power and

responsibilities among the various levels of government.''

Today's proposal does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's proposal will not impose any new costs or requirements over those considered during the original promulgation of the rules because it will merely clarify those existing requirements. (See original promulgations at 57 FR 32250, July 21, 1992 for part 70, and 61 FR 34202, July 1, 1996 for part 71.) Accordingly, it will not alter the overall relationship or distribution of powers between governments for the part 70 and part 71 operating permits programs. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive order 13132, and consistent with EPA policy to promote communication between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

D. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's proposed rule revisions do not have tribal implications because they 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 in Executive Order 13175. Today's action does not significantly or uniquely affect the communities of Indian tribal governments. As discussed above, today's action imposes no new requirements that would impose compliance burdens beyond those that would already apply. Accordingly, the requirements of Executive Order 13175 do not apply to these proposed rule revisions.

E. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have ''a significant economic impact on a substantial number of small entities.'' Small entities include small businesses, small organizations, and small government jurisdictions.

For purposes of assessing the impacts of today's proposal on small entities, a small entity is defined as: (1) A small business that has fewer than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Today's proposed rule would merely clarify existing requirements and would not create a new burden for regulated entities, such as small entities. The EPA has determined there will be no additional costs on any small entities associated with today's proposed revisions to part 70 and part 71. After considering the economic impact of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines is (1) ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risk, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. Today's proposed rule is not subject to Executive Order 13045 because it is not ''economically significant'' under Executive Order 12866 and it does not establish an environmental standard intended to mitigate health or safety risks.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The NTTAA does not apply to this proposed rule because it does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Paperwork Reduction Act

The information collection requirements for parts 70 and 71 were previously approved by OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The existing ICR for part 70 is assigned ICR number 1587.05 and OMB number 2060–0243; for part 71, the ICR number is 1713.04 and the OMB number is 2060–0336. A copy of these ICRs may be obtained by mail to: Director, Collection Strategies Division (2822), Office of Environmental Information, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

Today's proposed revision to the current part 70 and 71 rules will have no impact on the information collection burden estimates made previously for these rules because it would not impose any new information collection requirements beyond those already required under the existing rules

because the proposed rule would merely clarify existing requirements. Therefore, the existing Information Collection Request (ICR) documents for these rules have not been revised. In developing the final rule, this will be analyzed again and, if it is determined that there are new information collection requirements resulting from the final rule, the ICR for these rules will be revised.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a ''significant energy action,'' as defined in to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. As noted earlier, this action would simply clarify existing requirements and would not impose any new requirements, and thus would not affect the supply distribution, or use of energy.

List of Subjects

40 CFR Part 70

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

40 CFR Part 71

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirement.

Dated: September 4, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 70—[AMENDED]

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

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

2. In § 70.6(c)(1) by revising the first sentence to read as follows:

§ 70.6 Permit content.

* * * * *

(c) * * *

(1) Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. * * *

* * * * *

PART 71—[AMENDED]

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

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

2. In § 71.6(c)(1) by revising the first sentence to read as follows:

§ 71.6 Permit content.

* * * * *

(c) * * *

(1) Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. * * *

* * * * *

[FR Doc. 02–23588 Filed 9–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPPT–2002–0013; FRL–7176–1]

RIN 2070–AB20

Polychlorinated Biphenyls; Manufacturing (Import) Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: With certain exceptions, section 6(e)(3) of the Toxic Substances Control Act (TSCA) bans the manufacture (including import), processing, and distribution in commerce of polychlorinated biphenyls (PCBs). One of these exceptions is TSCA section 6(e)(3)(B), which gives EPA authority to grant petitions to perform these activities for a period of up to 12 months, provided EPA can make certain findings by rule. In January and April 2001, the United States Defense Logistics Agency (DLA), a component of the Department of Defense (DoD), submitted two petitions to EPA to import foreign-manufactured PCBs that DoD currently owns in Japan and Wake Island for disposal in the United States. In this document, EPA is proposing to grant both of DLA's petitions and is soliciting public comment on this decision; if finalized, this decision to grant would allow DLA to engage in the import of these PCBs for disposal.

DATES: Comments, identified by the docket ID number OPPT–2002–0013, must be received by EPA on or before October 17, 2002.

If requested by October 11, 2002, an informal hearing will be held in Washington, DC on a date to be announced later in the **Federal Register**.

ADDRESSES: Comments and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0013 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Peter Gimlin, Environmental Protection Specialist, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0515; fax number: (202) 566–0473; e-mail address: gimlin.peter@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. To Whom Does this Action Apply?

Primarily, this action applies to the petitioner, the DLA. However, you may be potentially affected by this action if you process, distribute in commerce, or dispose of PCB waste generated by others, i.e., you are an EPA-permitted PCB waste handler. Potentially affected categories and entities include, but are not necessarily limited to:

Categories	NAICS codes	Examples of potentially affected entities
Public Administration	92	Petitioning Agency (i.e., DLA)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR part 761. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document or Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPPT–2002–0013. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 761 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr761_00.html, a beta site currently under development. To access information about PCBs, go directly to the PCB Home Page for the Office of Pollution Prevention and Toxics at http://www.epa.gov/pcb.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA can not read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA can not read your comment due to technical difficulties and can not contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2002–0013. The system is an ''anonymous access '' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT–2002–0013. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access '' system. If you

send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (DCO) (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPPT–2002–0013.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0013. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Proposing to Take?

In this document, the Agency is proposing to grant two petitions submitted by DLA to import PCB waste for disposal. In the absence of an exemption, import of this waste would be banned by TSCA section 6(e)(3). One petition, dated January 19, 2001, is for an exemption to import foreign-source PCBs that were used on DoD installations in Japan and are currently stored on Wake Island, a United States territory in the Pacific Ocean west of Hawaii (Ref. 9). (While Wake Island is part of the United States, it is outside the Customs Territory of the United States, and TSCA defines ''manufacture'' to include ''import into the Customs Territory of the United States.'') In addition, 40 CFR 761.99(c) does not exclude this waste from EPA's regulatory interpretation of ''import,'' because it never entered the Customs Territory prior to January 1, 1979. For more information on these definitional issues, see the **Federal Register** documents of November 1, 2000 (Ref. 7) and March 30, 2001 (Ref. 8). The other petition, dated April 16, 2001, is to import foreign-generated PCBs owned by DoD that are currently in use or storage in Japan (Ref. 10). (The term ''foreign-generated PCBs'' is used to identify those PCBs that DoD acquired from foreign sources and that are subject to the TSCA ban on import.)

B. What is the Agency's Statutory Authority for Taking this Action?

Section 6(e) of TSCA, 15 U.S.C. 2605(e), generally prohibits the manufacture of PCBs after January 1, 1979, the processing and distribution in commerce of PCBs after July 1, 1979, and most uses of PCBs after October 11, 1977. Section 6(e)(3)(A) of TSCA prohibits the manufacture, processing, and distribution in commerce of PCBs except for the distribution in commerce of PCBs that were sold for purposes other than resale before July 1, 1979. Section 6(e)(1) of TSCA also authorizes EPA to regulate the disposal of PCBs consistent with the provisions in TSCA section 6(e)(2) and (3).

Section 6(e)(3)(B) of TSCA provides that any person may petition the Administrator for an exemption from the prohibition on the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that:

> (i) an unreasonable risk of injury to health or the environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl. (15 U.S.C. 2605(e)(3)(B)(i)-(ii)).

The Administrator may prescribe terms and conditions for an exemption and may grant an exemption for a period of not more than 1 year from the date the petition is granted. In addition, TSCA section 6(e)(4) requires that a rule under TSCA section 6(e)(3)(B) be promulgated in accordance with TSCA sections 6(c)(2), (3), and (4), which provides for publication of a proposed rule and an opportunity for an informal public hearing before a final rule can be issued.

C. What is the Agency's Regulatory Authority for Taking this Action?

EPA's procedures for rulemaking under TSCA section 6 are found under 40 CFR part 750. This part includes Subpart B—Interim Procedural Rules for Manufacturing Exemptions (40 CFR 750.10 through 750.21) that describe the required content for manufacturing exemption petitions and the procedures EPA follows in rulemaking on these petitions.

III. Findings Necessary to Grant Petitions

A. Unreasonable Risk Finding.

Before granting an exemption petition, TSCA section 6(e)(3)(B)(i) requires the Administrator to find that

granting an exemption would not result in an unreasonable risk of injury to health or the environment in the United States.

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur to health or the environment against the benefits to society from granting or denying each petition. See generally, 15 U.S.C. 2605(c)(1). Specifically, EPA considers the following factors:

1. *Effects of PCBs on human health and the environment*. In deciding whether to grant an exemption, EPA considers the magnitude of exposure and the effects of PCBs on humans and the environment. The following discussion summarizes EPA's assessment of these factors. A more complete discussion of these factors is provided in the preamble to the proposed rule: Polychlorinated Biphenyls; Manufacturing, Processing, and Distribution in Commerce Exemptions (Ref. 3), in the rulemaking record for that proposed rule (OPTS Docket–66008F), 40 CFR 761.20, and in EPA's 1996 PCB Cancer Assessment (Ref. 32).

i. *Health effects*. EPA has determined that PCBs cause significant human health effects including cancer, immune system suppression, liver damage, skin irritation, and endocrine disruption. PCBs exhibit neurotoxicity as well as reproductive and developmental toxicity. PCBs are readily absorbed through the skin and are absorbed at even faster rates when inhaled. Because PCBs are stored in animal fatty tissue, humans are also exposed to PCBs through ingestion of animal products (Ref. 32).

ii. *Environmental effects*. Certain PCB congeners are among the most stable chemicals known, and decompose very slowly once they are released in the environment. PCBs are absorbed and stored in the fatty tissue of higher organisms as they bioaccumulate up the food chain through invertebrates, fish, and mammals. Significantly, bioaccumulated PCBs appear to be even more toxic than those found in the ambient environment, since the more toxic PCB congeners are more persistent and thus more likely to be retained (Ref. 32). PCBs also have reproductive and other toxic effects in aquatic organisms, birds and mammals.

iii. *Risks*. Toxicity and exposure are the two basic components of risk. EPA has concluded that any exposure of humans or the environment to PCBs may be significant, depending on such factors as the quantity of PCBs involved in the exposure, the likelihood of exposure to humans and the environment, and the effect of exposure. Minimizing exposure to PCBs should minimize any eventual risk. EPA has previously determined that some activities, including the disposal of PCBs in accordance with 40 CFR part 761, pose no unreasonable risks. Other activities, such as long-term storage of PCB waste, are generally considered by EPA to pose unreasonable risks.

2. *Benefits and costs*. The benefits to society of granting an exemption vary, depending on the activity for which the exemption is requested. The reasonably ascertainable costs of denying an exemption vary, depending on the individual petition. As discussed in Unit IV., EPA has taken benefits and costs into consideration when evaluating each exemption petition.

B. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA also requires the Administrator to find that ''good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for [PCBs].'' EPA considers several factors in determining whether good faith efforts have been made. For each petition, EPA considers the kind of exemption the petitioner is requesting and whether the petitioner expended time and effort to develop or search for a substitute.

To satisfy this finding in the context of an exemption to import PCBs for disposal, EPA looks at why such activity should occur in the United States, including what steps the petitioner has taken to find an alternative to importing the PCBs for disposal. While requiring a petitioner to demonstrate that good faith efforts to develop a substitute for PCBs makes sense when dealing with traditional manufacturing and distribution exemption petitions, the issue of the development of substitute chemicals seems to have little bearing on whether to grant a petition for exemption that would allow the import into the United States for disposal of waste generated by the DoD overseas. EPA believes the more relevant ''good faith'' issue for such an exemption request is whether the disposal of the waste should occur outside the United States.

IV. Proposed Disposition of Pending Exemption Petitions

A. The Petitions

1. *January 19, 2001, petition to import PCBs located on Wake Island*. On January 19, 2001, DLA submitted a petition for a 1–year exemption to import certain PCBs and PCB items into the Customs Territory of the United States for disposal. The waste in question consists of approximately 91 metric tons [a metric ton is 1,000 kilograms, or 2,200 pounds] of material, of which 31 metric tons DLA estimates to be liquids. Non-liquid material consists of electrical transformers, switches, circuit breakers, and debris (rags, small parts, and packaging materials). The laboratory analyses conducted by DLA indicate PCB concentrations of less than 50 parts per million (ppm) for all materials that could be tested without disassembly. DLA indicates that while it believes any components that could not be tested were excluded from this waste in question, there is a possibility that inaccessible internal components (e.g., small capacitors) of certain transformers may contain PCB constituents at or above 50 ppm.

The material is currently stored in overpack containers at a U.S. Government-owned storage site on Wake Island. DLA proposes to ship the materials in these containers to the Customs Territory using U.S. flag carriers, and in accordance with applicable laws. Upon arrival in port, the containers would be transported by Department of Transportation (DOT) permitted carriers to the destination facility. On April 16, 2001, DLA also amended its petition to include the possibility that the materials could be transported by air on U.S. military aircraft.

DLA proposes in its January 19, 2001, petition to ship the materials to an EPA-approved PCB disposal facility. While DLA initially identified Trans Cycle Industries, Inc. (TCI) in Pell City, Alabama as the receiving facility, it amended its petition on September 28, 2001, to include any EPA-approved PCB disposal facility as a potential receiving facility, indicating that it is premature to specify which approved facility would be contracted to treat and dispose of the waste. DLA would treat and dispose of all material in compliance with the U.S. PCB regulations at 40 CFR part 761. Generally, DLA indicates their intention is to recycle all metal components that can be decontaminated; if they are not decontaminated they would be buried in a chemical waste landfill or incinerated. Used oils or liquids would be decontaminated by dechlorination or sent for energy recovery as fuel. Non-recyclable material will be disposed of as residual solid waste. DLA also notes that EPA-approved alternative methods may also be used. (Note that while DLA is proposing to send this material to a TSCA-approved facility for initial processing, this is not normally required

for materials containing less than 50 ppm PCBs that have not been subject to dilution.)

i. *Information regarding no unreasonable risk.* EPA requires that petitioners explain the basis of their contention that unreasonable risk of injury to health or the environment would not result from the granting of their petition (40 CFR 750.11(c)(6)). In its petition, DLA makes several arguments that the proposed activity would present no unreasonable risk. First, DLA notes the low levels of PCB contamination involved in this waste, i.e., <50 ppm for all tested material. As DLA notes, EPA allows the processing, distribution in commerce, and use of ''excluded PCB products'' that contain <50 ppm PCBs because doing so does not generally present an unreasonable risk to health or the environment. Excluded PCB products include transformers and other electrical equipment, and used oils containing <50 ppm PCBs (subject to certain provisions, see definition § 761.3).

Secondly, DLA explains that the materials would be managed in accordance with applicable laws, ensuring its safe disposition. DLA notes the waste will be packed and shipped in compliance with DOT and EPA regulations, with appropriate bracing, over packs, secondary spill containment, etc. DLA cites its safe performance record and those of its contractors, who over the last 4 years have managed some 1.3 million pounds of U.S.-manufactured PCB items returned from Japan without incident. Regarding disposal risks, DLA notes that ''EPA licensing of the proposed disposal facilities and approval of the proposed treatment methods assure that exempted import and disposal of the material will present no unreasonable risk of injury to health or the environment'' (Ref. 1, p.3).

Finally, in assessing risks, DLA argues that any risks inherent in shipment and disposal are far outweighed by the risks inherent in continued storage of the materials in their present location on Wake Island. DLA notes that Wake Island, as a U.S. territorial possession, is defined by TSCA section (3)(13) and (3)(14) as part of the United States, and is entitled to statutory protection against unreasonable risk of injury to health or the environment. DLA also cites a recent **Federal Register** document (Ref. 8, p. 65656) in which EPA stated:

> The prohibitions and restrictions on PCBs under TSCA Section 6(e) and its implementing regulations protect not only the United States citizens in the 50 states, but United States citizens in all the territories and possessions of the United States. PCBs in the 50 States and in the territories and possessions must be managed and disposed of in a manner that does not present an unreasonable risk to health or the environment.

DLA also cites EPA's March 18, 1996, Import for Disposal Final Rule (Ref. 5, p. 11099):

> Based on the persistence of PCBs in the global environment and EPA's finding that any exposure to human beings or the environment may be significant, EPA believes that the safe disposal of PCBs in approved U.S. facilities poses less risk of injury to health or the environment in the United States than the continued presence of PCBs in other countries, since proper disposal in this country provides protection against possible hazards from improper disposal elsewhere.

DLA concludes that granting its petition ''will eliminate the risks cited above by removing these PCBs from Federal property that can not provide suitable disposal and permitting proper disposal in a manner limiting releases to the environment to the levels permitted by U.S. regulations.''

EPA asks petitioners to estimate the economic costs of denial of their petition (40 CFR 750.11(c)(8)). DLA estimates that the annual cost of long-term storage on Wake Island is $40,000, covering inspection, labor, and container replacement, but excluding the costs of any possible site remediation that could result from a spill if it were to occur. DLA estimates costs of transport and alternative disposal in another country, would range from approximately $1.15 million to $3 million, as opposed to approximately $0.85 million for disposal in the United States. However, as discussed in Unit IV.A.1.ii., DLA believes that disposal in another country is precluded by political and policy reasons. DLA also estimates that processing of this waste on-site at Wake Island would cost approximately $1.2 million, but as discussed in Unit IV.A.1.ii., on-site treatment would not eliminate the need for an exemption, nor is it desirable for other reasons.

ii. *Information regarding good faith efforts.* DLA submits in its petition that it has made good faith efforts to find alternatives to disposal of the material within the Customs Territory of the United States, and that there is no reasonable alternative available. DLA notes that although most of the PCBs in question are known to be at low enough levels (<50 ppm) that they could be disposed of legally in a solid waste landfill (as opposed to a TSCA or Resource Conservation and Recovery Act (RCRA) chemical waste landfill), that approach is not appropriate for Wake Island because of its small land area and low elevation. (The Wake Island atoll's land area is 6.5 square kilometers, and its highest point is only 6 meters above sea level). Moreover, DLA notes there are no facilities on Wake Island to provide on-site processing or treatment for disposal off-island. DLA examined the alternative of transporting and constructing such processing or treatment facilities on Wake Island, and concluded the following:

> To be properly processed, these PCB materials should be separated into three streams: 1) metallic components to be recycled; 2) used oils to be treated; and 3) non-recyclable material to be disposed of as residual solid wastes. According to TCI, a disposal contractor who analyzed this issue for DLA, the cost of shipping a mobile PCB treatment system from the United States to Hawaii and back, and operating the system on Wake Island to clean and initially process the shipment, would be $1.2 million. Additional and potentially significant costs under this scenario include shipping the system from Hawaii to Wake Island and back; providing food and shelter for contractor personnel; providing power and water to operate the mobile system; and completing additional required environmental documentation and other management/oversight activities.
>
> This processing would also leave large quantities of metallic components and non-recyclable materials to be disposed of off-island. In addition, on-island processing would be an incomplete solution that would not obviate the need for this petition, because this process would leave the Government with thousands of pounds of residual PCB-containing materials still requiring a 6(e) petition to be shipped into the United States for disposal. These requirements, including the cost of shipping these materials to proper disposal facilities, would also significantly increase the Government's overall on-site disposal costs.
>
> Processing on-site at a newly established facility will make it more difficult to mitigate the unavoidable risks involved in such activities. Serious PCB spills, worker accidents, and other incidents will likely be more difficult to address in such a remote location. Additional risks may be involved in the creation of the facility on Wake Island, including equipment transportation and construction activities. In light of the concerns cited above, engaging in such processing activities on Wake Island would present significantly greater risks than shipping the materials to a site where the infrastructure and facilities already exist to process them properly.

DLA also investigated the possibility of disposal of this waste in another country. DLA reports there are no PCB disposal facilities in Japan where this waste originated, and DLA's attempt to ship the waste to a disposal facility in Canada was unsuccessful, as explained in detail by DLA in a footnote to its petition. To briefly summarize, in

March 2000, DLA contracted to have this waste shipped to a disposal facility in Canada as non-PCB waste, however, due to public protests and concerns of the Canadian government, the waste was not unloaded in Vancouver, but was instead returned to Japan the next month. In May 2000, to allay Japanese concerns about the waste remaining in Japan, the waste was moved to the U.S. territory of Wake Island for interim storage while DLA sought another disposal solution.

In consequence of the failure of this initial disposal attempt, DLA investigated disposal options in other countries; an effort that it summarized in its petition:

> The DLA and its primary disposal contractor made extensive contacts over a period of several months with disposal facilities in numerous locations outside the United States in an effort to identify firms who could dispose of this shipment. The DoD also consulted at length with State Department officials whose responsibilities included international environmental matters and the nations under consideration. The variety of problems identified in these contacts regarding overseas disposal of this shipment resulted in a consensus that use of existing facilities in other developed countries was not a reasonable alternative. The final, coordinated Government position is that this option should be eliminated from further consideration. Aside from these countries, there are no other nations with suitable facilities that could accept the material, given the constraints of Article 11 of the Basel Convention. Even if other countries could accept these wastes, activist groups could be expected to oppose United States disposal of its waste in third countries, because the Unites States has the technical capability to properly dispose of the hazardous materials itself.

Therefore, DLA concludes that despite its diligent effort to identify disposal options both on-site and in other countries, there are no practicable alternatives to disposal in the Customs Territory of the United States.

2. *April 16, 2001, petition to import PCBs located in Japan*. On April 16, 2001, DLA submitted a second petition; this petition sought a 1–year exemption to import PCBs and PCB items currently in temporary storage on U.S. military installations in Japan. In revised figures provided in June 2001, DLA estimates that as much as 4,293,621 pounds, or approximately 1,952 metric tons of waste containing PCBs could be generated in Japan through the year 2006 and beyond; however, much of this material is currently still in use, and will not become waste requiring disposal for several years. Exactly how much waste could be imported under this exemption would vary depending on when the final exemption would be in effect, as the exemption is limited to a 1–year maximum. For example, if EPA were to grant a 1–year exemption to import that would expire on December 31, 2003, then according to DLA up to 2,104,189 pounds, or approximately 956 metric tons of material could theoretically be available for shipment for disposal (Appendix 1: totals for CY2001 + CY2002 + 2003). The material in Japan consists of liquids, electrical transformers, capacitors, switches, circuit breakers, other miscellaneous items, and debris (rags, small parts, and packaging materials). PCB concentrations of the waste include amounts at all concentrations; however, most of the waste is at concentrations below 50 ppm PCB. Details of particular amounts and concentrations are provided in Appendix 1 (Refs. 9 and 11).

DLA proposes to package and transport, treat, and dispose of this PCB waste in the same manner as waste identified in the previous petition; DLA notes compliance is required with the International Maritime Dangerous Goods (IMDG) Code/International Maritime Organization (IMO), International Civil Aviation Organization (ICAO) Technical Instructions, the International Air Transport Association (IATA) Dangerous Goods Code, UN Recommendations on the Transport of Dangerous Goods Code, and 49 CFR parts 100–199. DLA further notes proper handling and shipping shall include blocking, bracing, over packing, and inclusion of spill containment devices as required by applicable transportation regulations.

DLA states it would handle and dispose of all PCBs in conformance with the PCB regulations at 40 CFR part 761. DLA notes that it has ''considerable experience and expertise in awarding and administering disposal contracts for PCB waste in the United States'' and that it will only ''use contracts with commercial firms providing such services in accordance with all applicable Federal procurement statutes and the Federal Acquisition Regulations (FAR).'' DLA states that it has not yet identified the specific companies that would receive the waste, but that only Federal and State-permitted facilities would be used. Proposed treatment would be in accordance with the options allowed by 40 CFR part 761, including landfilling, incineration, decontamination and recovery of metal, decontamination or burning of used oil, and alternative technologies where allowed.

i. *Information regarding no unreasonable risk*. As in the previous petition, DLA notes that the materials in question would be managed in accordance with all applicable laws and regulations. Once in the United States, the PCB waste would be transported, handled, treated and disposed of in compliance with the PCB regulations at 40 CFR part 761. DLA states they would only contract with companies with the required Federal and State-permitted storage, treatment, and disposal facilities for dealing with PCBs and PCB items. DLA notes that it and its contractors ''have extensive experience in safely returning U.S.-manufactured PCBs and PCB items to the United States for disposal,'' and that ''over the last four years DLA has returned over 1.3 million pounds of U.S.-manufactured PCBs and PCB items from Japan to the United States using the same standards and procedures described above with no known spills or safety problems.''

In contrast, DLA notes that the continuing storage of PCBs at U.S. facilities in Japan is problematic. As discussed in Unit IV.A.2., DoD currently has a considerable amount of PCB waste in storage at its facilities in Japan, and more will accumulate over the coming years as equipment is retired from use and contaminated sites are cleaned up. DLA notes that due to the unavailability of disposal capacity much of DLA's foreign-manufactured PCB waste inventory has been in storage for years; some facilities, including the largest PCB storage facility at Sagami, are at or near their storage capacity, and movement of PCB waste presently in storage is frequently necessary to accommodate additional PCBs taken out of service. DLA summarizes the risks of this situation as follows:

> Continued, indefinite storage and lack of in-country disposal capacity increase the risk of exposure to U.S. military personnel, to people living in and around the U.S. military installations where the PCBs are stored, and to the environment should spills occur due to human error, severe weather such as typhoons, or earthquakes. Storage containers deteriorate, increasing the likelihood of PCB exposure to personnel who must monitor such items and repack them if they suspect leakage. Frequent handling creates multiple opportunities for spills or exposures. Long-term storage may increase DoD's liability and create clean-up costs if accidental spills occur. All of these scenarios potentially increase exposure to U.S. personnel, local citizens, and to the ground and water. This problem is magnified in Japan, because the installations where these materials are located are relatively small, storage space is at a premium, and the surrounding civilian communities are located in very close proximity to the stored PCBs. PCBs and PCB items in indefinite storage, therefore, present a greater risk to human health and the

environment than PCBs stored for disposal in the mainland United States.* * *

DLA further notes that EPA expressed concerns about long-term storage in the PCB Import for Disposal Rule (Ref. 5, p. 11096):

EPA believes that PCB wastes which are not disposed of for extended periods of time or which are not disposed of in facilities providing equivalent protection from release to the environment may pose an unreasonable risk of injury to health and the environment.

As in its previous petition, DLA cites the concerns EPA expressed in 1996 about the benefits of safe disposal of PCBs in the United States as opposed to their continued presence in other countries. Finally, DLA notes that EPA mandates a 1–year storage for disposal limit for PCB waste, and concludes that ''the same long-term storage and risk concerns that apply to facilities in the U.S. should also apply to DoD installations overseas.''

Beyond the immediate environmental risk, DLA describes other benefits to the United States that it believes would result from the granting of its petition:

* * * failure of the United States to permit disposal of waste it generated overseas in furtherance of its national interests not only strains relations at the national government level, but also exacerbates tensions between each facility with such materials and the local community. In 1968, a tragic human poisoning episode in Western Japan affected over 1,000 people and caused 22 deaths. The ''Yusho'' or ''rice oil disease'' was attributed to the consumption of rice bran oil contaminated with PCBs and served as a catalyst for current PCB bans such as those imposed by TSCA. As a result of this highly publicized incident, Japanese citizens exhibit particular sensitivity to PCB issues. Denial of this petition could adversely affect delicate U.S.-Japan relations over the presence and operation of the U.S. Armed Forces in Japan. The presence of PCBs on U.S. Military bases in Japan has, in fact, attracted significant adverse attention from Japanese politicians, the Japanese press, Japanese environmental groups and local citizens. Regular surveillance of DoD storage operations in Sagamihara and demands for inspections and sampling have occurred since a member of the U.S. Congress released a report outlining the storage and presence of PCBs and other hazardous materials on U.S. bases in Japan. The perceived failure by the U.S. Military to resolve the current PCB disposal dilemma posed by the TSCA importation ban invites unwarranted claims that the U.S. Military is neglecting its environmental responsibilities.

DLA concludes:

Granting this petition presents no unreasonable risks and will serve to mitigate or lessen the risk of injury to public health and the environment of Japan. Petition approval will demonstrate environmentally responsible behavior by the United States and further the United States' interests by maintaining good relations with a valued ally as it will significantly reduce the risk of injury to the health of persons of both nations and to the environment in Japan. Granting this petition will eliminate the risks cited above by removing these PCBs from U.S. Military facilities in a country that can not provide suitable disposal in a manner limiting releases to the environment to the levels permitted by U.S. regulations.

In response to the request that petitioners estimate the economic costs of denial, DLA concluded that the economic consequences of a petition denial ''are not readily susceptible to objective quantification.'' DLA did note, however, that indirect costs, such as those stemming from international controversy over disposal abroad or those related to continued storage and exposure risks in Japan, ''while difficult to quantify, are of potentially greater magnitude than the direct costs of petition denial.''

ii. *Information regarding good faith efforts.* DLA argues in its petition that disposal of its PCBs in Japan is not an available disposal option:

There are currently no Japanese government permitted operators or companies, or adequate facilities to provide treatment or processing of these items on-site at DoD Military installations in Japan. A report by UNEP [United Nations Environment Program], published in August 2000, lists three companies in Japan offering alternate technology for processing and treatment of PCBs. As far as DLA can determine at this time, these technologies are demonstration technologies that lack permits for operation in Japan. Additional risks and negative public perception by the local Japanese communities may be involved in the creation of such a facility, including objections to equipment transportation and construction activities. In light of the concerns cited above, engaging in on-site processing activities using a temporary facility in Japan would present significantly greater public relations problems and potentially greater environmental and health risks than shipping the materials to a U.S. domestic site where the infrastructure and facilities already exist to process them properly. Finally, DoD policy currently prohibits the treatment of this material on a U.S. installation. In addition, even if DoD policy changed, any PCB treatment on Japanese territory on a U.S. installation would require permission from appropriate Japanese government officials.

DLA also notes elsewhere that even if a commercial or government disposal facility is established in Japan in the near future, DLA's inventory of PCBs is unlikely to receive first priority for access to that facility ahead of the large stockpiles of commercial or Japanese government PCBs in long-term storage in Japan.

DLA further argues that disposal of this waste in another country is not a viable option. DLA cites its 1999 Report to Congress as background on the difficulty it faces in finding suitable disposal alternatives for PCB waste generated by DoD overseas. DLA also notes the difficulty it had in its previous attempt to ship low-level PCBs from Japan to Canada for disposal (resulting in the other petition that is the subject of this proposed rule). In particular, DLA discusses the difficulty of shipping waste from Japan to other countries posed by the Basel Convention (Ref. 36):

In 1998 DLA awarded a contract for the proper disposal of PCBs from Japan to an acceptable facility outside the United States. However, because the PCBs fall under the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal (Basel), a DLA contractor was required to comply with the notice and consent regime imposed by Basel. Unfortunately, the DLA contractor was not able to persuade Japanese officials to prepare the necessary Basel notifications. DLA and its primary disposal contractor made extensive contacts over a period of several years with Japanese officials and disposal facilities in numerous locations outside the United States in an effort to identify firms who could dispose of such waste while satisfying Basel requirements. DoD also consulted at length with State Department officials in Japan and the United States whose responsibilities included international environmental matters. Although Japanese officials seemed willing to allow DoD to remove the PCBs pursuant to the United States—Japan Status of Forces Agreement (SOFA), the DLA contractor was unable to identify acceptable third countries that could receive the PCBs without Basel notification from Japan. The apparent preference by Japanese officials for shipment to the United States under the SOFA could not be accommodated due to the U.S. TSCA import ban. The variety of problems identified in various contacts regarding overseas disposal of PCBs resulted in a consensus that use of existing facilities in other developed nations was not a reasonable alternative.

DLA concludes that it has made every reasonable effort to locate appropriate disposal sites outside the United States and that it has accordingly satisfied the good faith efforts criteria necessary for an exemption.

B. EPA's Proposed Decision on Petitions

1. *January 19, 2001, petition; EPA proposes to grant this petition.* EPA agrees with DLA's reasoning that this waste, being primarily and perhaps exclusively at concentrations below 50 ppm PCBs, has little inherent potential to pose an unreasonable risk to health or the environment. Even more germane to this waste than the ''Excluded PCB Products'' processing, distribution, and use standards referred to by DLA are the disposal regulations at 40 CFR part 761, subpart D that do not require waste below 50 ppm PCBs be disposed of in

a TSCA or RCRA approved facility, provided the concentration was not affected by dilution. EPA notes the prohibition on import of PCBs at concentrations less than 50 ppm stems from the TSCA ban on ''manufacture'' of PCBs and is not based on any specific finding of EPA that importing PCBs at concentrations less than 50 ppm for disposal presents any unreasonable risk. Prior to 1997, EPA allowed such imports for disposal without restriction. (EPA authorized the import for disposal of PCBs at concentrations of less than 50 ppm in 1984 (Ref. 37), at 40 CFR 761.20(b)(2), using the authority of TSCA section 6(e)(1). This import provision was recodified from § 761.20(b) to § 761.93(a)(1)(i) as part of the March 18, 1996, PCB Import for Disposal Rule (Ref. 5). On July 7, 1997, the U.S. Court of Appeals for the Ninth Circuit overturned the PCB Import for Disposal Rule, on the grounds that EPA could not rely, as it did, on TSCA section 6(e)(1) to authorize imports of PCBs for disposal. *Sierra Club* v. *EPA*, 118 F 3d 1324 (9th Cir. 1997). EPA amended § 761.93 on June 29, 1998 (Ref. 6) to reflect the Sierra Club decision, by changing it to state that no person may import PCBs or PCB items for disposal without a TSCA section 6(e)(3) exemption.)

EPA also concurs with DLA's assessment that transportation of this waste poses no significant risk if conducted in accordance with all applicable laws and regulations. Domestically, EPA permits the processing and distribution in commerce of PCBs and PCB items at concentrations less than 50 ppm for disposal (§ 761.20(c)(4)) without additional restriction. Higher concentration PCBs and PCB items may be processed and distributed in commerce for disposal in compliance with part 761 (which requires marking, manifesting, registration, recordkeeping, etc.). In issuing the PCB Import for Disposal rule EPA investigated and sought comment on the risks inherent in transportation of imported PCB waste, and determined those risks to be insignificant (Ref. 5, p. 11097).

As this waste will be processed and, where required, disposed of at EPA-approved PCB disposal facilities, EPA finds that the import and disposal of this waste will not pose an unreasonable risk of injury to health or the environment. EPA approves all TSCA PCB disposal facilities on the basis of this standard, whether the unit be an incinerator, chemical waste landfill, or alternative process, such as a decontamination or chemical dechlorination operation. Similarly, EPA has previously determined that other disposal options for PCB waste at concentrations below 50 ppm, such as burning used oil for energy recovery in compliance with 40 CFR 761.20(e), pose no unreasonable risk to health or the environment.

Moreover, any risks inherent in transportation and disposal must be weighed against the risks of continued long-term storage. As DLA noted, Wake Island is a part of the United States and under TSCA it is entitled to the protection against unreasonable risk of injury to health or the environment. Generally, EPA considers long-term storage of PCB waste to pose an unacceptable risk due to threat of leaks and spills, and with certain limited exceptions, EPA limits storage for disposal of PCB waste to 1–year from the date the waste was generated (40 CFR 761.65(a)). As discussed at length by EPA in recent **Federal Register** documents (Refs. 7 and 8) the long-term storage of PCBs in U.S. territories and possessions outside the Customs Territory of the United States, such as Wake Island, often poses additional risks; examples of problems cited included risk of severe storms, sensitive ecosystems, limited available land, low elevation and water resources that are vulnerable to contamination. For instance, while 40 CFR 761.65(b)(1)(v) stipulates that PCB waste storage sites should not be located below the 100–year floodgate elevation, the highest elevation on Wake Island is only 6 meters above sea level. Therefore, EPA concludes that removal of this PCB material from Wake Island in the most expeditious manner possible will reduce risk of injury to health and the environment.

Other benefits to the United States will be realized through the granting of this petition, as well. One of EPA's purposes in promulgating 40 CFR 761.99(c) was to address the inequitable treatment of the territories outside the Customs Territory of the United States that was inadvertently created by the manufacturing ban of TSCA section 6(e)(3) (Refs. 7 and 8). EPA believes that granting this exemption will likewise allow waste stored in the territories to be managed and disposed of in a manner similar to waste generated in other States, and it will prevent the Pacific Island territories of the United States from bearing any undue burden for the disposal of such waste. Furthermore, as this waste is the property of the U.S. Government, and it was generated by the U.S. Government while conducting its affairs abroad, EPA believes the U.S. Government has an obligation to allow this waste to be safely disposed of under its jurisdiction in the United States. A grant of this petition would allow the United States Government to solve one of its own toxic waste problems without relying on other countries' disposal resources. Thus, EPA finds that DLA has provided adequate justification for a finding that the activity proposed in this petition would not pose an unreasonable risk of injury to health or the environment.

EPA also finds that DLA has made good faith efforts to find alternatives to import into the Customs Territory. EPA agrees with DLA that Wake Island is an unsuitable location for attempts at on-site disposal, due to its extremely remote location, small size, lack of facilities, and fragile environment. In addition, as DLA notes, decontamination procedures typical for this type of waste would not eliminate all PCBs and the concomitant need for an exemption. EPA also believes DLA has made good faith efforts to find disposal alternatives in other countries; indeed, the waste came to Wake Island as a result of an unsuccessful effort to dispose of it abroad. EPA is well aware of DLA's growing difficulty in disposing of its foreign-manufactured waste abroad, a problem outlined in DLA's report to Congress in 1999 (Ref. 33), and EPA has been aware of DLA's substantial efforts since April 2000 to identify options for disposal of this particular waste in a responsible manner, including disposal in another country. EPA accepts DLA's assessment that with the notoriety that is now attached to this particular waste shipment and the difficulty of satisfying Basel Convention obligations, acceptance of this waste by another country for disposal is unlikely to ever occur. EPA further notes that disposal in a facility in the United States, but outside the Customs Territory of the United States, e.g., in another Pacific territory, is not an alternative because no suitable facilities exist. Finally, EPA also believes it relevant to the good faith issue that, as noted earlier, this waste was generated by the U.S. Government while conducting its affairs abroad, and thus the United States bears some obligation to provide for the safe disposal of this waste in the United States if it can not be easily disposed elsewhere.

For these reasons, EPA finds DLA has satisfied the exemption criteria of TSCA section 6(e)(3)(B) and proposes to grant this petition.

2. *April 16, 2001, petition; EPA proposes to grant this petition.* As with the previous petition, EPA concurs with DLA's assessment that transportation of this waste will pose no unreasonable

risk if conducted in accordance with all applicable laws and regulations. As noted in Unit IV.B.1., EPA permits the domestic processing and distribution in commerce of PCBs and PCB items for disposal in compliance with part 761, and in issuance of the PCB Import for Disposal rule EPA investigated and sought comment on the risks inherent in transportation of imported PCB waste, and determined those risks to be insignificant (Ref. 5, p. 11097). Also, as discussed in Unit IV.B.1. in regard to the Wake Island petition, EPA finds generally that the disposal of imported PCB waste at an EPA-approved PCB disposal facility poses no unreasonable risks as these facilities have been approved on the basis of that standard.

EPA believes that granting this petition will benefit the United States in several ways. As DLA notes, the continued long-term storage of PCB waste on U.S. military facilities in Japan poses risks of exposure to U.S. personnel and the environment—risks that can be mitigated through the action proposed in this petition. Also, the reduction of risk to Japanese citizens must be considered advantageous, especially in light of the heightened concerns over PCBs in that country and the sensitivities surrounding the U.S. military's presence in Japan. Currently, the U.S. military is in the awkward position of explaining to its Japanese hosts that it can not remove its toxic waste from their country because United States law does not allow the waste to be sent to the United States. As with the Wake Island petition, granting this petition allows the United States to accept responsibility for solving its own toxic waste problems. Thus, EPA finds that the activity proposed in this petition would not pose an unreasonable risk of injury to health or the environment.

EPA believes that DLA has demonstrated good faith efforts to find alternatives to disposal of this PCB waste in the United States. EPA is aware of the lack of adequate PCB disposal capacity in Japan, to which DoD's large inventory of PCB waste is itself testimony. While EPA is aware that some recent efforts are underway to establish new disposal capacity in Japan (Refs. 34 and 35), EPA believes it will be some time before these new facilities are operational and the large inventories of commercial and government PCB waste that have accumulated over the years in Japan will be eliminated. Moreover, as DLA notes, even assuming adequate disposal capacity becomes available in Japan in the near future, there are significant political obstacles that are likely to prevent the U.S. military disposing of its PCB waste in Japan, either off-site at a commercial facility or on-site at a U.S. base.

EPA is generally aware of the increasing difficulties DoD has in disposing of its foreign-generated PCB waste abroad, as described in its Report to Congress, and as evidenced by the difficulties with the waste now stored on Wake Island. EPA also acknowledges the peculiar circumstances of DoD's PCBs, which, while present in one country, are owned by another's government, leading to significant difficulty in providing Basel notification to third countries. Given these difficulties, EPA concurs with DLA's conclusion that disposal in a third country is not a viable option for this waste. And, as stated earlier, EPA also believes it relevant to the good faith issue that since this waste was generated by the U.S. Government while conducting its affairs abroad, the United States bears some obligation to provide for the safe disposal of this waste in the United States if it can not be easily disposed of elsewhere.

For these reasons EPA finds DLA has satisfied the exemption criteria of TSCA section 6(e)(3)(B) and proposes to grant this petition.

V. References

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3. USEPA. Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, and Distribution in Commerce Exemptions; Proposed Rule. OPTS–66008F. **Federal Register** (53 FR 32326, August 24, 1988).

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5. USEPA. Disposal of Polychlorinated Biphenyls (PCBs); Import for Disposal; Final Rule. OPPTS–66009F. **Federal Register** (61 FR 11096, March 18, 1996) (FRL–5354–8).

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VI. Regulatory Assessment Requirements

A. Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB), because this action is not likely to result in a rule that meets any of the criteria for a ''significant regulatory action'' provided in section 3(f) of the Executive order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as:

1. A small business that meets the Small Business Administration size standards codified at 13 CFR 121.201;

2. A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. EPA is proposing to grant two petitions by DLA to import PCBs for disposal. Only DLA, which is not a small entity, would be regulated by this proposed rule.

C. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information 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.

This proposed rule would not impose any new information collection burden. Once the exemption is granted as proposed, DLA will be subject to the existing EPA regulations regarding the disposal of PCBs in 40 CFR part 761. OMB has previously approved the information collection requirements contained in 40 CFR part 761 under the PRA, and has assigned OMB Control No. 2070–0112 (EPA ICR No. 1446.07).

The annual public burden approved under OMB Control No. 2070–0112, is estimated to average 0.57 hours per response. As defined by the PRA and 5 CFR 1230.3(b), ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of this ICR document may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, by e-mail at auby.susan@epa.gov, or by calling (202) 566–1972. Copies may also be downloaded from the Internet at http://www.epa.gov/icr. Include the EPA ICR number and/or OMB control number in any correspondence.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, (UMRA), Public Law 104–4, EPA has determined that this proposal does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. EPA is proposing to grant two petitions by DLA to import PCBs for

disposal. If the petitions are granted, and DLA imports PCBs for disposal, DLA would be required to comply with the existing regulations on PCB disposal at 40 CFR part 761. The only mandate that would be imposed by this proposed rule would be imposed on DLA. In addition, EPA has determined that this proposed rule would not significantly or uniquely affect small governments. The DLA petitions state that the PCBs will be disposed of in PCB-approved facilities. No new facilities, which could affect small government resources if a permit is required, are contemplated. EPA believes that the disposal of PCBs in previously approved facilities in the amounts specified in this proposal would have little, if any, impact on small governments. Thus, this proposed rule is not subject to the requirements of UMRA sections 202, 203, 204, and 205.

E. Federalism

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. EPA is proposing to grant two petitions from DLA to import PCBs and dispose of them in accordance with existing regulations. There will be no direct effects on the States, nor will there be any impact on the relationships between the various levels of government with respect to PCB disposal issues. Thus, Executive Order 13132 does not apply to this proposed rule. However, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. EPA's proposal would grant two petitions from DLA to import PCBs and dispose of them in PCB-approved disposal facilities in accordance with existing regulations. EPA does not believe that this activity will have any impacts on the communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this proposed rule. However, in the spirit of Executive Order 13175, EPA specifically solicits comment on this proposed rule from tribal officials.

G. Children's Health

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any proposed rule that:

1. Is determined to be ''economically significant'' as defined under E.O. 12866, and

2. Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA is proposing to grant two petitions from DLA to import PCBs and dispose of them in PCB-approved disposal facilities in accordance with existing regulations. EPA believes that the import and disposal of the amount of PCBs specified in the exemption petitions will present little, if any, additional risk to persons living in the vicinity of the approved disposal facilities or in the communities through which the PCBs may be transported.

H. Energy Effects

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355 (May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630, entitled*Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this proposed rule in accordance with the*Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings* issued under the Executive order.

K. Civil Justice Reform

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

Lists of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls (PCBs), Reporting and recordkeeping requirements.

Dated: September 12, 2002.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I is proposed to be amended as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

2. Section 761.80 is amended by adding a new paragraph (j) to read as follows:

§ 761.80 Manufacturing, processing and distribution in commerce exemptions.

* * * * *

(j) The Administrator grants the following petitions to import PCBs and PCB items for disposal pursuant to this part:

(1) United States Defense Logistics Agency's January 19, 2001, petition for an exemption for 1 year to import PCBs and PCB Items stored on Wake Island and identified in its petition for disposal.

(2) United States Defense Logistics Agency's April 16, 2001, petition for an exemption for 1 year to import PCBs and PCB Items stored or in use in Japan and identified in its petition, as amended, for disposal.

* * * * *

[FR Doc. 02–23718 Filed 9–13–02; 2:56 pm]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[Docket No. OST–2002–13361]

RIN 2105–AD17

Standard Time Zone Boundary in the State of North Dakota: Proposed Relocation of Sioux County

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

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Chairman of the Board of County Commissioners for Sioux County, ND, DOT proposes to relocate the boundary between mountain time and central time in the State of North Dakota. DOT proposes to move all of the county east of State Highway 31 into the central time zone.

DATES: Comments should be received by October 17, 2002, to be assured of consideration. Comments received after that date will be considered to the extent practicable. If the time zone boundary is changed as a result of this rulemaking, the effective date would be no earlier than 2 a.m. MDT Sunday, October 27, 2002, which is the changeover from daylight saving to standard time.

ADDRESSES: You may submit your comments and related material by only one of the following methods:

(1) By mail to the Docket Management Facility (OST–2002–13361), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address 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 questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, Washington, DC 20590, (202) 366–9315, or by e-mail at *joanne.petrie@ost.dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is ''regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce.''

Time zone boundaries are set by regulation (49 CFR part 71). Currently, under regulation, the southeastern part of the county around Fort Yates is in the central time zone and the remainder of the county is in the mountain time zone. The area near Fort Yates has the greatest population, is the county seat, and has the greatest concentration of schools, businesses, medical facilities, houses of worship and recreational facilities. Areas to the south and east of the county observe central time. Morton County, which is north of Sioux County, is currently split between central and mountain time. Morton County has asked to be changed to central time and that request is currently pending before the Department. Grant County, which lies to the northwest and Adams County, which lies to the west, both observe mountain time.

The Standing Rock Indian Reservation is geographically located in both North and South Dakota and covers approximately 2.3 million acres. All of Sioux County is part of the reservation. The Standing Rock Sioux observe central time. Under the Uniform Time Act, as amended, the county is currently divided between central and mountain time for federal, state and county purposes.

Request for a Change

In 2000, the Chairman of the Board of County Commissioners for Sioux County asked the Department of Transportation to place the entire county on central time. A DOT representative informed the Standing Rock Sioux of this request by telephone and sent a letter to the Chairman of the Tribal Council. . On September 27, 2000, a representative of DOT visited the county and met with a representative of the Standing Rock Sioux Tribal Council to ascertain the Council's views on this request. The Tribal Representative explained that the tribe observed central time, had no plans to change that observance, and had no objection to the request of the Sioux County Board of County Commissioners.

On September 27, 2000, the DOT representative also held an informal public hearing at the Sioux County Courthouse to gather public views on this request. The hearing was widely advertised through numerous newspaper and television stations. In addition, the public was invited to submit written comments to the Department on this possible change.

In addition to the County Commissioners and staff, one member of the public attended and presented testimony. The County Commissioners explained the inconvenience and confusion that resulted from the current time zone boundary. They outlined geographic and economic conditions in the area and explained how people and businesses in the county interacted with neighboring areas.

Frank Tomac, a resident living in western Sioux County, concurred with most of the arguments presented by the County Commissioners. He suggested, however, that the time zone boundary be placed at State Highway 31, rather than the western border of the county. Mr. Tomac noted that the western part of the county is rural and very sparsely populated. He noted that there is no road going east to west in this part of the county. Residents must either go into South Dakota or drive a considerable distance into Grant County to get to the eastern part of the county. Because of the proximity with the South Dakota border, Mr. Tomac noted that many of the public services in this area are provided in South Dakota. Other services are provided in Grant County, which is on mountain time. In response to his comments, the Commissioners decided to amend their request.

In a petition dated November 1, 2001, the Chairman of the Board of County Commissioners for Sioux County asked the Department of Transportation to move the central portion of Sioux County, North Dakota, from the mountain time zone to the central time zone. In the petition, the Chairman asked:

''That the U.S. Department of Transportation move the time zone line separating central time and mountain time in Sioux County, North Dakota, west to Highway 31, so that all land in Sioux County east of Highway 31 would be in Central Time and all land west of Highway 31 would remain in Mountain Time.

This request is made for the following reasons:

1. Sioux County is currently one of the few counties in North Dakota that is divided in two as far as time zones go. A small area in the southeast corner of the county, including Fort Yates (the county seat) is already in the central time zone, and the entire rest of the county is in the mountain time zone.

2. That while Fort Yates operates on central time, a large part of the northern area of Sioux County, while technically being in the mountain time zone, already operates incorrectly on central time anyway.

3. That Fort Yates is the county seat and main center of commerce for the entire county, being the only town larger than five hundred people, and moving the entire eastern half of the county, where 95 percent of the population resides, to central time would eliminate confusion.

4. That virtually all television and radio broadcasts come out of Bismarck, ND, which is also on central time.

5. That virtually all supplies bought in Sioux County come out of Bismarck, ND, also.

6. That Sioux County residents regularly travel to Bismarck, ND, for shopping and recreational purposes.

7. That while the voters of Sioux County voted on June 13, 2000, to move Sioux County to the central time zone, the inhabitants of western Sioux County almost unanimously wish to remain on mountain time. This action would facilitate the wishes of all involved.''

In response to the Board's action, Mr. Tomac sent written comments reiterating his position and urging the Department to set the boundary at Highway 31. No other written comments have been filed to date in response to our invitation.

Under DOT procedures to change a time zone boundary, the Department will generally begin a rulemaking proceeding if the highest elected officials in the area make a *prima facie* case for the proposed change. DOT has determined that the Resolution of the Chairman of the County Commissioners of Sioux County, ND makes a prima facie case that warrants opening a proceeding to determine whether the change should be made. Consequently, in this notice of proposed rulemaking, DOT is proposing to make the requested change and is inviting additional public comment. Because this proposal has been subject to public comment for a lengthy period, we are only providing 30 days, rather than the usual 60, for public comment.

We are proposing that this change go into effect during the next changeover from daylight saving time to standard time, which is on October 27, 2002. The Board of County Commissioners have advised the Department that they would like the change to go into effect as soon as possible, that the community is anxious to resolve this issue, and that, as a practical matter, the few residents affected need little or no advance notice of the change. Under the Administrative Procedure Act, final rules are generally effective 30 days after publication of a final rule unless there is a showing of good cause. We request comments concerning the appropriate effective date.

Impact on Observance of Daylight Saving Time

This time zone proposal does not directly affect the observance of daylight saving time. Under the Uniform Time Act of 1966, as amended, the standard time of each time zone in the United States is advanced one hour from 2:00 a.m. on the first Sunday in April until 2:00 a.m. on the last Sunday in October, except in any State that has, by law, exempted itself from this observance.

Regulatory Analysis and Notices

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The rule primarily affects the convenience of individuals in scheduling activities. By itself, it imposes no direct costs. Its impact is localized in nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations, and governmental jurisdictions with populations of less than 50,000. This proposal, if adopted, would primarily effect individuals and their scheduling of activities. Although it would effect some small businesses, not-for-profits and, perhaps, several small governmental jurisdictions, it would not be a substantial number. In addition, the change should have little, if any, economic impact.

Therefore, the Office of the Secretary certifies under 5 U.S.C. 605(b) that this proposed rule would not, if adopted, have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in

understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Joanne Petrie at (202) 366–9315.

Collection of Information

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

Federalism

We have analyzed this proposed rule under E.O. 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

This rulemaking is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, an environmental impact statement is not required.

Consultation and Coordination with Indian Tribal Governments

E.O. 13175 provides that government agencies consult with tribes on issues that impact the Indian community. The Department has consulted with the Standing Rock Sioux and will continue to do so as this rulemaking progresses.

List of Subjects in 49 CFR Part 71

Time zones.

For the reasons discussed above, the Office of the Secretary proposes to revise Title 49 part 71 to read as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 would continue to read:

Authority: Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; 49 CFR 159(a), unless otherwise noted.

2. Paragraph (a) of § 71.7, Boundary line between central and mountain zones, would be revised to read as follows:

§ 71.7 Boundary line between central and mountain zones.

(a) *Montana-North Dakota.* Beginning at the junction of the Montana-North Dakota boundary with the boundary of the United States and Canada southerly along the Montana-North Dakota boundary to the Missouri River; thence southerly and easterly along the middle of that river to the midpoint of the confluence of the Missouri and Yellowstone Rivers; thence southerly and easterly along the middle of the Yellowstone River to the north boundary of T. 150 N., R. 104 W.; thence east to the northwest corner of T. 150 N., R. 102 W.; thence south to the southwest corner of T. 149 N., R. 102 W.; thence east to the northwest corner of T. 148 N., R. 102 W.; thence south to the northwest corner of 147 N., R. 102 W.; thence east to the southwest corner of T. 148 N., R. 101 W., thence south to the middle of the Little Missouri; thence easterly and northerly along the middle of that river to the midpoint of its confluence with the Missouri River; thence southerly and easterly along the middle of the Missouri River to the midpoint of its confluence with the northern land boundary of Oliver County; thence west along the northern county line to the northwest boundary; thence south along the western county line to the southwest boundary; thence east along the southern county line to the northwest corner of T. 140 N., R. 83 W.; thence south to the southwest corner of T. 140 N., R. 82 W.; thence east to the southeast corner of T. 140 N., R. 83 W.; thence south to the middle of the Heart River; thence easterly and northerly along the middle of that river to the southern boundary of T. 139 N., R. 82 W.; thence east to the middle of the Heart River; thence southerly and easterly along the middle of that river to the northeast boundary of Sioux County; thence west and south along the northern boundary of Sioux County to the center of State Highway 31; thence south along the center of State Highway 31 to the state border with South Dakota; thence east along the southern boundary of Sioux County to the middle of the Missouri Rivers.

* * * * *

Issued in Washington, DC, on September 12, 2002.

Kirk K. Van Tine,

General Counsel.

[FR Doc. 02–23707 Filed 9–16–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Unarmored Threespine Stickleback

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Finding that the designation of critical habitat should not be made.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), find that the proposed designation of critical habitat for the unarmored threespine stickleback (*Gasterosteus aculaetus williamsoni*) pursuant to the Endangered Species Act of 1973, as amended, (Act) should not be made final. On November 17, 1980, we proposed designating approximately 51 kilometers (31.7 miles) of streams in Los Angeles and Santa Barbara Counties, California, as critical habitat for this species (45 FR 76012).

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Listing, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203 (telephone 703/358–2105).

SUPPLEMENTARY INFORMATION:

Background

The unarmored threespine stickleback is a small fish that we listed as endangered on October 13, 1970 (35 FR 16047), under the authority of the Endangered Species Conservation Act of 1969 (Pub. L. 91–135, 83 Stat. 275 (1969)). The Endangered Species Conservation Act of 1969 had no requirement to designate critical habitat and accordingly, at the time of its listing, critical habitat was not proposed for the unarmored threespine stickleback.

The Endangered Species Act of 1973 referred to the concept of critical habitat, requiring that Federal agency actions not modify or destroy habitat determined to be critical. However, the 1973 Act did not define critical habitat or specify a procedure for its designation (Pub. L. 93–205, 87 Stat. 884 (1973), codified at 16 U.S.C. 1536).

Amendments to the Act, enacted on November 10, 1978, defined ''critical habitat'' and provided that critical habitat ''may be established'' for species listed prior to the date of enactment of the 1978 amendments, but did not make designation mandatory nor set a certain timeframe for designation (Pub. L. 95–632, section 2(2), 92 Stat. 3751 (1978)). In 1982, amendments to the Act established the requirement to designate critical habitat at the time of listing to the extent such designation was prudent and determinable, but excluded from that requirement any species listed prior to November 10, 1978 (Pub. L. 97–304, sections 2(a), 2(b)(4), 96 Stat. 1411 (1982)). Therefore, for species listed prior to the 1978 amendments, such as the unarmored threespine stickleback, we are not required to designate critical habitat.

At our discretion, on November 17, 1980, we published a proposal (45 FR 76012) to designate a total of approximately 51 kilometers (31.7 miles) of streams in Los Angeles and Santa Barbara Counties, CA, as critical habitat for the unarmored threespine stickleback. We have not made a final designation of critical habitat for this species. The Endangered Species Act amendments of 1982 specified that, for any proposed designation of critical habitat pending at the time of enactment of the 1982 amendments, the procedures for revisions to critical habitat would apply (Pub. L. 97–304, section 2(b)(2)). Consequently, our 1980 proposal to designate critical habitat for the unarmored threespine stickleback is subject to the procedures for revisions to critical habitat.

The relevant procedures for revisions to critical habitat are set out under section 4 of the Act. Section 4(a)(3)(B) provides that the Service ''may'' make revisions to critical habitat ''from time-to-time * * * as appropriate'' (16 U.S.C. 1533(a)(3)(B)). Section 4(b)(6)(A)(i) of the Act requires that within one year of publishing a proposed revision to critical habitat, the Service must publish in the **Federal Register** one of four possible actions: (1) A final rule to implement the revision; (2) a notice that the one-year period is being extended for up to six months for purposes of soliciting additional data due to substantial disagreement regarding the sufficiency or accuracy of the available data; (3) a notice that the proposed revision is being withdrawn, because there is insufficient evidence to justify the action; or (4) a finding that the revision should not be made. As explained below, we are taking the fourth of these possible actions.

Finding

This notice presents our finding that the November 17, 1980, proposed designation of critical habitat, which is subject to the procedures for revisions to critical habitat in accordance with the 1982 amendments to the Act, should not be made. In making this finding, we are exercising our discretion, provided under the 1978 and 1982 amendments to the Act, not to designate critical habitat for this species. The basis for this finding is described below.

Under the 1978 and 1982 amendments to the Act, the Service is not required to designate critical habitat for the unarmored threespine stickleback, but may do so at our discretion. Since the Service decided in 1980 to exercise its discretion and propose the designation of critical habitat for the species, section 4(b)(6)(A)(i) of the Act requires the Service to take one of four actions: implement the proposed designation, extend the time for taking action on the proposed designation, withdraw the proposed designation, or make a finding that the designation should not be made. After considering all of the relevant factors, we have determined that taking any of the first three actions is not justified, and have concluded that the critical habitat designation should not be made.

We cannot justify exercising our discretion to issue a final rule to implement the proposed critical habitat designation, because the 1980 proposal clearly does not satisfy the Act's requirement that the designation or revision of critical habitat shall be made on the basis of the best scientific data available and after taking into consideration the economic impact of specifying any particular area as critical habitat (16 U.S.C. 1533(b)(2)). The degree of specificity and scientific rigor that the Service now uses for designating critical habitat has evolved considerably since 1980. Moreover, it is likely that considerable new information regarding changes in habitat or other conditions has become available since 1980, and would need to be assessed to determine if the proposal needs to be revised. The economic information associated with the 1980 proposal is also out of date, and would need to be completely replaced with a new economic analysis.

We also cannot justify formally extending the proposed action for six months to solicit additional data to address concerns regarding the sufficiency or accuracy of the data in the proposal. Considerable time and effort would be needed to update the information and conduct new analyses to bring the 1980 proposal to the point at which it would meet current standards, and to complete other procedural steps that would be associated with completing this discretionary action. Such an effort would come at the expense of critical habitat designations that the Service is required to make for other species. At the present time, we have a backlog of actions involving non-discretionary designations of critical habitat for approximately 475 species. These include actions that are mandated by court orders and court-approved settlement agreements, as well as actions necessary to implement the requirements of the Act pertaining to critical habitat designations. It will take us several years to clear this backlog, and during that time we also will need to meet non-discretionary requirements to designate critical habitat as additional species are listed. Meeting these requirements, for which we have no discretion, is a higher priority than taking discretionary actions.

Finally, we cannot justify withdrawing the proposed regulation. To withdraw the proposed regulation, we must have made a judicially reviewable finding that ''there is not sufficient evidence to justify the action proposed by the regulation'' (16 U.S.C. 1533(b)(6)(B)(ii)). We have not made such a finding and would need to compile and analyze all the existing available information in order to determine whether such a finding could be made. Such an effort would come at the expense of critical habitat designations that the Service is required to make for other species. As discussed above, we currently have a large backlog of non-discretionary critical habitat

designations, and meeting those requirements is a higher priority than taking discretionary actions.

Due to the discretion we have regarding the designation of critical habitat for species listed prior to the 1978 amendments to the Act, the staleness of the proposed rule, and our need to give priority to funding the large number of outstanding non-discretionary designations and to address new designations that will be required as additional species are listed, we find that the proposed designation of critical habitat for the unarmored threespine stickleback should not be made.

This finding means that Federal agencies no longer are required to confer with us, under section 7(a)(4) of the Act, regarding any agency action that is likely to result in the destruction or adverse modification of the areas that were proposed for designation as critical habitat. The fact that we are making this finding and exercising our discretion not to designate critical habitat for the unarmored threespine stickleback does not, however, alter the protection this species and its habitat will continue to receive under the Act. Specifically, it does not alter the requirement of section 7(a)(2) of the Act that all Federal agencies must insure that actions they authorize, fund, or carry out are not likely to ''jeopardize the continued existence'' of a listed species. Further, the section 9 prohibition of take of the species, which applies to all land ownerships, is independent of whether critical habitat is designated and is unchanged by this finding.

Authority

The authority for this action is section 4(b)(6)(A)(i)(II) of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1533(b)(6)(A)(i)(II)), Pub. L. 95–632, at 2(2), 92 Stat. 3751 (November 10, 1978), and Pub. L. 97–304, at 2(b)(2), 2(b)(4), 96 Stat. 1411, 1416 (October 13, 1982).

Dated: September, 11, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–23645 Filed 9–12–02; 4:09 pm]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 67, No. 180

Tuesday, September 17, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–032N]

Codex Alimentarius Commission: Twenty-Fifth Session of the Codex Committee on Methods of Analysis and Sampling

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, of the U.S. Department of Agriculture, and the Food and Drug Administration, of the Department of Health and Human Services, are sponsoring a public meeting on October 16, 2002, to review the technical contents of the agenda item documents and to receive comments on all issues coming before the Twenty-fifth Session of the Codex Committee on Methods of Analysis and Sampling, which will be held in Budapest, Hungary, November 18–22, 2002.

DATES: The public meeting is scheduled for Wednesday, October 16, 2002 from 9 a.m. to 12 noon.

ADDRESSES: The public meeting will be held in the Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, Maryland 20740, Conference Room 1A 001.

To receive copies of the documents relevant to this notice, contact the Food Safety and Inspection Service (FSIS) Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net*.

Send comments (an original and two copies) to the FSIS Docket Clerk and reference Docket # 02–032N. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Syed Amjad Ali, International Issues Analyst, U. S. Codex Office, FSIS, Room 4861, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–3700, telephone (202) 205–7760; Fax (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Dr. Gregory Diachenko, Director, Division of Product Manufacture and Use, FDA, at telephone (301) 436–2387; Fax (301) 436–2634.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the major international organization for encouraging fair international trade in food and for protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. The Codex Committee on Methods of Analysis and Sampling (CCMAS) performs multiple functions; defines criteria appropriate for Codex Methods of Analysis and Sampling; specifies reference methods of analysis and sampling; endorses methods of analysis and sampling proposed by Codex Committees; elaborates sampling plans; and considers specific sampling and analysis problems. The Government of Hungary hosts this committee and will chair the Committee meeting.

Issues To Be Discussed at the Public Meeting

The following specific issues will be discussed during the public meeting:

1. Matters referred by the Codex Alimentarius Commission and other Codex Committees.

2. Amendment to the Procedural Manual of the Codex Alimentarius Commission Relevant to the Criteria Approach: Proposed Guidelines and Working Instructions to Aid the Implementation of the Criteria Approach to the Selection of Methods of Analysis for Codex purposes, and Proposed Draft Guidelines for Evaluating Acceptable Methods of Analysis for Governments.

3. Consideration of International Union of Pure and Applied Chemistry Guidelines for the Use of Recovery Information in Analytical Measurements (for adoption by reference).

4. Endorsement of Methods of Analysis and Sampling, including General Methods Provisions in Codex Standards.

5. Proposed Draft General Guidelines on Sampling.

6. Validation of methods; Single Laboratory Validation, and Use of Proficiency Testing Schemes.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the ''Constituent Update'' page on the FSIS Web site at

http://www.fsis.usda.gov/oa/update/update.htm. Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

Done at Washington, DC, on September 11, 2002.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 02–23601 Filed 9–16–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 35–2002]

Foreign-Trade Zone 61—San Juan, PR, Expansion of Facilities and Manufacturing Authority-Subzone 61H, Baxter Healthcare Corporation Plant (Pharmaceuticals), Guayama, PR

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Baxter Healthcare Corporation of Puerto Rico (Baxter), requesting to add capacity and to expand the scope of manufacturing authority under zone procedures within Subzone 61H, at the Baxter plant in Guayama, Puerto Rico. It was formally filed on September 10, 2002.

Subzone 61H was approved by the Board in 1997 at a single site located at Route 3, km. 142.5, Guayama, Puerto Rico, with authority granted for the manufacture of pharmaceuticals including inhalation anesthetics (Board Order 875, 62 FR 10521, 3/7/97).

Subzone 61H (200 employees) currently consists of 23 buildings totaling 176,000 square feet on 38 acres. Baxter is now proposing to add 9 buildings of 33,716 sq. ft. and 1.15 acres. The proposed Subzone 61H would then consist of 32 buildings of 209,716 sq. ft. on 39.15 acres.

The application also requests to expand the scope of authority for manufacturing activity conducted under FTZ procedures to include additional general categories of inputs that have recently been approved by the Board for other pharmaceutical plants. They include chemically pure sugars, empty capsules for pharmaceutical use, protein concentrates, natural magnesium phosphates and carbonates, gypsum, anhydrite and plasters, petroleum jelly, paraffin and waxes, sulfuric acid, other inorganic acids or compounds of nonmetals, ammonia, zinc oxide, titanium oxides, fluorides, chlorates, sulfates, salts of oxometallic acids, radioactive chemical elements, colloidal precious metals, compounds of rare earth metals, acyclic hydrocarbons, derivatives of phenols or peroxides, acetals and hemiacetals, phosphoric esters and their salts, diazo-compounds, glands for therapeutic uses, wadding, gauze and bandages, pharmaceutical glaze, hair preparations, lubricating preparations, albumins, prepared glues and adhesives, catalytic preparations, diagnostic or laboratory reagents, prepared binders, acrylic and ethylene polymers, self-adhesive plates and sheets, other articles of vulcanized rubber, plastic cases, cartons, boxes, printed books, brochures and similar printed matter, carboys, bottles, and flasks, stoppers, caps, and lids, aluminum foil, tin plates and sheets, taps, cocks and valves, and medical instruments and appliances. Materials sourced from abroad represent some 50–70 percent of the total value of materials used in production.

Zone procedures would exempt Baxter from Customs duty payments on foreign materials used in production for export. Some 30 percent of the plant's shipments are exported. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to finished products (duty free-9.2%) instead of the rates otherwise applicable to the foreign input materials (duty free-20%)(noted above). The application indicates that the savings from zone procedures would help improve Baxter's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is November 18, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 2, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 525 F.D. Roosevelt Ave., Suite 905, San Juan, PR 00918.

Dated: September 10, 2002.

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. 02–23608 Filed 9–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; P&M Trading, Inc.

In the Matter of: P&M Trading, Inc., 93 Coyote Place, PO Box 1313, San Ramon, California 94583.

Order Denying Export Privileges

On October 20, 2000, a U.S. District Court in the District of Maryland convicted P&M Trading, Inc. of violating the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1994 & Supp. V 1999)) (IEEPA). Specifically, the Court found that P&M Trading, Inc. willfully, knowingly and unlawfully violated the embargo against Iran by attempting to export and causing the exportation of a Shimadzu GC–14A Transformer Oil Gas Analysis System from the United States to Iran via the United Arab Emirates.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401–2420 (1994 & Supp. V 1999)) (the Act) [1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating any of a number of federal criminal statutes including the IEEPA shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 FR 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the Act.

(currently codified at 15 CFR parts 730–774 (2002)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the IEEPA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person's export privileges for a period of up to 10 years from the date of conviction and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of P&M Trading, Inc.'s conviction for violating the IEEPA, and after providing notice and an opportunity for P&M Trading, Inc. to make a written submission to the Bureau of Industry and Security before issuing an Order denying its export privileges, as provided in section 766.25 of the Regulations, and following consultations with the Director, Office of Export Enforcement, I have decided to deny P&M Trading, Inc.'s export privileges for a period of 10 years from the date of its conviction. The 10-year period ends on October 20, 2010. I have also decided to revoke all licenses issued pursuant to the Act in which P&M Trading, Inc. had an interest at the time of its conviction.

Accordingly, it is hereby ordered:

I. Until October 20, 2010, P&M Trading, Inc., 93 Coyote Place, P.O. Box 1313, San Ramon, California 94583, (''the denied person'') and, when acting in behalf of it, all of its successors or assigns, officers, representatives, agent and employees, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in section 766.23 of the Regulations, any person, firm, corporation, or business organization related to P&M Trading, Inc. by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until October 20, 2010.

VI. In accordance with Part 756 of the Regulations, P&M Trading, Inc. may file an appeal from this Order with the Under Secretary for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

VII. A copy of this Order shall be delivered to P&M Trading, Inc. This Order shall be published in the **Federal Register**.

Dated: September 9, 2002.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 02–23548 Filed 9–16–02; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rod from India: Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit of the preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limits of the preliminary results of the antidumping duty administrative review of stainless steel wire rod (''SSWR'') from India. This review covers the period December 1, 2000 through November 30, 2001.

EFFECTIVE DATE: September 17, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1102.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless

otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background

On January 29, 2002, we published a notice of initiation of a review of SSWR from India covering the period December 1, 2000 through November 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* January 22, 2002 (67 FR 4236). On July 9, 2002, we published a notice of extension of the preliminary results of administrative review from September 2, 2002, to November 1, 2002. *See Stainless Steel Wire Rod from India: Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review,* July 9, 2002 (67 FR 45481) *(''Preliminary Extension Notice'').*

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 245-day period to issue its preliminary results by 120 days. Because the Department has already extended these preliminary results only 60 days, we are allowed to further extend the preliminary results an additional 60 days. Completion of the preliminary results of this review within the 305–day period is not practicable for the following reasons, which were also cited in the *Preliminary Extension Notice:*

- The review involves four companies, a large number of transactions and complex adjustments.
- All companies include sales and cost investigations which require the Department to gather and analyze a significant amount of information pertaining to each company's sales practices, manufacturing costs and corporate relationships.

Additionally, responses from three of the four companies required the Department to issue multiple supplemental questionnaires which further delayed the planned verification schedules.

Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 30 days until December 1, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: September 11, 2002.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–23607 Filed 9–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091002G]

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 will hold a meeting of its Habitat and Environmental Protection Advisory Panel (AP) and a joint meeting of the Habitat and Environmental Protection AP and Coral Advisory Panel in Charleston, SC.

DATES: The meetings will be held October 1–3, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: These meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: 843–571–1000 or 1–800–334–6660.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366; fax: (843) 769–4520; e-mail: *kim.iverson@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Habitat and Environmental Protection AP will meet October 1, 2002 from 1 p.m. until 5:30 p.m. and October 2, 2002, from 8:30 a.m. until 12 noon. The Habitat and Environmental Protection AP and Coral Advisory Panel will meet jointly October 2, 2002, from 1:30 p.m. until 5:30 p.m. and October 3, 2002 from 8:30 a.m. until 3 p.m.

Habitat and Environmental Protection AP Meeting—The AP will be briefed on and discuss the Final Essential Fish Habitat (EFH) Rule which was published on January 17, 2002 replacing the interim Final Rule of December 19, 1997 on which the original EFH and EFH-Habitat Area of Particular Concern (EFH-HAPC) designations were made. The Councils have, pursuant to the Final EFH Rule, been directed to update EFH and EFH-HAPC information and designations; in addition, pursuant to revisions to NOAA General Counsel interpretation of the National Environmental Policy Act (NEPA) the Councils will be required to update all Environmental Impact Statements (EIS) for all Federal Fishery Management Plans under their jurisdiction.

Information compiled during this process will further facilitate meeting both the EFH and the NEPA mandate. The AP will discuss a Council workshop process that integrates two directives in the Final Rule for Essential Fish Habitat: (1) the review and update of EFH information, and (2) the consideration of ecosystem-based management through development of a Fishery Ecosystem Plan (EEP) for the South Atlantic Region.

In addition, the Habitat and Environmental Protection AP will review and make recommendations and draft revisions to Council habitat policy statements on Oil and Gas Exploration, Development and Transportation, and Dredging and Dredge Disposal. The AP will also initiate the development of policy statement on in-stream flow.

Joint Habitat AP and Coral AP Meeting—The Coral AP will provide additional input on draft revisions to policy statements. During the joint meeting, the panels will discuss and develop recommendations on additional Coral HAPCs, hear a presentation on deepwater habitats off of North Carolina and receive a briefing on nearshore mapping efforts. The Panels will also discuss preliminary characterization of habitat associated with Marine Protected Areas (MPAs) proposed for public hearing.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (*see* **ADDRESSES**) by September 27, 2002.

Dated: September 12, 2002.

Richard W. Surdi,

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

[FR Doc. 02–23622 Filed 9–16–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

September 10, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 17, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59409, published on November 28, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 10, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 21, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on September 17, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
335	369,796 dozen.
352/652	16,711,371 dozen.
635	621,230 dozen.
638/639	2,101,786 dozen.
641	830,200 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–23524 Filed 9–16–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Federative Republic of Brazil

September 10, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: September 17, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://www.otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 361 is being increased for carryover and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 57426, published on November 15, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 10, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 9, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on September 17, 2002, you are directed to increase the current limit for Category 361 to 2,110,753 numbers [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–23525 Filed 9–16–02; 8:45 a.m.

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2001.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

September 10, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 17, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 67229, published on December 28, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 10, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on September 17, 2002, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
Sublevels in Group I	
200	869,294 kilograms.
226	12,920,215 square meters.
331pt. [2]	2,308,170 dozen pairs.
335	422,319 dozen.
338/339	2,510,048 dozen of which not more than 1,891,544 dozen shall be in Categories 338–S/339–S [3].
340	863,004 dozen of which not more than 426,897 dozen shall be in Category 340–Z [4].
341	757,382 dozen of which not more than 443,883 dozen shall be in Category 341–Y [5].
342	293,864 dozen.
347/348	2,480,353 dozen.
352	1,790,010 dozen.
360	9,249,493 numbers of which not more than 6,318,105 numbers shall be in Category 360–P [6].
361	5,063,228 numbers.
362	8,261,359 numbers.
363	24,073,285 numbers.
613	8,994,281 square meters.
614	14,133,868 square meters.
638/639	2,645,086 dozen.
642	397,743 dozen.
644	3,907,987 numbers.
648	1,252,593 dozen.
Group III	
201, 220, 224–V [7], 224–O [8], 225, 227, 369–O [9], 400, 414, 469pt. [10], 603, 604–O [11], 618–620 and 624–629, as a group.	51,588,066 square meters equivalent.
Sublevels in Group III	
224–V	4,281,071 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[3] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[4] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[5] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[6] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[7] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[8] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[9] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.0020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[10] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[11] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–23526 Filed 9–16–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Colombia; Correction

September 11, 2002.

In the letter to the Commissioner of Customs, published on September 4, 2002 (67 FR 56537), page 56537, column 2, 2nd paragraph under ''*Department of the Treasury, Washington, DC 20229.,*'' line 3, change ''154,453 dozen'' to ''154,453 numbers.''

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–23522 Filed 9–16–02; 8:45 a.m.

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

September 10, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 17, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift, carryforward, and the replacement of previous swing donors with new swing donor categories for swing done previously.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63025, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 10, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on September 17, 2002, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Levels in Group I	
225	10,998,531 square meters.
300/301	6,721,326 kilograms.
314–O [2]	79,444,987 square meters.
315–O [3]	39,714,554 square meters.
317–O [4]/617/326–O [5]	23,145,453 square meters of which not more than 5,173,219 square meters shall be in Category 326–O.
334/335	367,506 dozen.
336/636	1,026,535 dozen.
338/339	2,061,940 dozen.
340/640	2,547,681 dozen.
341	1,594,596 dozen.
345	648,078 dozen.
351/651	757,966 dozen.
433	13,003 dozen.
447	21,041 dozen.
448	24,427 dozen.
619/620	14,777,713 square meters.
625/626/627/628/629–O [6].	46,236,882 square meters.
634/635	466,441 dozen.
638/639	2,317,740 dozen.
641	3,664,265 dozen.
643	543,816 numbers.
644	694,218 numbers.
645/646	1,230,245 dozen.
647/648	4,856,986 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–23527 Filed 9–16–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Philippines

September 10, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: September 17, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 345 is being increased for a crochet adjustment.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63031, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 10, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on September 17, 2002, you are directed to increase the current limit for Category 345 to 310,365 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–23523 Filed 9–16–02; 8:45 a.m.

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2001.

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, October 4, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–23733 Filed 9–13–02; 2:30 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, October 11, 2002.

PLACE: 1155 21st St., NW., Washington, DC., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–23734 Filed 9–13–02; 2:32 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, October 18, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–23735 Filed 9–13–02; 2:33 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m. Friday, October 25, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS OF BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–23736 Filed 9–13–02; 2:35 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meeting.

SUMMARY: The Naval Research Advisory Committee will meet to discuss basic and advanced research and technology. All sessions of the meetings will be devoted to briefings, discussions and technical examination of information related to the application of technologies to improve the physical security of Navy and Marine Corps bases; and the roles of unmanned vehicles including air, surface, ground and sub-surface vehicles.

DATES: The meetings will be held on Monday, September 30, 2002, through Friday, October 4, 2002, from 8 a.m. to 5 p.m.; Monday, October 7, 2002, through Thursday, October 10, 2002, from 8 a.m. to 5 p.m.; and Friday, October 11, 2002, from 8:30 a.m. to 12 p.m.

ADDRESS: The meetings will be held at the Space and Naval Warfare Systems Center San Diego, 53560 Hull Street, San Diego, California.

FOR FURTHER INFORMATION CONTACT: Dennis Ryan, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, (703) 696–6769.

SUPPLEMENTARY INFORMATION: This notice of meetings is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meetings will be devoted to briefings, discussions and technical examination of information related to anti-terrorism/force protection (AT/FP) issues with respect to the security of Navy and Marine Corps bases including: access control, automation, intrusion detection systems, consolidation of manpower, threat detection, counter-surveillance, situational awareness, and deterrence; and to the roles of unmanned vehicles in future conflicts including discussions

of: current operational requirements, research and development of air, surface, ground, and sub-surface unmanned vehicles and projected technologies. These briefings and discussions will contain proprietary information and classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The proprietary, classified, and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meetings be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552b(c)(1) and (4).

Dated: September 11, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–23554 Filed 9–16–02; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; request for comment.

SUMMARY: The Defense Nuclear Facilities Safety Board (DNFSB or Board) implements these Guidelines pursuant to section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub. L. 106–554, and government-wide Guidelines issued by the Office of Management and Budget (OMB), OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 FR 8452 (Feb. 22, 2002) (OMB Guidelines). The purpose is to ensure and maximize the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies that are subject to the Paperwork Reduction Act, 44 U.S.C. 3502(1).

As is the intent of OMB's Guidelines, DNFSB's Guidelines will focus primarily on the dissemination of substantive information rather than information pertaining to basic agency operations. The Guidelines also apply to information other parties provide to the Board, if the other parties seek to have the Board rely upon or disseminate this information or if the Board decides to rely upon or disseminate the information.

These Guidelines are suggestions, recommendations, and policy views of the DNFSB. They are not intended to be, and should not be construed as, legally binding regulations or mandates. They do not create any right or benefit, substantive or procedural, enforceable at law or equity, by any party against the United States, its agencies (including the Board or DNFSB), officers, or employees, or any person.

DATES: Comments are due by close of business October 17, 2002.

ADDRESSES: Comments should be sent to Joseph Neubeiser, Chief Information Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901. Send e-mail to *MAILBOX@DNFSB.gov.* The Board will publish its information quality standards on its Web site: *www.dnfsb.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Neubeiser, Chief Information Officer, or Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (202) 694–7000.

SUPPLEMENTARY INFORMATION:

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Appendix A. Section 515 Administrative Correction Mechanism

I. Definitions

The definitions set forth below are consistent with the definitions provided in the OMB Guidelines. Unless otherwise stated, information dissemination outside the scope of these definitions is not subject to these Guidelines.

A. ''Information'' means any communication or representation of knowledge such as facts or data, not opinion, in any medium or form. Information includes textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition also includes information that the Board disseminates from its Web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include Board opinions or conclusions. This definition also does not include information that the Board has indicated is someone's individual opinion.

B. ''Dissemination'' means agency initiated or sponsored distribution of information intended for the public; excluding:

1. Information not intended for public dissemination;
2. Distribution intended only for government employees or contractors;
3. Procedural, operational, policy, and internal documents prepared for the management and operations of the Board that are not primarily intended for public dissemination;
4. Information designated as ''Classified,'' ''Unclassified Controlled Nuclear Information,'' or ''Official Use Only'';
5. Outdated or superseded information;
6. Government information intended for intra- or inter-agency use or sharing;
7. Information items intended for inter-agency transmittals or congressional compliance and provided to members of the public as a courtesy (*e.g.*, weekly site representative reports, technical reports, letters);
8. Responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law;
9. Other correspondence with individuals or persons not intended for public dissemination, including, but not limited to, written agreements with particular entities or parties, responses to specific requests for advisory opinions or other advice;
10. Press releases, fact sheets, press conferences or similar communications in any medium that announce, support the announcement, or give public notice of information the Board has disseminated elsewhere;
11. Archival records (*e.g.*, library materials);
12. Public filings, including, but not limited to, submissions in rulemakings or other Board proceedings or matters, requests, petitions, applications, supporting materials, etc. The Guidelines do not apply when the Board

distributes this information simply to provide the public with quicker and easier access to materials submitted to the Board that are publicly available. This will generally be the case if the Board has not authored the filings, is not distributing the information in a manner that suggests that the Board endorses or adopts the information, and does not indicate in its distribution that it is using or proposing the use of the information to formulate or support a regulation, guidance, or other Board decision or position;

13. Opinions presented to Congress in response to Congressional requests or statutes and not intended for dissemination to the public;

14. Subpoenas or discovery orders issued in proceedings or court litigation, Orders, opinions, amicus, and other briefs.

Adjudicative processes also include factual allegations by the staff during the investigative and litigative phases of cases brought by or participated in by the Board. Because there are well-established procedural safeguards and rights to address the quality of factual allegations and adjudicatory decisions, and to provide persons with an opportunity to contest decisions, these Guidelines do not impose any additional requirements on the Board during adjudicative proceedings and do not provide parties to such proceedings any additional rights of challenge or appeal;

15. Legally required disclosures, notices, or other information disseminated by persons or entities other than the Board, where the text of such disclosures, notices, or information is not explicitly prescribed or specified by the Board itself; and

16. Studies, statements, other issuances, or publications by Board employees, officials, contractors, consultants, or others who may be or have been paid, employed, or retained by the Board, where the issuance or publication is not represented as being an official position of the Board or used by the Board in support of its official position. Conversely, if the Board has directed a third party to disseminate information or retains the authority to review and approve the information upon release, then the Board has sponsored the dissemination of the information and the information may be considered a Board dissemination.

C. ''Information dissemination product'' means any book, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, the agency disseminates to the public. This definition includes any electronic document, storage media, or Web page.

D. ''Quality'' is an encompassing term comprising utility, objectivity, and integrity.

E. ''Utility'' refers to the usefulness of the information to its intended users, including the public. When transparency of information is relevant for assessing the information's usefulness from the public's perspective, transparency is addressed to the extent practicable and appropriate in the Board's review of the information. There may be legal limitations, however, on the Board's ability to make publicly available the data or methods underlying a particular information dissemination product, and persons seeking access to such data or methods must comply with certain Board requirements and procedures for requesting such access.

F. ''Objectivity'' involves two distinct elements, presentation, and substance:

1. ''Objectivity'' includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner, including whether the information is presented within a proper context and identifying the source of the disseminated information to the extent possible in light of confidentiality protections, if any. In a scientific, financial, or statistical context, the Board may make supporting data and models publicly available so the public can assess whether there may be reasons to question the objectivity of the sources. Where appropriate, data should have full, accurate, transparent documentation, and error sources affecting data quality should be identified and disclosed to users, subject to any applicable restrictions on disclosure.

2. ''Objectivity'' also involves a focus on ensuring accurate, reliable, and unbiased information. In a scientific, financial, or statistical context, original and supporting data are normally generated, and the analytic results are normally developed, using sound statistical and research methods.

3. To ensure ''objectivity'' in instances where the Board is responsible for disseminating ''influential scientific, financial, or statistical information,'' the Board shall ensure transparency of data and methods to facilitate the reproducibility of such information by qualified third parties, consistent with any applicable limitations on disclosure.

4. When relying upon third party information, the Board will notify the public if the disseminated information has not been reviewed by the Board, but that the third party attests that the quality of the information is consistent with the Data Quality Act and the OMB Guidelines;

G. ''Integrity'' refers to the security of information, *i.e.*, protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

H. ''Influential,'' when used in the phrase ''influential scientific, financial, or statistical information,'' means that the Board can reasonably determine that dissemination of information, prepared for public distribution, will have or does have a clear and substantial impact on important public policies or important private sector decisions. Whether a particular Board information dissemination product is ''influential'' will depend on the nature of the issues for which the Board is responsible and the relationship of the information dissemination product to those issues.

In non-rulemaking contexts, the Board will consider two factors—breadth and intensity—in determining whether information is influential.

The Board will consider whether the information affects a broad range of parties. Information that affects a broad, rather than narrow, range of parties is more likely to be influential. The Board will also consider the intensity of the information's impact. Information that has a modest impact on affected parties is less likely to be influential than information that can have a significant impact.

The definition applies to ''information'' itself, not to decisions that the information may support. Even if a decision or action by the Board is itself very important, a particular piece of information supporting it may or may not be ''influential.''

I. ''Reproducibility'' means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. As provided in the OMB Guidelines, this standard does not apply to all agency information or data, but only to ''influential scientific or statistical information,'' if any, disseminated by DNFSB.

1. Original or supporting data: The Board may identify and/or limit the specific types of such data that can practicably be ''reproduced,'' given ethical, feasibility, or confidentiality constraints and, in doing so, may consult, as needed, with relevant scientific and technical communities. The Board shall assure reproducibility for those kinds of original and supporting data according to commonly

accepted scientific, financial, or statistical standards.

2. Analytic results relating to original or supporting data: All analytic results shall undergo robustness checks through the Board's rigorous internal quality review process.

3. Analysis of risks to human health, safety, and the environment disseminated by the Board, if any: The Board will apply, as appropriate and feasible, the standards set forth in the Safe Drinking Water Act, 42 U.S.C. 300g–1(b)(3)(A), and when promulgating regulations the Board will apply, as appropriate and feasible, the standards set forth in the Safe Drinking Water Act, 42 U.S.C. 300g–1(b)(3)(B).

J. ''Affected persons'' are people who may benefit from or be harmed by the disseminated information.

II. Information Quality Principles

The following quality principles apply as a matter of policy to information disseminated by the Board:

A. Information that the Board prepares for public dissemination, including factual or statistical data, shall meet basic standards of quality, including objectivity, utility, and integrity.

B. The Board treats information quality as an integral part of achieving its performance goals and shall take appropriate steps to incorporate information quality criteria into information dissemination practices.

C. The specific quality standards that the Board adopts in a particular case shall be appropriate for the type of information being disseminated.

These Guidelines explain how the Board achieves information quality, objectivity, utility, and integrity. The Guidelines also describe the administrative mechanism by which affected persons may seek correction of Board disseminated information that they believe does not comply with Section 515, OMB Guidelines, or Board Guidelines.

III. Board's Role in Public Information Dissemination

Section 315 of the National Defense Authorization Act for Fiscal Year 2001, 42 U.S.C. Section 2286d requires the Board to:

(a) *Public availability and comment.*

Subject to subsections (g) and (h) and after receipt by the Secretary of Energy of any recommendations from the Board under Section 2286a of this title [Section 312 of the Atomic Energy Act], the Board promptly shall make such recommendations available to the public in the Department of Energy's regional public reading rooms and shall publish in the **Federal Register** such recommendations and a request for the submission to the Board of public comments on such recommendations. Interested persons shall have 30 days after the date of the publication of such notice in which to submit comments, data, views, or arguments to the Board concerning the recommendations.

(b) *Response by Secretary.*

(1) The Secretary of Energy shall transmit to the Board, in writing, a statement on whether the Secretary accepts or rejects, in whole or in part, the recommendations submitted to him by the Board under section 2286a of this title [Section 312 of the Atomic Energy Act], a description of the actions to be taken in response to the recommendations, and his views on such recommendations. The Secretary of Energy shall transmit his response to the Board within 45 days after the date of the publication, under Subsection (a), of the notice with respect to such recommendations or within such additional period, not to exceed 45 days, as the Board may grant.

(2) At the same time as the Secretary of Energy transmits his response to the Board under paragraph (1), the Secretary, subject to subsection (h), shall publish such response, together with a request for public comment on his response, in the **Federal Register.**

(3) Interested persons shall have 30 days after the date of the publication of the Secretary of Energy's response in which to submit comments, data, views, or arguments to the Board concerning the Secretary's response.

(4) The Board may hold hearings for the purpose of obtaining public comments on its recommendations and the Secretary of Energy's response.

(c) *Provision of information to Secretary.*

The Board shall furnish the Secretary of Energy with copies of all comments, data, views, and arguments submitted to it under subsection (a) or (b) of this section.

IV. The Board's Commitment to Quality Information Dissemination

In carrying out its functions, the Board strives to ensure that the information it prepares for public dissemination reflects a level of quality appropriate to the anticipated use of the information. The Board disseminates information consistent with applicable disclosure restrictions (*e.g.*, classified information).

V. Pre-Dissemination Information Quality Review

The Board will review the quality (including objectivity, utility, and integrity) of information before it is disseminated and treat information quality as integral to every step of the Board's development of information, including creation, collection, maintenance, and dissemination.

When appropriate, the Board will demonstrate in its Paperwork Reduction Act clearance packages that each information collection will result in information that will be collected, maintained, and used in a way consistent with the OMB and Board information quality standards.

Internal agency review: The Board performs robust internal reviews to ensure information quality—including objectivity, utility, and integrity—before such information is disseminated.

1. Information disseminated to the public by the Board is normally subject to one or more levels of internal staff, supervisory, or Board review for quality before such information may be disseminated.

2. The number of levels of internal quality review applied in a particular case depends on the nature, scope, and purpose of the information to be disseminated.

Public comment: In rulemakings and certain other agency matters *(e.g.*, Recommendations), information or data may also be subject to public comment. This public comment process provides an opportunity for interested parties, including persons who may be most affected by the dissemination, to corroborate or dispute the objectivity, utility, or integrity of the information or data. In these cases, the Board may provide public access to the underlying data or methods used by the Board (*e.g.*, statistical models, assumptions), to the extent the Board deems relevant to information quality and consistent with controlling law.

VI. Development of Quality Information and Data

Information quality is integral to the development of information that will ultimately be disseminated, including its creation, collection, and maintenance. This process shall enable the Board to substantiate the quality of the information it has disseminated through documentation or other means appropriate to the information. The strategies that the Board employs to develop quality information and data include, for example:

A. Using a variety of methods and sources to solicit relevant and reliable information, such as:

1. Voluntary and compulsory methods;

2. invitations for public comment;

3. public hearings; and

4. meetings with public groups, labor representatives and organizations, and industry and professional groups.

B. Soliciting public comment specifically on paperwork burden estimates of information collection activities sponsored by the Board and subject to the Paperwork Reduction Act, if applicable.

C. Conducting independent legal, economic, or statistical research as the Board deems appropriate, using an array of government and private commercial and non-profit databases, agency surveys and questionnaires, etc.

VII. Transparency of Underlying Data and Methods

Consistent with applicable laws, regulations, orders, and policies, the Board shall make underlying data and methods (*e.g.*, sources and assumptions) used for ''influential scientific or statistical information'' available to the public as is appropriate. OMB Guidelines, para. V.3.b.ii.

Where public access to ''influential scientific or statistical'' data and methods will not occur due to other compelling interests, the Board shall apply rigorous checks to analytic results and document what checks were undertaken. The types of these checks, and the level of detail for documentation thereof, shall depend on the nature of the issues for which the Board is responsible. OMB Guidelines, para. V.3.b.ii.B.ii.

To the extent that underlying data or methods are not part of the Board's public record or otherwise published or publicly available, persons seeking access to such data or methods are required to follow applicable Board requirements and procedures for seeking such access. In all cases, the interest in the transparency of the Board's data and methods shall not override other compelling interests such as national security, privacy, trade secrets, intellectual property, and other confidentiality protections. OMB Guidelines, para. V.b.3.ii.B.i.

VIII. Integrity of Board Information and Data

To preserve the integrity of information and data that the Board may ultimately disseminate, the Board takes appropriate measures to ensure that the security of information and data is not compromised while it is being collected, maintained, or used by the agency. OMB Guidelines, para. V.4. These measures are intended to be consistent with legal requirements such as the Computer Security Act, 40 U.S.C. 759; the Government Information Security Reform Act, 44 U.S.C. 3531, *et seq.*; the Privacy Act, 5 U.S.C. 552a; and any other applicable laws, regulations, orders, agreements, or guidance.

These measures extend to Board contractors, consultants, experts or others to the extent such information or data are shared with them on a non-public basis.

IX. Documentation

When necessary or appropriate, the Board substantiates the quality of the information it has disseminated through documentation or other means appropriate to the information. OMB Guidelines, para. III.2.

With respect to pre-dissemination review, this documentation may include intra-or inter-agency memoranda or communications, or other records or materials, including, where applicable, underlying data or methods, demonstrating that the information has been reviewed internally by appropriate agency staff or officials before it is disseminated to the public.

As provided in the OMB Guidelines, the Board will submit a report to OMB describing the number, nature, and resolution of information correction requests by each January 1, beginning in 2004.

X. Administrative Mechanism for Seeking Correction of Information

The Board shall provide and maintain a mechanism in compliance with the OMB Guidelines by which affected persons may seek timely correction of information maintained and disseminated by the Board. See Appendix A for details.

XI. Compliance, Reporting, and Effective Date

The Board's Chief Information Officer, or other designated Board official, shall be responsible for agency compliance with these Guidelines.

The Board shall respond to complaints in a manner appropriate to the nature and extent of the complaint. Examples of appropriate responses include personal contacts via letter or telephone, form letters, press releases, or mass mailings that correct a widely disseminated error or address a frequently raised complaint.

The Board shall submit (and, when required, post on its Web site, publish in the **Federal Register**, or otherwise make available) all reports, or notice thereof, required by Section 515 and the OMB Guidelines. Such reports shall include an annual fiscal year report submitted to the Director of OMB on the number and nature of complaints, if any, received by the Board regarding agency compliance with the OMB Guidelines and how the agency resolved such complaints. This annual report is to be submitted no later than January 1 following the end of the relevant fiscal year, with the first report due January 1, 2004.

Effective Date: Pursuant to Section 515 and paragraph III.4. of the OMB Guidelines, these Board Guidelines shall become effective October 1, 2002. The fact that an information product disseminated by DNFSB before this date is still maintained by the DNFSB (*e.g.*, DNFSB files, publications available on the Web site) does not make the information subject to these Guidelines or to the request for correction process. If a particular distribution of information is not covered by these Guidelines, the Guidelines may still apply to a subsequent distribution of the information in which the Board adopts, endorses, or uses the information to formulate or support a regulation, guidance, or other Agency decision or position.

A. To the extent these Guidelines prescribe procedures for the pre-dissemination quality review of Board information, such procedures shall apply only to information that the Board first disseminates on or after that date.

B. The Guidelines do not apply to outdated or superseded Board information that is provided as background information but no longer reflects Board policy or influences Board decisions.

C. To the extent these Guidelines prescribe a Board administrative mechanism for affected persons to seek correction of information disseminated by the Board, that mechanism shall apply only to information that the Board disseminates on or after that date, regardless of when the Board first disseminated the information.

Appendix A—Administrative Correction Mechanism

The Defense Nuclear Facilities Safety Board (DNFSB, Board) strives to ensure that the information it disseminates to the public is of the highest quality, objectivity, utility, and integrity. To this end, the Office of Management and Budget (OMB) and the DNFSB have issued Guidelines for ensuring and maximizing the quality of information disseminated by the DNFSB, and in accordance with section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub. L. 106–554 (section 515). You may view these Guidelines through the following Web link: *www.dnfsb.gov.* Persons affected by non-exempted Board information disseminated on or after October 1, 2002, may request that the Board correct allegedly incorrect information.

How To Seek Correction of Board Information Dissemination Products

If you are seeking to obtain correction of information disseminated by the Board on or after October 1, 2002, because you believe the information does not comply with the information quality Guidelines issued by OMB or the DNFSB, please submit your request, with the subject ''Section 515 Request,'' by e-mail to: *mailbox@dnfsb.gov.*

If you send us an e-mail, you should know that e-mail is not necessarily secure against interception before it reaches the Board's e-mail system. Therefore, you may prefer instead to deliver or mail your Section 515 request to the following address: Chief Information Officer, C/O Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

Whichever method you use, your request should specifically:

• Identify the information you believe does not comply with the OMB or Board Data Quality Guidelines;

• Explain why you believe the information should be corrected. If possible, provide specific recommendations for how the information should be corrected; and

• Describe how you are affected by the alleged information error.

Requests for correction that are specific and provide evidence to support the need for correction will enable a timely response.

Requesters should be aware that they bear the ''burden of proof'' with respect to the necessity for correction as well as with respect to the type of correction sought.

To learn how we may disclose any information that you provide, please read our Privacy Policy at *www.dnfsb.gov/privacy.htm.*

To submit a correction request through this process, you must be an ''affected person'' (*i.e.*, someone who may benefit from or be harmed by the disseminated information) and your request must relate to ''information'' that is ''disseminated'' by the Board within the meaning of the Board Guidelines.

You may not use these procedures to request correction of matters which are not ''dissemination'' of information as outlined in Section I.B. of the Board's Guidelines.

How We Will Handle Your Section 515 Request?

Processing Your Initial Request

Once the appropriate Board staff member has received your request, the Board will provide an initial response to your request within 60 days, excluding weekends and Federal holidays. If the Board is unable to provide an initial response within the 60-day period, the Board will notify you of the estimated date for an initial response.

Delay in the Board's response may be required if you modify your original request, if we need to clarify your request, or if we need to consult with other offices or agencies that may have an interest in the matter, although the Board shall be solely responsible for determining how to respond to your request.

Initial Board Response

The Board's initial response will either grant or deny your request, in whole or part, and make appropriate corrections, if any. If your request relates to information in which there is an opportunity for public comment (*e.g.*, Recommendations), you may be required to seek correction of the information through public comment, and your request will be referred to the responsible Board staff for consideration and incorporation into the record of the relevant proceeding. When appropriate, in lieu of an individualized response to your request, the Board may issue or provide you a form letter, press release, or mass mailing that corrects a widely disseminated error or that addresses a frequently raised complaint. Responses may also be posted on the Board's Web site.

In all cases, the correction process shall serve to address the genuine and valid needs of the Board and its constituents without disrupting Board processes. The Board may reject claims that are made in bad faith, without justification, unlikely to have substantial future impact (*e.g.*, harmless error), frivolous, or speculative. The Board shall undertake only the degree of correction that the Board concludes is appropriate for the nature of the information involved. In making this determination, the Board will consider such factors as the significance of the error on the use of the information, the magnitude of the error, and the cost of undertaking a correction. The Board will also consider the error's relationship to Board priorities. The Board is not required to change, or in an way alter, the content or status of information simply based on the receipt of a request for correction. The Board need not respond substantively to frivolous or repetitive requests for correction. Furthermore, the Board may not respond to requests that concern information not covered by the Guidelines or from a person whom the information does not affect.

Seeking Reconsideration of the Initial Response

If you disagree with the Board's initial response, you will have 30 days, excluding weekends and Federal holidays, to appeal (*i.e.*, file for reconsideration within the agency). The Board will provide a response to your request for reconsideration within 60 days, excluding weekends and Federal holidays, unless it notifies you of a later date and explains the reason(s) for the delay. The official conducting the second level of review shall not be the same official that responded to the initial request for correction or that prepared the subject information.

If the Board agrees with the appeal, it will also take steps to notify the public of its decision.

Certain disseminations of information include a comprehensive public comment process (*e.g.*, Recommendations, notices of proposed rulemaking, regulatory analyses, and requests for comment on an information collection subject to the Paperwork Reduction Act). The administrative correction mechanism described in these Guidelines does not apply to dissemination of such a document. Persons questioning information disseminated in such a document must submit comments as directed in that document.

When engaged in rulemaking, the Board will utilize the notice and comment process required by the Administrative Procedure Act. This process will satisfy the Section 515 administrative correction mechanism requirement. Affected persons must address any correction requests through the rulemaking comment process. Correction requests made through the Section 515 mechanism will not be considered. Information or studies relied upon and cited in rulemaking will be addressed through the rulemaking notice and comment process.

If there is an existing process for reconsideration of a particular sort of information dissemination by the DNFSB, DNFSB will make use of that process.

The Guidelines are not intended to and do not provide any right to judicial review.

Availability of Section 515 Reports

No later than each January 1, beginning in 2004, the agency is required to submit an annual fiscal year report to the OMB Director on the number and nature of Section 515 correction requests received by the Board and how the agency resolved those requests. Copies of these reports will be made publicly available through the Board's Web page.

John T. Conway,

Chairman.

[FR Doc. 02–23609 Filed 9–16–02; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Local Flexibility Demonstration Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice extending application deadline.

SUMMARY: Under the Local Flexibility Demonstration Program (''Local-Flex'' program), the Secretary will competitively select up to 80 local educational agencies (LEAs) with which to enter into Local-Flex agreements. The agreements will provide participating LEAs the flexibility to consolidate certain Federal formula grant funds in order to assist them in meeting the State's definition of adequate yearly progress and the LEA's specific measurable goals for improving student achievement and narrowing achievement gaps. In this notice, we are extending the deadline for eligible LEAs to apply to participate in the Local-Flex program.

APPLICATION DEADLINE: December 6, 2002.

Eligible Applicants

LEAs in the following States are eligible to apply for Local-Flex: Alaska, Arkansas, California, Connecticut, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, Washington,

West Virginia, Wisconsin, and Wyoming.

By statute, the Secretary may enter into Local-Flex agreements with no more than three LEAs in a State. Therefore, any consortium that seeks a Local-Flex agreement may include no more than three LEAs. Furthermore, only LEAs that receive formula grant funds from their State educational agency (SEA) under the Federal programs subject to consolidation may seek Local-Flex authority.

LEAs in the following States may *not* apply at this time because their SEA indicated, by May 8, 2002, an intent to apply for State-Flex authority: Alabama, Arizona, Colorado, Delaware, Florida, Illinois, Massachusetts, Nebraska, Pennsylvania, Tennessee, and Texas. In addition, the District of Columbia, Hawaii, Puerto Rico, and the outlying areas are not eligible to apply for Local-Flex because, for purposes of this program, the legislation considers a state-wide LEA to be an SEA.

Under the legislation, a State generally cannot receive State-Flex authority if one of its LEAs has entered into a Local-Flex agreement with the Secretary. If an LEA enters into a Local-Flex agreement with the Secretary, its SEA may subsequently seek State-Flex authority only if that LEA agrees to be part of the SEA's State-Flex proposal.

SUPPLEMENTARY INFORMATION: On July 19, 2002, we published in the **Federal Register** (67 FR 47528–47529) a notice establishing a September 17, 2002 deadline for the initial Local-Flex competition. In that notice, the Secretary indicated that he would select up to forty LEAs for participation in Local-Flex in the initial competition, and that he would select the remaining LEAs in a subsequent competition.

The Department now believes that many LEAs need additional time to prepare a Local-Flex application, especially given that new requirements in the programs affected by Local-Flex just recently became effective. With additional time, many more interested LEAs should be able to prepare a Local-Flex proposal that fully addresses the statutory requirements and that will assist them in meeting their State definition of adequate yearly progress and in attaining specific, measurable goals for improving student achievement and narrowing achievement gaps.

An LEA that submitted an application by the previously established deadline does not have to re-apply for Local-Flex, but may submit a revised application by the deadline established in this notice if it wishes to do so. The Department intends to hold one or more subsequent Local-Flex competitions until the statutory maximum of 80 LEAs are participating in the program.

Notification of Intent To Apply for Local-Flex

We will be able to develop a more efficient process for reviewing Local-Flex applications if we have a better understanding of the number of LEAs that intend to seek participation in the program. Therefore, we strongly encourage each potential applicant to send, by November 8, 2002, a notification of its intent to apply for participation in the Local-Flex program to the following address: *LocalFlex@ed.gov.*

The notification of intent to apply for participation in Local-Flex is *optional* and should not include information regarding the potential applicant's Local-Flex proposal. LEAs that fail to provide the notification may still submit an application by the application deadline.

FOR FURTHER INFORMATION CONTACT: Ms. Milagros Lanauze. Telephone: (202) 401–0039 or via Internet: *LocalFlex@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

APPLICATIONS: You may obtain a copy of the application on the Department's web site at: *http://www.ed.gov/flexibility/prog.*

You may also obtain a copy of the application from the contact person identified under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document

You may view this document, as well as other Department of Education documents published in the **Federal Register** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1–888–293–6498; or in the Washington DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official version of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *www.access.gpo.gov/nara/index.html.*

Program Authority: Sections 6151 through 6156 of the ESEA, as amended by the No Child Left Behind Act of 2001 (Pub.L. 107–110).

Dated: September 13, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–23737 Filed 9–15–02; 2:56 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, October 3, 2002, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

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, waste management, and related activities.

Tentative Agenda:

1. Meeting with new site manager, Eugene Schmitt.
2. Update on natural resource management issues.
3. Finalize and approve 2003 work plan and budget.
4. End-state discussion regarding subsurface soil remediation.
5. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above.

Requests must be received at least five days prior to the meeting and reasonable provisions 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.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 8:30 a.m. to 4:30 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC on September 12, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–23626 Filed 9–16–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF02–2021–000]

Bonneville Power Administration; Notice of Filing

September 11, 2002.

Take notice that on July 31, 2002, the Bonneville Power Administration (Bonneville) tendered for filing with the Federal Energy Regulatory Commission (Commission) a proposed adjustment to its ACS–02 Generation Imbalance Service rate pursuant to section 7(a)(2) of the pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(a)(2). Pursuant to Commission regulation 300.21, 18 CFR 399.21, Bonneville seeks final or interim confirmation and approval of the amended Generation Imbalance Service rate effective October 1, 2002. Bonneville seeks rate approval for use during the period October 1, 2002 through September 30, 2003.

Bonneville's proposed Generation Imbalance Service rate exempts wind generation resources from the Generation Imbalances outside the Generation Imbalance kilowatthour penalty rate for imbalances outside the Generation Imbalance Deviation Band when the actual energy delivered from a wind resource in Bonneville's Control Area in a schedule hour is less than the energy scheduled for that hour. When energy delivered by a wind generation resource is less than the energy scheduled, the charge will be Bonneville's incremental cost plus 10%.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659. 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. The Commission strongly encourages electronic filings.

Comment Date: September 18, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23570 Filed 9–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–113–000]

Cinergy Services, Inc., on Behalf of PSI Energy, Inc., CinCap Madison, LLC, CinCap VII, LLC; Notice of Filing

September 11, 2002.

Take notice that on September 6, 2002, Cinergy Services, Inc., on behalf of PSI Energy, Inc., CinCap Madison, LLC and CinCap VII, LLC (collectively, Applicants) tendered for filing an application requesting all necessary authorizations under Section 203 of the Federal Power Act, 16 U.S.C. 824b (2000), for Applicants to engage in a transfer of assets. Copies of this filing have been served on the Indiana Utility Regulatory Commission.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659. 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. The Commission strongly encourages electronic filings.

Comment Date: September 27, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23568 Filed 9–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–350–009]

Colorado Interstate Gas Company; Notice of Compliance Filing

September 11, 2002.

Take notice that on September 9, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in

Appendix A to filing, with an effective date of October 1, 2002.

CIG states that the tariff sheets are being filed in compliance with the Commission's August 5, 2002 order in this proceeding to implement the pro forma tariff provisions contained in CIG's May 23, 2002 Offer of Settlement filed at Docket Nos. RP01–350–000, *et al.* Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23572 Filed 9–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–539–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 11, 2002.

Take notice that on September 6, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective November 1, 2002:

First Revised Sheet No. 229A.01

CIG states that this tariff sheet revises the posting procedures for the monthly cash out index price.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23579 Filed 9–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–535–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 11, 2002.

Take notice that on September 6, 2002 Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to become effecive October 1, 2002.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedule SST. The costs of the above referenced storage service comprise the rates and charges payable (or a portion thereof) under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23575 Filed 9–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–537–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 11, 2002.

Take notice that on September 6, 2002, El Paso Natural Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective November 1, 2002:

First Revised Sheet No. 266
Second Revised Sheet No. 280
First Revised Sheet No. 281

El Paso states that the tendered tariff sheets update the list of publications used for the calculation of imbalance cash-out index prices.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23577 Filed 9–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–114–000]

Hinson Power Company, LLC; Notice of Filing

September 11, 2002.

Take notice that on September 5, 2002, Hinson Power Company, LLC (Hinson), filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act (FPA) for authorization to engage in a proposed intra-corporate reorganization.

Hinson respectfully requests that the Commission issue its order approving the proposed intra-corporate reorganization no later than October 4, 2002, in order to facilitate the reorganization.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659. 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. The Commission strongly encourages electronic filings.

Comment Date: September 26, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23569 Filed 9–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–536–000]

Mojave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 11, 2002.

Take notice that on September 6, 2002, Mojave Pipeline Company (Mojave) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective November 1, 2002:

First Revised Sheet No. 152
First Revised Sheet No. 168

Mojave states that these tariff sheets revise the publication used for valuing park and loan penalty gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23576 Filed 9–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2285–001 and [Docket No. EL99–73–003 (not consolidated)]

Niagara Mohawk Power Corporation and Griffiss Local Development Corporation; Notice of Filing

September 11, 2002.

Take notice that on September 6, 2002, Niagara Mohawk Power Corporation, a National Grid Company, submitted a Compliance Filing pursuant to the Commission's Letter Order issued in these proceedings on August 23, 2002.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. 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. The Commission strongly encourages electronic filings.

Comment Date: September 27, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–23566 Filed 9–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–363–002]

North Baja Pipeline, LLC; Notice of Compliance Filing

September 11, 2002.

Take notice that on September 9, 2002, North Baja Pipeline, LLC (NBP) tendered for filing as part of its FERC Gas Tariff, the tariff sheets listed on Appendix A to the filing, with an effective date of August 12, 2002.

NBP states that the filing is being filed to comply with requirements of the Commission's August 9, 2002 Order Accepting Tariff Sheets Subject to Conditions.

North Baja further states that a copy of this filing has been served on North Baja's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23574 Filed 9–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–114–000]

Tennessee Gas Pipeline Company; Notice of Comment Periods

September 11, 2002.

Take notice that the following comment periods have been established in the above-captioned technical conference proceeding: Initial comments are due by the close of business October 1, 2002; with reply comments due by the close of business October 11, 2002.

All comments should be filed with the Secretary's office in accordance with the provisions of the Commission's Rules of Practice and Procedure. In addition, 18 CFR 385.2010 (Rule 2010) requires that participants must serve a copy of their comments to on each person whose names appears on the official service list in this proceeding.

For additional information please contact Diane Neal at (202) 502–6210 or Leonard Burton at (202) 502–8074.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23573 Filed 9–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP95–197–043 and RP97–71–035]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

September 11, 2002.

Take notice that on September 6, 2002, Transcontinental Gas Pipe Line Corporation (Transco) submitted in Docket No. RP02–520–000 its Annual Charge Adjustment (ACA) filing with the Commission in order to reflect an increase in the ACA rate from $0.0021 to $0.0022 to be effective October 1, 2002. Subsequently, Transco determined that its filing was in error because the Commission had not authorized a change in the currently effective ACA rate of $0.0021. In order to correct its error, Transco submitted a letter on September 5, 2002 in the Docket No. RP02–520 proceeding in which it proposed to withdraw its August 30, 2002 ACA filing.

Also, on September 6, 2002 Transco submitted a filing in Docket Nos. RP95–197, RP97–71 and RP01–245 in which it proposed to revise its settlement rates in Docket No. RP01–245–000 to implement the roll-in of the costs of Transco's Leidy Line and Southern expansion projects as authorized by various Commission's orders in Transco's Docket Nos. RP95–197 and RP97–71 proceeding, and to comply with the Commission's finding in that proceeding that Transco must unbundle the cost of its Emergency Eminence Storage Withdrawal Service (Roll-In Filing).

Since the Roll-In Filing incorporated the proposed changes to the ACA rate as described above, many of the tariff sheets submitted in that filing reflected an incorrect ACA rate of $0.0022.

Therefore, in order to reflect the correct ACA rate of $0.0021 on the affected tariff sheets included in the Roll-In Filing, Transco is submitting substitute tariff sheets, as appropriate.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23571 Filed 9–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–538–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

September 11, 2002.

Take notice that on September 6, 2002, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheet to become effective November 1, 2002:

First Revised Sheet No. 36A

WIC states that this tariff sheet revises the posting procedures for the monthly cash out index price.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502-8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23578 Filed 9–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–416–000]

Williams Gas Pipelines Central Incorporated; Notice of Intent To Prepare an Environmental Assessment for the Proposed Southwest Missouri Expansion Project and Request for Comments on Environmental Issues

September 11, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Williams Gas Pipelines Central Incorporated's (Williams) proposed Southwest Missouri Expansion Project in Cherokee County, Kansas, and Jasper and Newton Counties, Missouri.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a Williams representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, Williams could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' should have been attached to the project notice Petal provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

This Notice of Intent (NOI) is being sent to landowners along William's proposed pipeline route; Federal, state, and local government agencies; national elected officials; regional environmental and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects; local libraries and newspapers; and the Commission's list of parties to the proceeding. Government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Additionally, with this NOI we[2] are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated William's proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described below.

Summary of the Proposed Project

Williams proposes to construct, expand, own, operate and maintain certain natural gas facilities in order to increase incremental firm transportation service to two existing customers: Empire District Electric Company and Kansas Gas Service. The action would include: Constructing 15.67 miles of 20-inch-diameter pipeline, beginning at the end of William's existing Southern Trunk 20-inch-diameter FR pipeline in Cherokee County, Kansas, and ending at Williams' existing meter station for the Empire Power Plant in Jasper County, Missouri; removing and relocating the pig trap currently at the end of the Southern Trunk 20-inch-diameter FR pipeline to the end of the new 15.67-mile-long 20-inch-diameter pipeline at the Empire Power Plant meter station; and upgrading piping at Williams' existing Saginaw Compressor Station in Newton County, Missouri to increase maximum allowable operating pressure from 820 pounds per square inch gauge (psig) to 900 psig. The general location of the facilities proposed by Williams is shown on the map attached as appendix 1.[3]

[1] Williams' application was filed under section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations on July 31, 2002.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available for review at the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 a.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426, or call (202) 502–8371, or on the FERC Internet website (*www.ferc.gov*) using the FERRIS link. For instructions on connecting to FERRIS refer to the

Continued

Land Requirements for Construction

Construction of the facilities proposed by Williams would affect a total of about 143 acres of land. About 95 acres would be converted into new permanent right-of-way. The remaining land would only be used temporarily, and after construction would be restored to its previous condition and use. About 58 percent of the pipeline route would parallel existing pipeline, railroad, or overhead electric power line rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA.

Our independent analysis of the issues will be in the EA. We will also evaluate possible alternatives to the proposed action, or portions of the project, and make recommendations on how to lessen or avoid impacts on various environmental resources.

Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, elected officials, affected landowners, regional public interest groups, Indian tribes, local newspapers and libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

The EA will discuss impacts that could occur as a result of construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Williams. This preliminary list of issues may be changed based on your comments and our analysis.

Geology and Soils

—Crossing 8.6 miles of soils with potential for erosion.
—Pipeline construction could affect 44 acres of agricultural land.

Water Resources and Wetlands

—Crossing 5 perennial waterbodies within Spring River drainage.
—Pipeline construction could affect about 2 acres of wetlands.

Vegetation and Wildlife

—Pipeline construction could affect about 6 acres of forest.
—5 areas containing habitat for sensitive state species would be crossed.

Cultural Resources

—6 archaeological sites identified in the project vicinity.
—Native American concerns.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426; Label one copy of the comments for the attention of the Gas/Hydro Branch, PJ–11.3; Reference Docket No. CP02–416–000; and Mail your comments so that they will be received in Washington, DC on or before October 18, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments, interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

We might mail the EA for comments. If you are interested in receiving it, please return the Information Request (appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional Information

Additional information about the proposed project is available from the Commission's Office of External Affairs at 1–866–208-FERC or on the FERC Internet website (*www.ferc.gov*) using the FERRIS link.

Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at (202) 502–8222, TTY (202) 502–8659. The FERRIS link on the FERC Internet website also provides access to the text of formal documents issued by the

last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23567 Filed 9–16–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7378–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; Tribal Operator Certification Program Information Collection Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Tribal Operator Certification Program ICR, EPA No. 2092.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 18, 2002.

ADDRESSES: People interested in making comments about the burden and/or cost estimates outlined in the Tribal Operator Certification Program ICR should direct comments to the Office of Ground Water and Drinking Water, Drinking Water Protection Branch, Mail Code 4606M, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For more information, or to obtain a copy of the draft Tribal Operator Certification Program ICR without charge, please contact Lisa Christ (202) 564–8354, fax (202) 564–3755, e-mail: *christ.lisa@epa.gov*.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are Tribal Drinking Water Systems and Tribal Operator Certification Providers.

Title: Tribal Operator Certification Program Information Collection Request (EPA No. 2092.01).

Abstract: The Tribal Operator Certification Program was developed to increase public health protection by increasing training and certification of personnel operating community and nontransient noncommunity drinking water systems in Indian Country. This voluntary program is intended to provide tribes with further training and certification opportunities in addition to existing training or certification programs offered by States, various federal agencies, and private organizations. The Information Collection Request will estimate the burden and cost to tribal drinking water system operators who seek certifications from EPA approved providers.

In addition, the burden and cost to Tribal Certification Providers will be estimated. The information collected will be used to measure EPA's goal for 80% of tribal community and nontransient noncommunity water systems to have a certified operator by 2005. Establishing a tribal operator certification program will help achieve this goal while bringing greater public health protection to tribal communities. The information collected will include: number and level of new certifications, number and level of renewal certifications, information regarding revoked and suspended certifications, and training status for tribal drinking water system operators. Responses to the collection of information are voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The estimated annual burden for the Tribal Operator Certification Program is approximately 2,597 hours. The estimated average burden hours per response is 17.6 hours. The estimated average number of responses per respondent is 0.54. The estimated number of likely respondents annually is 271. The estimated annual cost is $71,256; of which $0 represents capital and start-up costs, and $82 represents operation and maintenance costs. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 11, 2002.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–23592 Filed 9–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7377–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS for Equipment Leaks of VOC in Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Recution Action (44 U.SC. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Equipment Leaks of VOC in Petroleum Refineries—Subpart GGG, OMB Control Number 2060–0067; expiring October 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 17, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 0983.07 and OMB Control No. 2060–0067, to the following

addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *auby.susan@epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0983.07. For technical questions about the ICR contact Dan Chadwick at (202) 564–7054.

SUPPLEMENTARY INFORMATION:

Title: NSPS for Equipment Leaks of VOC in Petroleum Refineries—Subpart GGG, OMB Control No. 2060–0067; EPA ICR No. 0983.07, expiration date October 31, 2002. This is a request for extension of a currently approved collection.

Abstract: The New Source Performance Standards (NSPS) for Equipment Leaks of Volatile Organic Compounds (VOC) in Petroleum Refineries were proposed on January 4, 1983 and promulgated on May 30, 1984. These standards apply to the following facilities in petroleum refineries: compressors and the group of all equipment (*e.g.* valves, pumps, flanges, etc.) within a process unit in VOC service, commencing construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 60, subpart GGG.

Owners or operators of the affected facilities described must make one-time-only notifications. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to Equipment Leaks of VOC in Petroleum Refineries provide information on which components are leaking VOCs. NSPS subpart GGG references the compliance requirements of NSPS subpart VV. Owners or operators are required to periodically (time period varies depending on equipment type and leak history) record information identifying leaking equipment, repair methods used to stop the leaks and dates of repair. Semiannual reports are required to measure compliance with the standards of NSPS subpart VV as referenced by NSPS subpart GGG . These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Responses to this information collection are mandatory. Section 111 of the Clean Air Act as Amended provide EPA with the authority for NSPS standards; 40 CFR part 60, NSPS subpart GGG, requires the collection of the emissions data.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 30, 2002, (67 FR 4421); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 57 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of petroleum refineries.

Estimated Number of Respondents: 48.

Frequency of Response: Initial, weekly, monthly, quarterly, semiannual.

Estimated Total Annual Hour Burden: 6,137 hours.

Estimated Total Annualized Capital, and O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0983.07 and OMB Control No. 2060–0067 in any correspondence.

Dated: August 23, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–23591 Filed 9–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7377–5]

EPA Science Advisory Board Executive Committee; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Executive Committee (EC) of the U.S. EPA Science Advisory Board (SAB) will meet on Tuesday, October 1, 2002 and Wednesday, October 2, 2002 at the Hotel Washington, (Federal Room) 515 15th Street, NW., Washington, DC. The meeting will begin by 9 a.m. on October 1 and adjourn no later than 3 p.m. on October 2, 2002 Eastern Time. The meeting is open to the public, however, seating is limited and available on a first come basis.

Purpose of the Meeting: This meeting of the SAB Executive Committee is one in a series of periodic meetings in which the EC takes action on reports generated by SAB Committees, meets with Agency leadership, and addresses a variety of issues germane to the operation of the Board. The agenda for the meeting will be posted on the SAB Web site *(http://www.epa.gov/sab)* approximately two weeks before the meeting and may include, but not be limited to the following:

1. Action on Committee reports, including:

(a) Radiation Advisory Committee (RAC): ''Underground Storage Tanks (UST) Cleanup and Resource Conservation and Recovery Act (RCRA) Subtitle C Program Benefits, Costs, and Impacts Assessments: An EPA Science Advisory Board Advisory''

(b) Executive Committee's Trichloroethylene (TCE) Review Panel: ''Review of Draft Trichloroethylene

Health Risk Assessment: Synthesis and Characterization-An SAB Report''

2. Meeting with Agency leaders, including

(a) Ms. Linda Fisher, Deputy Administrator, USEPA

(b) Dr. Paul Gilman, Science Advisor to Governor Whitman, and Assistant Administrator, Office of Research and Development, USEPA

3. Matters of Board business, including

(a) Finalizing the SAB project agenda for FY2003.

(b) A Consultation on Data Quality and Reproducibility—The background and charge questions for this consultation are located on the SAB Web site under ''Recent Additions'' then click ''Executive Committee.'' For further information about the Consultation, please contact Mr. Lawrence Martin, Designated Federal Officer on 202–564–6497, or via e-mail at *martin.lawrence@epa.gov*.

Availability of Review Materials: Draft SAB reports or other relevant materials will be posted on the SAB Web site *(http://www.epa.gov/sab)* approximately two weeks before the date of the meeting.

For Further Information: Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (5 minutes or less) must contact Mr. A. Robert Flaak, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4546; FAX (202) 501–0582; or via e-mail at *flaak.robert@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Flaak no later than noon Eastern Time on September 24, 2002. Logistical information concerning this meeting is available from Ms. Diana Pozun, Program Specialist, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4544; FAX (202) 501–0323; or via e-mail at *pozun.diana@epa.gov.*

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to Dr. Barnes at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information: Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site (*http://www.epa.gov/sab*) and in *The FY2001 Annual Report of the Staff Director* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0323.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Flaak at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 9, 2002.

Vanessa Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 02–23590 Filed 9–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7379–7]

EPA Science Advisory Board, Executive Committee; Addendum to Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), notice is hereby given that the agenda for the meeting of the Executive Committee (EC) of the U.S. EPA Science Advisory Board (SAB) to be held on Tuesday, October 1, 2002 and Wednesday, October 2, 2002 at the Hotel Washington (Federal Room), 515 15th Street, NW., Washington, DC has been expanded to include a review of the report from the SAB Metals Assessment Panel which met September 10–12, 2002. The EC meeting will begin by 9 a.m. on October 1 and adjourn no later than 3 p.m. on October 2, 2002 Eastern Time. The meeting is open to the public, however, seating is limited and available on a first come basis.

Purpose of the Meeting: This meeting of the SAB Executive Committee is one in a series of periodic meetings in which the EC takes action on reports generated by SAB Committees, meets with Agency leadership, and addresses a variety of issues germane to the operation of the Board. The agenda for the meeting will be posted on the SAB Web site (*www.epa.gov/sab*) approximately two weeks before the meeting.

Due to critical mission and schedule requirements, there is insufficient time to provide the full 15 calendar days notice for this addendum in the **Federal Register** prior to this meeting of the SAB Executive Committee, pursuant to the final rule on Federal Advisory Committee Management codified at 41 CFR 102–3.150.

Availability of Review Materials: Draft SAB reports or other relevant materials will be posted on the SAB Web site (*www.epa.gov/sab*) approximately two weeks before the date of the meeting.

Background on Metals Assessment Panel: The EPA SAB announced in 67 FR 38957–38959, June 6, 2002, that it had been asked to undertake a review of EPA's draft Action Plan for the ''Framework for Metals Assessment and Cross-Agency Guidance for Assessing Metals-Related Hazard and Risk.'' The background, charge, and description of the review documents appear in the above referenced **Federal Register** notice and are also available at the SAB Web site (*www.epa.gov/sab*). The charge for this review was published in 67 FR 38957–38959, June 6, 2002. The review

documents and their availability were published in 67 FR 46505–46506, July 15, 2002.

FOR FURTHER INFORMATION COINTACT: Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (5 minutes or less) must contact Mr. A. Robert Flaak, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4546; FAX (202) 501–0582; or via e-mail at *flaak.robert@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Flaak no later than noon Eastern Time on September 24, 2002. Logistical information concerning this meeting is available from Ms. Diana Pozun, Program Specialist, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4544; FAX (202) 501–0323; or via e-mail at *pozun.diana@epa.gov*

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to Mr. Flaak at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information: Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2001 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0323.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Flaak at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 12, 2002.

Vanessa Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 02–23717 Filed 9–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0254; FRL–7274–5]

State FIFRA Issues Research and Evaluation Group; Working Committee on Pesticide Operations and Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State Federal Insecticide, Fugicide, and Rodenticide Act (FIFRA) Issues Research and Evaluation Group (SFIREG) Working Committee on Pesticide Operations and Management (WC/POM) will hold a 2–day meeting. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, October 7, 2002, from 8:30 a.m. to 5 p.m., and Tuesday, October 8, 2002, from 8:30 a.m. to 12 noon.

ADDRESSES: This meeting will be held at the Days Inn, 2000 Jefferson Davis Hwy., Crystal City, VA.

Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0252 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Georgia A. McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: mcduffie.georgia@epa.gov.

Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax number: (802) 472–6957; e-mail address: aapco@plainfield.bypass.com.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to all parties interested in SFIREG's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process are invited and encourage to attend the meetings and participate as appropriate. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0254. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information

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

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0254 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0254. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Tentative Agenda

1. Certification issues - testing, match, positive identification.
2. Survey of states - funding.
3. Section 18's working with Tribal counterparts.
4. E-labeling compliance strategy.
5. Pesticide cancellations/registration issues - process development for state input.
6. Fumigants.
7. Funding - National security.
8. Non-English pesticide labels; what should states do?
9. Label issues - inaccurate, unclear, supplemental.
10. Worker protection standards.
11. Senate Bill 0–532 (Dirkson bill) - state game plan.
12. OPP update.
13. EPA update/briefing.

- Office of Pesticide Programs.

a. NAFTA labeling status update.
b. Mosquito labeling, label review manual - changes complete and implemented.

- Office of Enforcement Compliance Assurance.

Inspector credentials.

List of Subject

Environmental protection, Pesticides and pests.

Dated: September 11, 2002.

Jay S. Ellenberger,

Acting Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 02–23719 Filed 9–13–02; 2:56 pm]

BILLING CODE 6560–50–S

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other agencies to take this opportunity to comment on proposed information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning Reimbursement for Cost of Firefighting on Federal Property.

SUPPLEMENTARY INFORMATION: This collection of information is necessary in order to reimburse fire services for claims submitted for fighting fires on property, which is under the jurisdiction of the United States. Such claims are authorized by Section 11, of the Federal Fire Prevention and Control Act of 1974 (Public Law 93–498, 88 Stat. 1535, 15 U.S.C. 2201 *et seq.*). Section 11 of the Act is implemented by FEMA regulations 44 CFR part 151.

Collection of Information:

Title: Reimbursement for Cost of Fighting Fire on Federal Property.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0141.

Abstract: The collection of information is required in order to reimburse fire services for claims submitted for fighting fires on property, which is under the jurisdiction of the United States and to determine the amount authorized for payment. The FEMA Director, the United States Fire Administration Administrator, and the U.S. Department of Treasury will use the information to ensure proper expenditure of Federal funds.

Affected Public: Business or Other For-Profit, Not-For-Profit Institutions, State, Local or Tribal Government.

Number of Respondents: 16.

Frequency of Response: On Occasion.

Hours Per Response: 1.5.

Estimated Total Annual Burden Hours: 24 hours.

Estimated Cost: The estimated reimbursable amount is determined by the extent to which the fire service incurred additional firefighting costs, over and above its normal operating costs, in connection with the fire, which is the subject of a claim.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Timothy Ganley, Fire Program Specialist, U.S. Fire Administration, (301) 447–1358 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e-mail *InformationCollection@fema.gov.*

Dated: August 29, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–23559 Filed 9–16–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Opportunity To Comment on Snow Emergency and Severe Winter Storm Declarations and Snow Removal Assistance Policy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of opportunity for comment.

SUMMARY: FEMA is proposing to publish a revision to the currently effective Snow Assistance policy dated December 28, 1999. The proposed policy maintains the basic tenets of the current policy, but includes additional declaration criteria for snow emergencies. In addition to an area experiencing ''record'' or ''near-record'' snowfall, FEMA will require evidence of the actual impacts from a snowstorm before making a recommendation for a snow emergency declaration. More specifically, FEMA will require that the snowstorm cause some of the following impacts: search and rescue operations, opening of shelters, closure of Interstates and State highways, power outages, closure of local government offices, and the need for federal equipment and labor. Once a declaration is made, assistance would be provided to all eligible applicants for eligible snow removal work for a 48-hour time period.

DATES: This notice is effective on publication. We invite comments that are received by November 1, 2002.

FOR FURTHER INFORMATION CONTACT: Melissa M. Howard, PhD., Recovery Division, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, 202–646–4240 or *Melissa.Howard@fema.gov* (e-mail).

SUPPLEMENTARY INFORMATION: Comments are being solicited on a specific policy entitled Snow Emergency and Severe Winter Storm Declarations and Snow Removal Assistance. The policy follows:

A. Definitions

Contiguous County: A county that shares a border with a core county. Two counties that share a border across a State line are not considered contiguous counties.

Core County: A county that is declared under a snow emergency or severe winter storm that is designated for Snow Removal Assistance based on record or near-record snowfall.

Near-Record Snowfall: A snowfall that approaches, but does not exceed, the record snowfall as documented by NOAA's historical records. FEMA generally considers snowfall within ten percent of the record amount to be a near-record snowfall.

Record Snowfall: For the purposes of this policy, a record snowfall is defined as the maximum snowfall over a 1-, 2-, or 3-day period, as documented by historical records maintained by the National Oceanic and Atmospheric Administration (NOAA).

Severe Winter Storm: For the purposes of this policy, a severe winter storm is defined as an event that occurs during the winter season and includes snow, ice, high winds, blizzard conditions, etc., and causes substantial physical damage or loss to improved property.

Snow Removal Assistance: Snow removal assistance is assistance for snow removal, de-icing, salting, and sanding of roads.

B. Snow Emergency and Severe Winter Storm Declaration Criteria

It continues to be Federal policy that disaster response and recovery is the responsibility of the State and local governments. Federal assistance is supplementary and is appropriate only when an event is of such severity and magnitude that response requirements exceed State and local capabilities. FEMA's primary considerations for either an emergency or major disaster declaration recommendation for snow or severe winter storms are the actual impacts of the event.

1. All snow emergency declaration requests must satisfy the requirements of 44 CFR 206.35. All counties requested under this policy must have experienced a record or near-record snowfall or meet the contiguous county criteria described in C.1. FEMA will require evidence of some of the following impacts when making its recommendation to the President:

(a) Significant level of activation of National Guard for search and rescue operations and other life saving actions.

(b) Opening of multiple shelters for large numbers of stranded motorists and

large numbers of victims of extended power outages.

(c) Closure of Interstates and/or State highways for extended periods of time exceeding 48 hours.

(d) Power outages across a significant portion of the storm-affected area exceeding 48 hours.

(e) Closure of local government offices for extended periods of time exceeding 48 hours.

(f) State's need for a significant level of federal equipment and labor to address the impacts of the event.

2. FEMA will follow the guidelines in 44 CFR 206.48 when evaluating a request for a major disaster declaration as a result of a severe winter storm. FEMA will not include snow removal costs when calculating the per capita cost impacts.

C. Provisions for Snow Removal Assistance:

1. The following procedures are followed for determining if an area has experienced a record or near-record snowfall:

(a) The current and historic snowfall values shall be compared for the same time period.

(b) When NOAA's historical data shows that multiple stations exist for a county, the current snowfall should be compared to the highest historical snowfall record for that county.

(c) For counties that do not have NOAA reporting stations, a comparison of the snowfall values for reporting stations within adjacent counties or the nearest reporting station shall be used for designation purposes. However, data from a station in another State will not be used.

2. A county that does not receive a record or near-record snowfall, but is contiguous to a core county may be designated for snow removal assistance if it has snowfall equal to or greater than that of the designated core county.

3. All eligible applicants within a designated area, including private non-profit organizations, are eligible for snow removal assistance.

4. Snow removal assistance for snow removal, salting, and sanding of roads is only eligible if the area meets the record, near-record, or contiguous county designation criteria. Generally, FEMA will provide assistance for eligible costs for force account labor (overtime only), contract, equipment, materials, etc. for a continuous period of 48 hours. If applicants award contracts for a period greater than 48 hours, eligible funding is limited to 48 hours. This same procedure applies to all other snow removal related costs. The eligible funding will only cover reasonable expenditures incurred for 48 hours of operations.

5. Applicants may use different 48-hour periods. Each district of a State-wide applicant (*e.g.*, Department of Transportation) may have different 48-hour periods. All subdivisions of a local government must use the same 48-hour period.

6. The eligible time period may be extended 24 hours for the most extreme and anomalous conditions where snowfall quantities greatly exceed record amounts. To qualify for an extension, a significant number of the core counties within the State must experience snowfall that greatly exceeds the record amount. The time extension will be made for all designated counties within a state. Only the Assistant Director for Response and Recovery has the authority to extend the eligible time period.

7. In a major disaster declaration for a severe winter storm, snow removal assistance will not be approved by FEMA if the area does not meet the record, near record or contiguous county designation criteria. However, a very limited level of snow removal, incidental to the recovery, may be eligible for assistance. For example, snow removal that is necessary in order to access debris or for access to repair downed power lines may be eligible following a snowstorm that does not meet the record or near-record criteria.

8. Eligible snow removal costs will be reduced by the amount of snow removal insurance proceeds.

Dated: September 10, 2002.

John R. D'Araujo, Jr.,

Assistant Director, Response and Recovery Directorate.

[FR Doc. 02–23558 Filed 9–16–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 p.m., Monday, September 23, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 13, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–23732 Filed 9–13–02; 2:29 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

Standard Tender of Service

AGENCY: Federal Supply Service, GSA

ACTION: Notice of final implementation of interim 2 percent insurance related subcharge.

SUMMARY: The General Services Administration (GSA) has adopted an interim 2 percent ''insurance related surcharge'' requested by the freight motor carrier industry, hereinafter referred to as transportation service provider (TSP). This surcharge allows a TSP to recover escalating insurance premiums resulting from changes in the economy compounded by events of September 11, 2001. Notice of this adoption was published for comment in the **Federal Register** on May 9, 2002 (67 FR 31307), and comments were due by June 10, 2002. GSA received one comment. The comment was from the Government Relations Committee of the National Motor Freight Traffic Association, Inc., and it supported implementation of the surcharge. The 2 percent interim surcharge therefore is implemented as published in the attachment to 67 FR 31307. The provisions of the attachment also may be accessed at *http://www.kc.gsa.gov/fsstt/FRT/stos.htm* under the ''What's New'' item posted to the Web site on May 9, 2002.

DATES: *Effective Date:* May 1, 2002; *Expiration Date:* October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Price, Transportation Programs Branch, by phone at 703–305–7536, or be e-mail at *raymond.price@gsa.gov.*

Dated: September 10, 2002.

Tauna T. Delmonico,

Director, Travel and Transportation Management Division.

[FR Doc. 02–23552 Filed 9–16–02; 8:45 am]

BILLING CODE 6820–24–M

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

GSA Standard Tender of Service (STOS), GSA National Rules Tender No. 100–D, Item 1300, Fuel Related General Rate Adjustment (FRGRA)

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of final issuance of amendment to Item 1300 of the GSA STOS.

SUMMARY: The General Services Administration (GSA) is issuing in final an amendment to Item 1300, ''Fuel Related General Rate Adjustment'' (FRGRA), of GSA National Rules Tender No. 100–D, which is a part of the GSA STOS. This amendment was publised in the **Federal Register** for comment on May 23, 2002 (67 FR 36192), and comments were due by June 24, 2002. GSA received one comment. The comment was from the Government Relations Committee of the National Motor Freight Traffic Association, Inc., and supported implementation of the fuel related surcharge. Item 1300 therefore is implemented as published in the attachment to 67 FR 36192, and may be accessed at *http://www.kc.gsa.gov/fsstt/FRT/stos.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Price, Transportation Programs Branch, by phone at 703–305–7536, or by e-mail at *raymond.price@gsa.gov.*

Dated: September 10, 2002.

Tauna T. Delmonico,

Director, Travel and Transportation Management Division.

[FR Doc. 02–23553 Filed 9–16–02; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary's Advisory Committee on Regulatory Reform

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Department of Health and Human Services (HHS) Secretary's Advisory Committee on Regulatory Reform. As governed by the Federal Advisory Committee Act in accordance with section 10(a)(2), the Secretary's Advisory Committee on Regulatory Reform will advise and make recommendations for changes that would be beneficial in four broad areas: health care delivery, health systems operations, biomedical and health research, and the development of pharmaceuticals and other products. The Committee will review and advise on changes identified through regional public hearings, written comments from the public, and consultation with HHS staff.

All meetings and hearings of the Committee are open to the general public. The meeting agenda will allow some time for public comment. Additional information on the agenda and meeting materials will be posted on the Committee's Web site prior to the meeting (*http://www.regreform.hhs.gov*).

DATES: The final full meeting of the Secretary's Advisory Committee on Regulatory Reform will be held on Tuesday, October 1, from 9 a.m. to 5 p.m. and on Wednesday, October 2, from 8 a.m. to 3 p.m.

ADDRESSES: The hearing will be held in Room 800, Hubert H. Humphrey Building, 200 Independence Ave, SW., Washington, DC. To comply with security requirements, individuals who do not possess a valid Federal identification must present a picture identification, *e.g.,* driver's license or passport upon entry to the Humphrey Building.

FOR FURTHER INFORMATION CONTACT: Margaret P. Sparr, Executive Coordinator, Secretary's Advisory Committee on Regulatory Reform, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue, SW., Room 344G, Washington, DC, 20201, (202) 401–5182.

SUPPLEMENTARY INFORMATION: The Hubert H. Humphrey Building is in compliance with the Americans with Disabilities Act. Anyone planning to attend the meeting who requires special disability-related arrangements such as sign-language interpretation should provide notice of their need by Wednesday, September 25, 2002. Please make any request to Dianne Norcutt—phone: 301–628–3146; fax: 301–628–3101; e-mail: *dnorcutt@s-3.com.*

On June 8, 2001, HHS Secretary Thompson announced a Department-wide initiative to reduce regulatory burdens in health care, to improve patient care, and to respond to the concerns of health care providers and industry, State and local Governments, and individual Americans who are affected by HHS rules. Common sense approaches and careful balancing of needs can help improve patient care. As part of this initiative, the Department established the Secretary's Advisory Committee on Regulatory Reform to provide findings and recommendations regarding potential regulatory changes. These changes would enable HHS programs to reduce burdens and costs associated with departmental regulations and paperwork, while at the same time maintaining or enhancing the effectiveness, efficiency, impact, and access of HHS programs.

Dated: September 9, 2002.

William Raub,

Deputy Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–23528 Filed 9–16–02; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03004]

Improving the Health, Education, and Well-Being of Young People Through Coordinated School Health Programs; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC), announces the expected availability of fiscal year (FY) 2003 funds for cooperative agreements between CDC and state education agencies (SEA) and large city local education agencies (LEA) to improve the health, education, and well-being of young people through coordinated school health programs. This program announcement supports 15 health promotion and disease prevention objectives related to school-age youth in Healthy People 2010 and Strategy two of the CDC's HIV Prevention Strategic Plan Through 2005; and addresses at least the following specific outcome objectives:

- Increase the proportion of adolescents (grades 9 thru 12) who abstain from sexual intercourse or use condoms if currently sexually active (with special emphasis on reaching youth of color).

• Reduce the proportion of adolescents (grades 9 thru 12) who have had multiple sex partners (with special emphasis on reaching youth of color).

• Reduce the proportion of sexually active adolescents (grades 9 thru 12) who used alcohol or drugs before last sexual intercourse (with special emphasis on reaching youth of color).

• Increase the proportion of adolescents (grades 9 thru 12) who consume at least five daily servings of fruits and vegetables.

• Increase the proportion of adolescents (grades 9 thru 12) who engage in vigorous physical activity that promotes cardiorespiratory fitness three or more days per week for 20 minutes or more per occasion.

• Reduce the proportion of adolescents who are at risk for being overweight or are overweight.

• Reduce the proportion of adolescents (grades 9 thru 12) who smoke cigarettes or use other tobacco products.

• Decrease the number of school days missed for youth with persistent asthma.

• Increase the percentage of youth with persistent asthma who have asthma care plans on file at school.

• Decrease the incidence of foodborne illnesses among youth.

This program announcement also targets the Government Performance and Reporting Act (GPRA) Performance Goals of achieving and maintaining the percentage of high school students who are taught about HIV/AIDS prevention in school at ninety percent or greater.

The Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion is issuing this program announcement to support implementation and integration of current school health efforts (See the Logic Model for State-based School Health Programs and the Logic Model for Local Education Agency-based Programs in Attachment I), consolidate State and local education agency grant programs, simplify and streamline the grant pre-award and post-award administrative process, measure performance related to each grantee's stated objectives, and identify and establish long-term goals of a school health program through stated performance measures. Some examples of the benefits of the streamlined process are: the semi-annual progress report and budget will be used to process continuation applications; reporting expectations will be consistent across priority areas; and increased flexibility will be available within approved budget categories. This announcement will allow CDC to consider a higher level of funding for continuing programs based on annual performance and availability of funding. This announcement will also allow CDC to expand support for additional school health efforts (which may include, but not limited to programs to reduce school environmental hazards, unintentional injuries and violence, diabetes, Sexually Transmitted Disease (STD) infection and unplanned pregnancy, other infectious diseases, skin cancer, and stigma and complications from epilepsy; strengthen science education; improve oral health and childhood immunization; promote mental health; promote efforts to help youth abstain from sexual intercourse; prepare for possible unintentional emergencies (*e.g.*, fires, tornadoes, or chemical spills) and intentional emergencies (*e.g.*, biological, chemical, or physical threats); and support community-schools initiatives and CDC's National Youth Media Campaign) as funds become available.

This program announcement covers four priority areas for State education agencies (SEA) and four priority areas for local education agencies (LEA). A SEA or LEA can apply for funding to address one or any combination of priority areas for which they are eligible.

SEA Priority 1: Youth Risk Behavior Survey (YRBS)

The purpose of SEA Priority 1: YRBS is to establish or strengthen systematic procedures to monitor critical health behaviors of youth within the state through implementation of the Youth Risk Behavior Survey (YRBS).

SEA Priority 2–A: Coordinated School Health Programs (CSHP) and Reduction of Chronic Disease Risks

The purpose of SEA Priority 2–A: CSHP and Reduction of Chronic Disease Risks is to build State education and health agency partnership and capacity to implement and coordinate school health programs across agencies and within schools. The expected outcome of this effort is to help schools reduce priority health risks among youth, especially those risks that contribute to chronic diseases. Initial funding is made available to specifically (1) reduce tobacco use and addiction, (2) improve eating patterns, (3) increase physical activity, and (4) reduce obesity among youth.

SEA Priority 2–B: State Demonstration Efforts (Asthma and Foodborne Illness)

The purpose of Priority 2–B: State Demonstration Efforts is to develop or implement exemplary State-level policies and programs, to prevent priority health problems among school-age youth as part of a coordinated school health program, including sharing successful techniques, strategies, and lessons learned with other interested states and cities. These demonstration programs will serve as State models that other states throughout the nation might modify and implement within their own jurisdictions. Initial funding is made available to implement demonstration programs to help schools reducing foodborne illness and increasing awareness of food safety, and reduce asthma episodes and asthma-related absences.

SEA Priority 3: HIV Prevention for School-Age Youth

The purpose of SEA Priority 3: HIV Prevention For School-age Youth is to strengthen state-level policies, programs, and support to help schools prevent sexual risk behaviors that result in HIV infection, especially among youth who are at highest risk.

SEA Priority 4: National Professional Development

The purpose of SEA Priority 4: National Professional Development is to improve State strategies to reduce health problems among youth by planning and delivering learning opportunities for other interested states.

LEA Priority 1: Youth Risk Behavior Survey (YRBS)

The purpose of LEA Priority 1: YRBS is to establish or strengthen systematic procedures to monitor critical health behaviors of youth within the local education agency area through implementation of the Youth Risk Behavior Survey (YRBS).

LEA Priority 2: HIV Prevention For School-Age Youth

The purpose of LEA Priority 2: HIV Prevention For School-age Youth is to strengthen local education agency policies, programs, and support to help schools prevent sexual risk behaviors that result in HIV infection, especially among youth who are at highest risk.

LEA Priority 3: Local Demonstration Efforts (Asthma)

The purpose of LEA Priority 3: Local Demonstration Efforts is to develop or implement exemplary local education agency policies and programs to implement demonstration programs to help schools reduce priority risk behaviors and health problems. Initial funding is available to help schools reduce asthma episodes and asthma-

related absences as part of a coordinated school health program, including sharing successful techniques, strategies, and lessons learned with other interested LEAs.

LEA Priority 4: National Professional Development

The purpose of LEA Priority 4: National Professional Development is to improve school and community strategies to reduce health problems among youth by planning and delivering learning opportunities for other interested cities.

This program announcement is separated into three sections. Section I describes information about SEA Priorities, including Authority, Eligible Applicants, Availability of Funds, and Program Requirements. Section II describes information about LEA Priorities, including Eligible Applicants, Availability of Funds, and Program Requirements. Section III provides application guidance for both SEAs and LEAs, and includes information about Application Content, Submission and Deadline, Evaluation Criteria, Reporting Requirements, Other Additional Requirements, and Where to Obtain Additional Information.

Special Guidelines for Technical Assistance

Conference Call

Technical assistance will be available for potential applicants on three conference calls.

The first call will be held particularly for the SEAs located in American Samoa, Guam, Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the Northern Mariana Islands on September 26, 2002 from 6 p.m. to 8 p.m. (Eastern Time).

The second call will be for eligible SEAs in the contiguous United States, Hawaii, Puerto Rico, and the Virgin Islands and will be held on September 27, 2002 from 3 p.m. to 5 p.m. (Eastern Time).

The third call will be eligible LEAs and will be held on October 1, 2002 from 12 p.m. to 2 p.m. (Eastern Time).

Potential applicants are requested to call in using only one telephone line. The conference can be accessed by calling 1–800–311–3437 or 404–639–3277, and entering access code 318989. The purpose of the conference call is to help potential applicants to:

1. Understand the scope and intent of the Program announcement.
2. Be familiar with the Public Health Services funding policies and application and review procedures.

Participation in this conference call is not mandatory. If you have problems accessing the conference call, please call 404–639–7550. Questions and answers from the conference call will be provided to all eligible applicants through e-mail communications.

Section I: State Education Agency (SEA)

B. Authority and Catalog of Federal Domestic Assistance

This program is authorized under Sections 301(a), 311(b) and (c), and 317(k)(2) [42 U.S.C. 241(a), 243(b) and (c), and 247b(k)(2)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.938.

C. Eligible Applicants

Eligible applicants for SEA Priorities 1, 2–A, 2–B, 3, and 4 are State education agencies (SEA) in the 50 states, American Samoa, Puerto Rico, the Virgin Islands, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the Northern Mariana Islands.

SEA applicants may apply for any or all SEA Priorities, with the following clarification. Those SEAs applying for SEA Priority 2 can choose to apply for Priority 2–A alone or for both Priorities 2–A and 2–B. However, to be funded under Priority 2–B, the applicant must apply for and be approved for funding of Priority 2–A. To be awarded funds under SEA Priority 4, applicants must apply for and be funded under either Priority 2 or Priority 3 or both.

If additional funds become available, CDC SEAs funded under Priority 3 will be eligible to apply for funds under this announcement to promote abstinence and prevent other STDs and unplanned pregnancy, and SEAs funded under Priority 2 will be eligible to apply for funds to address other health risks and programs.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

It is anticipated that a total of approximately $21,830,000 will be available in FY 2003 to fund up to 58 SEAs (including territorial education agencies) for Priorities 1, 2–A, 2–B, and 3. In addition, approximately $1,275,000 will be available for up to a total of three SEAs or LEAs for Priority 4.

SEA Priority 1: YRBS

Approximately $1,450,000 is expected to be available for SEA Priority 1. CDC expects to fund all eligible applicants that submit an acceptable application. Awards are expected to average $25,000.

SEA Priority 2–A: CSHP and Reduction of Chronic Disease Risks

Approximately $7,380,000 is expected to be available for SEA Priority 2–A to fund approximately 18 SEAs. CDC expects to award each SEA an average of approximately $410,000.

SEA Priority 2–B: State Demonstration Efforts (Asthma and Foodborne Illness)

Approximately $800,000 is expected to be available for SEA Priority 2–B to fund approximately 5 SEAs to implement demonstration programs to help schools reduce foodborne illnesses and improve student awareness of food safety. In addition, approximately $200,000 is expected to be available to fund 1 SEA to implement a demonstration program to help schools reduce asthma episodes and asthma-related absences. Awards will average $175,000 and range from approximately $150,000 to $200,000.

SEA Priority 3: HIV Prevention for School-Age Youth

Approximately $12,000,000 is expected to be available for SEA Priority 3. CDC expects to fund all eligible applicants that submit an acceptable application. Awards are expected to range from approximately $25,000 to $325,000. Award ranges will be as follows, based on 1999 estimated student enrollment data as reported by the U.S. Department of Education, National Center for Education Statistics, April 2000:

- SEAs in states with a student enrollment of 2,500,000 or more (California, New York and Texas) are eligible for an award range of approximately $225,000 to $325,000.
- SEAs in states with a student enrollment less than 2,500,000, but equal to or more than 1,500,000 (Florida, Illinois, Michigan, Ohio, and Pennsylvania) are eligible for an award range of approximately $220,000 to $320,000.
- SEAs in states with a student enrollment less than 1,500,000, but equal to or more than 500,000 (Alabama, Arizona, Colorado, Connecticut, Georgia, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, North Carolina, Oklahoma, Oregon, Puerto Rico, South Carolina, Tennessee, Virginia, Washington, and Wisconsin) are eligible

for an award range of approximately $150,000 to $250,000.

• SEAs in states with a student enrollment less than 500,000, but equal to or more than 100,000 (Alaska, Arkansas, Delaware, Hawaii, Idaho, Iowa, Kansas, Maine, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Utah, Vermont, and West Virginia) are eligible for an award range of approximately $125,000 to $225,000.

• All other SEAs in states with a student enrollment less than 100,000 (American Samoa, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, the Virgin Islands, and Wyoming) are eligible for an award range of approximately $25,000 to $100,000.

SEA Priority 4: National Professional Development

Approximately $1,275,000 is expected to be available for SEA Priority 4 to fund some combination of two to three SEAs or large city LEAs to implement national professional development. Awards will average $400,000 and will range from approximately $375,000 to $425,000.

It is expected that all awards will begin on or about March 1, 2003, with a 12-month budget period, within a project period of five years. Funding estimates may vary and are subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Matching funds are not required for this program announcement.

Use of Funds

Cooperative agreement funds may be used to support personnel and to purchase equipment, supplies and services (including travel) directly related to program activities and consistent with the scope of the program announcement. Funds under this program announcement may not be used to conduct research projects, provide direct delivery of patient care or treatment services, or purchase or disseminate condoms. Although public health may have an assurance role in clinical testing and screening, funds are not to be used to provide clinical testing or screening services. Federal funds awarded under this program announcement may not be used to supplant State or local funds.

As part of the increased flexibility efforts, applicants are encouraged to maximize the public health benefit from the use of CDC funding within the approved budget line items to enhance the grantee's ability to achieve stated goals and objectives and to respond to changes in the field as they occur within the scope of the award. Recipients also have the ability to redirect up to 25 percent of the total approved budget to achieve stated goals and objectives within the scope of the award except from categories that require prior approval such as contracts, change in scope, and change in key personnel. A list of required prior approval actions will be included in the Notice of Cooperative Agreement Award.

SEA applicants are encouraged to identify and take advantage of opportunities, which will enhance the recipient's work with other education agency and health department programs in their State that address risk factors and health problems described in SEA Priorities. This may include cost sharing to support a shared position to implement activities such as surveillance, health communication, professional development, health resources development, and evaluation, or to implement programs that cross units/departments within the State education and health agencies. This may include, but is not limited to, joint planning activities, joint funding of complementary school health activities based on program recipient activities, coalitions, combined development and implementation of policy and program interventions, and other cost sharing activities that complement school and youth-based program priorities funded by other CDC units. SEAs may determine that the State health agency can effectively implement important school health policies and programs and may choose to provide fiscal support for State health agency implementation through an interagency agreement.

SEAs funded under priority 2A are expected to direct at least $100,000 to the State health agency to support staff positions and activities to promote coordination of school-related health programs within and across the health and education agencies.

E. Program Requirements

In conducting activities to achieve the purpose of this program, SEA recipients will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities for each SEA Priority are listed below. CDC has developed performance measures to evaluate recipients' progress in meeting the requirements. These performance measures are listed following the recipient activities listed for each priority.

SEA Priority 1—YRBS: Recipient Activities

a. *Staffing:* Identify staff position(s) in the education or health agency with responsibility and organizational authority for coordinating YRBS activities. The individual(s) identified should have knowledge needed for leadership and coordination of proposed activities, knowledge and understanding of school programs, and communication skills necessary to effectively promote and facilitate proposed plans and activities.

b. Establish and implement a plan for conducting a biennial YRBS among students in grades 9 thru 12 and disseminating YRBS results.

c. *Partnerships:* Establish or sustain effective partnerships with other State agencies, including the State health agency; non-governmental organizations; institutions of higher education; and others that can assist in implementing the YRBS, disseminating YRBS results, and utilizing results for program planning.

Performance will be measured by the extent to which:

• The State obtains weighted data representative of students in grades 9 thru 12 throughout the state, on a bi-annual basis and

• Decision makers, school districts, schools, health agencies, and other partners utilize YRBS data, in addition to other data, to improve policies and programs that will reduce health risk behaviors and improve the health of school-age youth.

SEA Priority 2–A—CSHP and Reduction of Chronic Disease

Risks: Recipient Activities

a. *Staffing:* Establish and maintain a full-time senior staff position in the State education agency (*i.e.*, one FTE) and a full-time senior staff position in the State health agency (*i.e.*, one FTE), with expertise, experience, and full-time responsibility and organizational authority for building each agency's capacity to implement and coordinate effective school health programs. In addition, the State education agency should establish or identify an appropriate full-time staff position (*i.e.*, one FTE), in the education agency with experience, expertise, and full responsibility and organizational authority for coordinating programs intended to reduce tobacco use and addiction, improve eating patterns, increase physical activity, and reduce obesity among youth. The individuals

identified for these three positions should have necessary credentials (*e.g.*, licensure or certification), training, and experience needed for leadership and coordination of the proposed activities; knowledge and experience in working with school and public health personnel, programs, and administrative procedures; and communication skills that would enable them to serve as a liaison with partners in health, education, the community, and with other decision makers at the local, State, and national levels.

b. *State Agency Collaboration and Planning:* Strengthen the partnership between the State education and State health agencies that will result in an Interagency Plan that identifies complementary responsibilities and support functions to improve the health and educational achievement of students through CSHP in the State's schools. Efforts to address tobacco use, dietary patterns that result in disease and obesity, physical inactivity, HIV, asthma, foodborne illnesses, and other health priorities should be coordinated with other State health department programs. The Intra-agency Plan should address effective policies and programs; resources; financial sustainability; technical assistance; professional development; partnerships and linkages; health communications and marketing; and assessment and evaluation.

c. *Partnerships and Planning:* Develop and implement a State plan that builds a broader private and public partnership for reducing priority risk behaviors, particularly tobacco use and addiction, improving eating patterns, increasing physical activity, and reducing obesity among youth in schools. The plan should be developed in collaboration with the State health agency, relevant non-governmental organizations, institutions of higher education, teachers and parents, and other coalitions or groups. Priorities established as part of the plan should be based on State surveillance and other monitoring and evaluation data. This plan should address efforts to help schools reduce foodborne illnesses, improve student awareness of food safety, and reduce asthma episodes and asthma-related absences (SEA Priority 2–B), and help schools prevent sexual risk behaviors that results in HIV infection (SEA priority 3), if theses are State or local priorities and CDC funds are provided to support theses priorities. The State plan should:

1. Incorporate the support functions and responsibilities of the State education and health agency's Interagency Plan.

2. Identify the complementary roles and responsibilities of State and local partners, specifying the contributions (*e.g.*, funds, technical assistance, professional development, and materials development) of partners in helping schools reduce priority health risks, including tobacco use and addiction, physical inactivity, and eating patterns that result in obesity and disease.

3. Emphasize implementation of effective policies, environmental changes, and educational strategies consistent with CDC's Guidelines for School and Community Programs to Promote Lifelong Physical Activity Among Young People, Guidelines for School Health Programs to Promote Lifelong Healthy Eating, Guidelines for School Health Programs to Prevent Tobacco Use and Addiction, and other relevant CDC guidance documents that target other youth risk behaviors, and the use of school health assessment data.

4. Build on a theoretical approach based on proven principles for prevention.

5. Leverage resources and avoid duplication at the state and local levels.

d. *State Systems To Support School District Implementation and Evaluation:* Develop and implement a plan for providing professional development, consultation, technical assistance, evaluation, and resource development in support of school districts or schools to assist them in assessing, planning, and coordinating school health programs and implementing strategies to reduce priority health risks, including tobacco use and addiction, physical inactivity, and eating patterns that result in obesity and disease.

e. Implement strategies to reduce disparities among populations that may be disproportionately affected by health risks and problems, especially among communities of color (as defined in CDC's HIV Prevention Strategic Plan Through 2005).

f. Identify proponents and advocates among decision makers and the public, inform and support them in their efforts to promote the role of schools in achieving priority health outcomes and improving academic success; including sharing and disseminating accurate information about effective programs and materials that address health priorities with decision-makers, other leaders including school personnel, parents, students, and other stakeholders.

g. Evaluate State-level school health capacity-building efforts and the implementation and effectiveness of strategies to reduce priority health risks, especially tobacco use and addiction and physical inactivity and eating patterns that result in obesity and disease, for the purposes of programmatic improvement and long range planning. Evaluation plans should include systematic procedures to monitor school policies and programs intended to promote health enhancing behaviors among youth.

h. Participate in at least two national, CDC or DASH-sponsored training workshops or conferences each budget year of the project period for the purpose of strengthening State-level infrastructure to support and coordinate school health programs and improving education to prevent leading causes of disease, disability, and death among youth.

Performance will be measured by the extent to which the State education and health agencies provide support to schools and school districts such that schools:

- Implement effective policies, environmental changes, and educational strategies to reduce tobacco use and addiction, physical inactivity, and eating patterns that result in obesity and disease among youth.
- Implement strategies to reduce health disparities among sub-populations that may be disproportionally affected by health risks and problems.
- Integrate effective school-based policies, programs and strategies to reduce priority health risks, especially, tobacco use and addiction, physical inactivity, and unhealthy eating patterns with community-based strategies, while building a sustainable local resource and funding base.

SEA Priority 2–B—State Demonstration Efforts (Asthma and Foodborne Illness)

Recipient Activities

a. *Staffing:* Identify staff position(s) in the education agency with full-time responsibility and organizational authority for coordinating activities (reducing asthma-related illnesses or asthma-related absences and/or reducing foodborne illnesses) proposed under this priority. The individual(s) identified should have credentials, training, and experience needed for leadership and coordination of proposed activities; knowledge and experience in working with schools and public health personnel; and communication skills necessary to effectively promote and facilitate proposed plans and activities.

b. *Partnerships and Planning:* Develop and implement a state plan that builds a broader private and public partnership for reducing asthma-related

illnesses or asthma-related absences and/or reducing foodborne illnesses in schools and improving student awareness of food safety. The plan should be developed in collaboration with the State Health Agency, the State agricultural agency's cooperative extension services (foodborne illnesses) relevant non-governmental organizations, institutions of higher education, teachers and parents, and other coalitions or groups. Priorities established as part of the plan should be based on State surveillance and other monitoring and evaluation data. (This plan should also address efforts to help schools reduce tobacco use and addiction, improve eating patterns, increase physical activity, and reduce obesity among youth in schools (SEA Priority 2–A) and help schools prevent sexual risk behaviors that result in HIV infection (SEA Priority 3), if CDC funds are also provided to support these priorities).

The plan should:

1. Incorporate the support functions and responsibilities of the State education and health agency's Interagency Plan for coordinating school health programs.

2. Identify the complementary roles and responsibilities of State and local partners, specifying the contributions (*e.g.*, funds, technical assistance, professional development, materials development) of partners to reduce asthma-related illnesses or asthma-related absences and/or reducing foodborne illnesses in schools and improving student awareness of food safety.

3. Emphasize implementation of effective policies, environmental changes, and educational strategies consistent with CDC guidance related to these priorities.

4. Leverage resources and avoid duplication at the state and local levels.

c. Implement strategies to reduce disparities among populations that may be disproportionately affected by these relevant health risks and problems, especially among communities of color (as defined in CDC's HIV Prevention Strategic Plan Through 2005).

d. Identify proponents and advocates among decision makers and the public, and inform and support them in their efforts to promote the role of schools in reducing asthma-related illnesses or asthma-related absences and/or reducing foodborne illnesses in schools and improving student awareness of food safety, including sharing and disseminating accurate information about effective programs and materials that address these priorities with decision-makers, other leaders, including school personnel, parents, students, other stakeholders in the state as well as interested education and health agencies in the nation.

e. Evaluate State-level school health capacity building efforts and the effectiveness of strategies to reduce asthma-related illnesses or asthma-related absences and/or reduce foodborne illnesses in schools and improve student awareness of food safety for the purposes of programmatic improvement and long range planning.

Performance will be measured by the extent to which the State education agency and partners:

- Translate and communicate successful and effective interventions for adoption by other state education and health agencies, school districts, schools, and communities and
- Provide support to schools and school districts to do the following:

(1) Implement effective policies, environmental changes, and educational strategies to reduce asthma-related illnesses or asthma-related absences and/or reducing foodborne illnesses in schools and improving student awareness of food safety.

(2) Implement strategies to reduce disparities among populations that may be disproportionally affected by these priority health risks and problems.

SEA Priority 3—HIV Prevention for School-Age Youth

Recipient Activities

a. *Staffing:* Establish and maintain a staff position that has full-time responsibility and organizational authority for HIV prevention activities within the agency. The individual in this position should have necessary credentials (*e.g.*, licensure or certification), training, and experience needed for leadership, coordination, and implementation of HIV prevention activities; knowledge and experience working in school settings and with sub-populations of youth that might be disproportionately affected by HIV infection; and communication skills that enable the staff person to serve as a liaison with partners in health, education, and the community.

b. *Partnerships and Program Planning*: Develop and implement a plan that builds on the broader state and community plans for strengthening HIV prevention in schools. The plan should be developed in collaboration with the State health agency HIV prevention program, the HIV community planning group, abstinence groups, schools, parents, students, and other coalitions or groups that are implementing efforts to prevent HIV infection among youth. Priorities established as a part of the plan should be based on state surveillance and other monitoring and evaluation data, reflective of HIV trends, and complement priorities identified by the State HIV community planning group. The plan should:

1. Identify the complementary roles and responsibilities of State and local partners, specifying the contributions (*e.g.*, funds, technical assistance, professional development, and materials development) of partners (especially the State health agency HIV prevention program).

2. Emphasize implementation of effective policies, programs, curricula frameworks, standards, resources and support in school that are:

(a) Developmentally and culturally appropriate.

(b) Medically and scientifically accurate.

(c) Consistent with scientifically researched evidence of effectiveness.

(d) Built on a theoretical approach based on proven principles for prevention.

(e) Consistent with the principles of CDC's Guidelines for Effective School Health Education to Prevent the Spread of AIDS and other CDC guidance documents.

(f) Integrate HIV prevention efforts with efforts to prevent other STDs and/or unintended pregnancy and efforts to reduce alcohol and other drug use.

(g) Complement existing intra-agency policy-making processes, state school board policy, and school and community standards and values.

(h) Leverage resources and avoid duplication at the state and local levels.

c. Implement strategies to reduce disparities among populations that may be disproportionately affected by HIV infection, especially among communities of color (as defined in CDC's HIV Prevention Strategic Plan Through 2005).

d. *State systems to support school district implementation and evaluation:* Develop and implement a plan for providing professional development, consultation, technical assistance, resource development, and evaluation to school districts and schools. Assist them in assessing, planning, and implementing effective HIV prevention to youth most at risk for HIV infection, including youth in grades 7 thru 12, youth with special needs, youth in high-risk situations, youth who are both in and out of school, youth of color, and sexual minority youth.

e. HIV Materials Review and Medical Accuracy: Establish and maintain an HIV materials review panel to review all written materials, audiovisual materials,

pictorials, questionnaires, surveillance instruments, proposed group educational sessions, educational curricula, and like materials, including website materials (see Attachment IV, AR–5, for guidance related to HIV Program Review Panel Requirements). The review requirement are to ensure that funded materials, sessions, and activities include accurate information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities. Ensure that funded materials, sessions, and activities do not provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse. Ensure that educational sessions do not include activities in which attendees participate in sexually suggestive physical contact or actual sexual practices; and that materials provide accurate information about various means to reduce an individual's risk of exposure to, or to transmission of, the etiologic agent for AIDS. In addition, establish mechanisms to ensure that all mass produced education materials that are specifically designed to address STDs including Human Papilloma Virus (HPV) shall contain medically accurate information regarding the effectiveness or lack of effectiveness of condoms in preventing the STD the materials are designed to address.

f. Identify proponents and advocates among decision makers and the public, and inform and support them in their efforts to promote the role of schools in achieving HIV prevention outcomes, including sharing and disseminating accurate information about effective programs and materials that address HIV prevention priorities with decision-makers, other leaders, including school personnel, parents, students and other stakeholders.

g. Involve youth as appropriate in planning, delivering, and evaluating HIV prevention programs.

h. Evaluate State-level capacity building efforts and evaluate the implementation and effectiveness of strategies to reduce risks for HIV infection among youth in schools for the purposes of programmatic improvement and long range planning. Evaluations should include systematic procedures to monitor school policies and programs intended to promote health enhancing behaviors among youth.

i. Participate in at least two national, CDC or DASH-sponsored training workshops or conferences each budget year of the project period for the purpose of improving HIV prevention and reducing other important health risks that affect young persons.

Performance will be measured by the extent to which the state education agency and partners provide support to schools and school districts to:

- Implement effective policies and educational strategies to reduce risk behaviors that lead to HIV infection among youth.
- Implement strategies to reduce disparities among sub-populations of youth disproportionally affected by HIV infection and other health problems related to sexual risk behaviors.
- Integrate effective school-based policies, programs and strategies to reduce health risks that lead to HIV infection with community-based strategies, while building a sustainable local resource and funding base.

SEA Priority 4—National Professional Development

Recipient Activities

a. *Staffing:* Establish and maintain a full-time staff position (*i.e.*, one FTE) in the education agency with full-time responsibility and organizational authority for coordinating professional development activities. The individual selected for this position should have specific credentials, training, and experience needed for leadership and coordination of proposed activities, knowledge and experience in working with school and public health personnel, and communication skills to effectively promote and facilitate professional development events.

b. Collaborate with other SEAs and/or LEAs that receive funding under Priority 4 in a Professional Development Consortium (PDC). The purpose of the PDC will be to share resources and coordinate activities.

c. Develop and implement a professional development plan that will improve State and local planning and implementation of coordinated school health programs and strategies that will reduce priority health risk behaviors among youth. The professional development plan should:

(1) Emphasize partnerships among education agencies, health agencies, and others.

(2) Be based on stated needs of DASH-funded education agencies and their project partners.

(3) Promote professional development events that focus on school health topics and priorities for representatives from other LEAs, SEAs, health agencies, and other interested individuals or groups.

d. Pay costs associated with coordination of events, including travel and per diem for participants and presenters for program-related professional development events.

e. In partnership with the consortium, provide at least two to three events within a 12-month budget period.

f. Evaluate program activities and use evaluation results for programmatic improvement and long range planning.

g. Participate in at least two national, DASH-sponsored professional development consortium meetings each budget year of the project period for the purpose of planning and coordinating SEA and LEA professional development events.

Performance will be measured by the extent to which professional development participants have improved plans and prevention strategies consistent with the increased knowledge and skills acquired from the professional development events.

2. Centers for Disease Control and Prevention's Activities

a. Provide national YRBS data for comparison with state YRBS data.

b. Provide public health information, training, and technical assistance related to program planning, and implementation, surveillance, professional development, and evaluation; assessment of program objectives; and dissemination of theoretical approaches, proven principles for prevention, effective and successful strategies, experiences, and evaluation results.

c. Collaborate with SEAs, LEAs, and national organizations in planning and carrying out relevant national strategies to improve school health programs and prevent important health risk behaviors.

d. Collaborate with appropriate partners to develop and disseminate recommendations for policy and program interventions, together with recommendations for assessment.

e. Organize and convene meetings of national, State, and local organizations and agencies to address issues and activities related to strengthening education to prevent important health risk behaviors and problems and integrating such education into existing school health programs.

f. Organize and convene professional development consortium meetings to jointly plan and deliver professional development and learning opportunities for DASH-funded national non-governmental and state and local grantees.

SEA Applicants can skip Section II and proceed to Section III.

Section II: Large City Local Education Agency (LEA)

B. Eligible Applicants

Eligible applicants for LEA Priorities 1, 2, 3, and 4 will be the 20 urban school districts with an enrollment of 80,000 students or more and a percentage of minority students of 50 percent or greater, as reported in the U.S. Department of Education, National Center for Education Statistics, Local Education Agency Universe Survey, 1999-2000. These districts include the New York City Public Schools (New York, NY); Los Angeles Unified Schools (Los Angeles, CA); City of Chicago School District (Chicago, IL); Dade County School District (Miami, FL); Broward County School District (Fort Lauderdale, FL); Houston Independent School District (Houston, TX); Philadelphia City School District (Philadelphia, PA); Detroit City School District (Detroit, MI); Dallas Independent School District (Dallas, TX); Orange County School District (Orlando, FL); San Diego City Unified Schools (San Diego, CA); Prince George's County Public Schools (Upper Marlboro, MD); Memphis City School District (Memphis, TN); Baltimore City Public School System (Baltimore, MD); Charlotte-Mecklenburg Schools (Charlotte, NC); Milwaukee School District (Milwaukee, WI); DeKalb County School District (Decatur, GA); Long Beach Unified Schools (Long Beach, CA); Albuquerque Public Schools (Albuquerque, NM); and Orleans Parish School Board (New Orleans, LA).

Eligible for LEA Priorities 1,2, and 4 will be the largest urban school districts in 11 additional metropolitan areas that have reported 6,600 cases or more of AIDS to CDC as of December 31, 2000. These LEAs include Atlanta City Schools (Atlanta, GA); Boston School District (Boston, MA); District of Columbia Public Schools (Washington, D.C.); Hillsborough County School District (Tampa, FL); Jersey City Schools (Jersey City, NJ); Newark City Schools (Newark, NJ); Oakland Unified Schools (Oakland, CA); Palm Beach County School District (West Palm Beach, FL); San Bernardino City Unified Schools (San Bernardino, CA); San Francisco Unified Schools (San Francisco, CA); and Seattle Schools (Seattle, WA). The LEAs listed in this paragraph are not eligible to apply for LEA Priority 3.

LEA applicants can apply separately for Priority 1, Priority 2, Priority 3, or Priority 4 or any combination of priorities for which they are eligible with the following exception. To be awarded funds under LEA Priority 4, applicants must apply and be funded under Priority 2.

If additional funds become available, LEAs eligible under Priority 2 will be eligible to apply for additional funds to promote abstinence and prevent STD prevention and pregnancy prevention, and LEAs eligible under Priority 3 will be eligible to apply for additional funds to address other priority health problems.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds

It is anticipated that a total of approximately $6,625,000 will be available in FY 2003 to fund LEA Priorities 1, 2, and 3. In addition, approximately $1,275,000 will be available for up to a total of 3 SEAs or LEAs for Priority 4.

LEA Priority 1: YRBS

Approximately $625,000 is available for LEA Priority 1 to fund approximately 25 local education agencies. It is expected that the average award will be $25,000.

LEA Priority 2: HIV Prevention for School-Age Youth

Approximately $5,000,000 is expected to be available to support approximately 20 large city LEAs for Priority 2. Awards to LEAs are expected to range from $100,000 to $350,000. Funds will be awarded as follows to large city LEAs using student enrollment data as reported in the U.S. Department of Education, National Center for Education Statistics, Local Education Agency Universe Survey, 1999–2000:

- LEAs with a student enrollment of more than 1,000,000 (New York City Public Schools) are eligible for an award range of approximately $225,000 to $350,000.
- LEAs with a student enrollment of less than 1,000,000, but equal to more than 350,000 (City of Chicago School District, Dade County School District and Los Angeles Unified Schools) are eligible for an award range of approximately $200,000 to $325,000.
- LEAs with a student enrollment of less than 350,000, but equal to or more than 200,000 (Broward County School District, Houston Independent School District, and Philadelphia City School District) are eligible for an award range of approximately $175,000 to $300,000.
- LEAs with a student enrollment of less than 200,000, but equal to or more than 100,000(Baltimore City Public School System, Charlotte-Mecklenburg Schools, Dallas Independent School District, Detroit City School District, Hillsborough County School District, Memphis City School District, Orange County School District, Palm Beach County School District, Prince George's County Public Schools, and San Diego City Unified Schools) are eligible for an award range of approximately $150,000 to $275,000.
- LEAs with a student enrollment of less than 100,000 (Albuquerque Public Schools, Atlanta City Schools, Boston School District, DeKalb County School District, District of Columbia Public Schools, Jersey City Schools, Long Beach Unified Schools, Milwaukee School District, Newark City Schools, Oakland Unified Schools, Orleans Parish School Board, San Bernardino City Unified Schools, San Francisco Unified Schools, and Seattle Schools) are eligible for an award range of approximately $125,000 to $250,000.

LEA Priority 3: Local Demonstration Efforts (Asthma)

Approximately $1,000,000 is expected to be available for LEA Priority 3 to fund approximately six large city LEAs to implement a demonstration program to help schools reduce asthma episodes and asthma-related absences. Awards will average $175,000 with a range from approximately $150,000 to $200,000.

LEA Priority 4: National Professional Development

Approximately $1,275,000 is expected to be available for LEA Priority 4 to fund some combination of two to three SEA or large city LEA projects to implement national professional development strategies. Awards will average $400,000 and range from approximately $375,000 to $425,000.

It is expected that all awards will begin on or about March 1, 2003, with a 12-month budget period, within a project period of five years. Funding estimates may vary and are subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Cooperative agreement funds may be used to support personnel, purchase equipment, supplies, services and travel directly related to program activities and consistent with the scope of the cooperative agreement. Funds under this program announcement may not be used to conduct research projects, provide direct delivery of patient care or

treatment services, and purchase or disseminate condoms.

Although public health may have an assurance role in clinical testing and screening, funds are not to be used to provide clinical testing or screening services. Federal funds awarded under this program announcement may not be used to supplant State or local funds.

As part of the increased flexibility efforts, applicants are encouraged to maximize the public health benefit from the use of CDC funding within the approved budget line items to enhance the grantee's ability to achieve stated goals and objectives and to respond to changes in the field as they occur within the scope of the award. Recipients also have the ability to redirect up to 25 percent of the total approved budget to achieve stated goals and objectives within the scope of the award, except from categories that require prior approval such as contracts, change in scope, and change in key personnel. A list of required prior approval actions will be included in the Notice of Grant Award.

LEA applicants are encouraged to identify and take advantage of opportunities, which will also enhance the recipient's work with other local education agency and health department programs and community programs that address risk factors and health problems described in LEA Priorities. This may include cost sharing to support a shared position to implement activities such as surveillance, health communication, professional development, health resources development, and evaluation or to implement programs that cross units/departments within the local education and health agency. This may include, but is not limited to, joint planning activities, joint funding of complementary school health activities based on program recipient activities, coalition or alliances, combined development and implementation of policy and program interventions, and other cost sharing activities that complement school and youth-based program priorities funded by other CDC units.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the large city LEA recipients will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities for each LEA Priority are listed below. CDC has developed performance measures to evaluate recipients' progress in meeting the requirements. These performance measures are listed following the recipient activities listed for each priority.

LEA Priority 1—YRBS: Recipient Activities

a. *Staffing:* Identify staff position(s) in the education or health agency with responsibility and organizational authority for coordinating YRBS activities. The individual(s) identified should have knowledge needed for leadership and coordination of proposed activities, knowledge and understanding of school programs, and communication skills necessary to effectively promote and facilitate proposed plans and activities.

b. Establish and implement a plan for conducting a biennial YRBS among students in grades 9 thru 12 and disseminating YRBS results.

c. *Partnerships:* Establish or sustain effective partnerships with other local agencies, including the state or local health agency; non-governmental organizations, institutions of higher education, and others that can assist in implementing the YRBS, disseminating YRBS results, and utilizing results for program planning.

Performance will be measured by the extent to which:

- The district or community obtains weighted data representative of students in grades 9 thru 12 throughout the school district, on a biennial basis.
- Decision makers, schools, health agencies, and other partners utilize YRBS data; in addition to other data, to improve policies and programs that will reduce health risk behaviors and improve the health of school-age youth.

LEA Priority 2—HIV Prevention for School-Age Youth

Recipient Activities

a. *Staffing:* Establish and maintain a staff position that has full-time responsibility and organizational authority for HIV prevention activities within the agency. The individual in this position should have specific credentials, training and experience needed for leadership, coordination, and implementation of HIV prevention activities; knowledge and experience working in school settings and with sub-populations of youth that might be disproportionately affected by HIV infection; and communication skills that enable the staff person to serve as a liaison with partners in health, education, and the community.

b. *Partnerships and Program Planning:* Develop and implement a plan that builds on the broader state and community plans for strengthening HIV prevention in schools. The plan should be developed in collaboration with the State education agency HIV prevention program, State health agency HIV prevention program, relevant HIV community planning groups, abstinence groups, schools, parents, students, and other coalitions or groups that are implementing efforts to prevent HIV infection among youth. Priorities established as a part of the plan should be based on state surveillance and other monitoring and evaluation data; should be reflective of HIV trends, and complement priorities identified by the State HIV community planning group. The plan should:

1. Identify the complementary roles and responsibilities of State and local partners, specifying the contributions (*e.g.*, funds, technical assistance, professional development, and materials development) of partners (especially the local health agency HIV prevention program).

2. Emphasize implementation of effective policies, programs, curricula frameworks, standards, resources and support in school that are:

(a) Developmentally and culturally appropriate,

(b) Medically and scientifically accurate,

(c) consistent with scientifically researched evidence of effectiveness,

(d) Build on a theoretical approach based on proven principles for prevention,

(e) Consistent with the principles of CDC's Guidelines for Effective School Health Education to Prevent the Spread of AIDS,

(f) Integrate HIV prevention efforts with efforts to prevent other STDs and/or unintended pregnancy and efforts to reduce alcohol and other drug use,

(g) Complements existing intra-agency policy-making processes, local school board policy, and school and community standards and values, and

(h) Leverage resources and avoid duplication at the local level.

c. Implement strategies to reduce disparities among populations that may be disproportionately affected by HIV infection, especially among communities of color (as defined in CDC's HIV Prevention Strategic Plan Through 2005).

d. *Support Implementation and Evaluation:* Develop and implement a plan for providing professional development, consultation, technical assistance, resource development, and evaluation to schools to assist them in assessing, planning, and implementing effective HIV prevention to youth most at risk for HIV infection, including

youth in grades 7 thru 12, youth with special needs, youth in high-risk situations, youth who are both in and out of school, youth of color, and sexual minority youth.

e. *HIV Materials Review and Medical Accuracy:* Establish and maintain an HIV materials review panel to review all written materials, audiovisual materials, pictorials, questionnaires, survey instruments, proposed group educational sessions, educational curricula and like materials, including website materials (see Attachment IV, AR–5, for guidance related to HIV Program Review Panel Requirements). Ensure that funded materials, sessions, and activities include accurate information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities. Ensure that funded materials, sessions, and activities do not provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse; that educational sessions do not include activities in which attendees participate in sexually suggestive physical contact or actual sexual practices; and that materials provide accurate information about various means to reduce an individual's risk of exposure to, or to transmission of, the etiologic agent for AIDS. In addition, establish mechanisms to ensure that all mass produced education materials that are specifically designed to address STDs including HPV shall contain medically accurate information regarding the effectiveness or lack of effectiveness of condoms in preventing the STD the materials are designed to address.

f. Identify proponents and advocates among decision makers and the public, inform and support them in their efforts to promote the role of schools in achieving HIV prevention outcomes, including sharing and disseminating accurate information about effective programs and materials that address HIV prevention priorities with decision-makers, other leaders, including school personnel, parents, students and other stakeholders.

g. Involve youth as appropriate in planning, delivering, and evaluating HIV prevention programs.

h. Evaluate the implementation and effectiveness of strategies to reduce risks for HIV infection among youth in schools for the purposes of programmatic improvement and long range planning. Evaluations should include systematic procedures to monitor school policies and programs intended to promote health enhancing behaviors among youth.

i. Participate in at least two national, CDC or DASH-sponsored training workshops or conferences each budget year of the project period for the purpose of improving HIV prevention and reducing other important health risks that affect young persons.

Performance will be measured by the extent to which schools:

- Implement effective policies and educational strategies to reduce risk behaviors that lead to HIV infection among youth.
- Implement strategies to reduce disparities among sub-populations of youth disproportionally affected by HIV infection and other health problems related to sexual risk behaviors.
- Integrate effective school-based policies, programs and strategies to reduce health risks that lead to HIV infection with community-based strategies, while building a sustainable local resource and funding base.

LEA Priority 3—Local Demonstration Efforts (Asthma)

Recipient Activities

a. *Staffing:* Identify or establish a position in the local education agency with full-time responsibility and organizational authority for management and supervision of proposed activities. The individual identified should have the necessary credentials (*e.g.*, licensure or certification), training, and experience needed for leadership and coordination of proposed activities; knowledge and experience in working with school and public health personnel; and communication skills necessary to effectively promote and facilitate proposed plans and activities.

b. Monitor local school district and relevant state policies and programs related to funded priorities and make recommendations that will help schools establish action plans, support laws, regulations for access to services in schools, assist children and their families with information, and encourage schools to reduce environmental factors that contribute to the priority health problem(s) to be addressed.

c. *Partnerships and Planning:* Develop and implement a district-wide plan that builds a broader private and public partnership for reducing asthma-related illnesses or asthma-related absences as part of a coordinated school health program. The plan should be developed in collaboration with the State and local health agency, relevant non-governmental organizations, institutions of higher education, teachers, parents, and other coalitions or groups. Established priorities should be based on surveillance, other monitoring and evaluation data. The plan should:

1. Identify the complementary roles and responsibilities of state and local partners, specifying the contributions (*e.g.*, funds, technical assistance, professional development, materials development) of partners.

2. Emphasize implementation of effective policies, environmental changes, and educational strategies consistent with CDC's Strategies for Coordinated School Asthma Programs.

3. Leverage resources and avoid duplication at the local levels.

d. Implement strategies to reduce disparities among populations that may be disproportionately affected by health risks and problems, especially among communities of color (as defined in CDC's HIV Prevention Strategic Plan Through 2005).

e. Identify proponents and advocates among decision makers, the public, inform and support them in their efforts to promote the role of schools in reducing asthma-related illnesses or asthma-related absences in schools; including sharing and disseminating accurate information about effective programs, materials that address these priorities with decision-makers, other leaders, school personnel, parents, students, other stakeholders education and health agencies in the nation.

(f) Evaluate the effectiveness of strategies to reduce asthma-related illnesses or asthma-related absences in schools for the purposes of programmatic improvement and long range planning.

Performance will be measured by the extent to which the local education agencies:

- Implement effective policies, environmental changes, and educational strategies to reduce asthma-related illnesses or asthma-related absences.
- Implement strategies to reduce disparities among populations that may be disproportionally affected by these priority health risks and problems, especially asthma-related illnesses and absences.
- Translate and communicate successful and effective interventions for adoption by other health agencies, school districts, schools, and communities.

LEA Priority 4—National Professional Development

Recipient Activities

a. *Staffing:* Establish and maintain a full-time staff position (*i.e.*, one FTE) in

the education agency with full-time responsibility and organizational authority for coordinating professional development activities. The individual selected for this position should have specific credentials, training, experience needed for leadership, coordination of proposed activities, knowledge, and experience in working with schools and public health personnel, and communication skills to effectively promote and facilitate professional development events.

b. Collaborate with other SEAs and/or LEAs that receive funding under Priority 4 in a PDC. The purpose of the PDC will be to share resources and coordinate activities.

c. Develop and implement a professional development plan that will improve state and local planning and implementation of coordinated school health programs and strategies that will reduce priority health risk behaviors among youth. The professional development plan should:

(1) Emphasize partnerships among education agencies, health agencies, and others.

(2) Be based on stated needs of DASH-funded education agencies and their project partners.

(3) Promote professional development events that focus on school health topics and priorities for representatives from other LEAs, SEAs, health agencies, and other interested individuals or groups.

d. Pay costs associated with coordination of events, including travel and per diem for participants and presenters for program-related professional development events.

e. In partnership with the consortium, provide at least two to three events within a 12-month budget period.

f. Evaluate program activities and use evaluation results for programmatic improvement and long range planning.

g. Participate in at least two national, DASH-sponsored professional development consortium meetings each budget year, for planning and coordinating SEA and LEA professional development events.

Performance will be measured by the extent to which professional development participants have improved plans and prevention strategies consistent with the increased knowledge and skills acquired from the professional development events.

2. Centers for Disease Control and Prevention Activities

a. Provide national YRBS data for comparison with district YRBS data.

b. Provide public health information, training, technical assistance related to program planning, implementation, surveillance, professional development, evaluation, assessment of program objectives, dissemination of theoretical approaches, proven principles for prevention, effective and successful strategies, experiences, and evaluation results.

c. Collaborate with SEAs, LEAs, and national organizations in planning and carrying out relevant national strategies to improve school health programs and prevent important health risk behaviors.

d. Together with recommendations for assessment, collaborate with appropriate partners to develop and disseminate recommendations for policy and program interventions.

e. Organize and convene meetings of national, State, local organizations and agencies to address issues and activities related to strengthening education to prevent important health risk behaviors, problems, and integrate education into existing school health programs.

f. Organize and convene professional development consortium meetings to jointly plan and deliver professional development and other opportunities to promote learning for DASH-funded national non-governmental and state and local grantees.

Section III: Guidance for SEA and LEA Applications (All Priorities)

E. Content

Letter of Intent (LOI)

An LOI is requested prior to application for this program. The LOI should be no more than two pages, single-spaced, printed on one side, with one-inch margins, and unreduced fonts. The LOI will be used only to confirm eligibility and establish CDC review panel processes. The information contained within the LOI will not be reviewed or used as part of the application review process. The LOI should include the name, address, telephone, email address, and fax number of the agency's primary contact for writing and submitting the application. Identify the SEA or LEA priorities for which you are applying. The LOI should be signed by the Superintendent or Commissioner of Education. For a State applying for SEA Priority 2, signatures of officials from both the state's education and health agencies should be included.

Applications

Use the information in this section as well as the relevant program requirements in Sections I and II to develop the application content. Your application will be evaluated on the criteria described in this section, so it is important to follow these criteria when describing your program plan. The application should include only one Background and Need Section, Capacity Section, and Program Evaluation Section that addresses to all priorities for which you are applying. However, you should include separate work plans, staffing plans, and budgets for each priority area for which you are applying. The narrative should be printed on one side, with one inch margins, and unreduced fonts.

Executive Summary

Your application should begin with a clear, concise three to four page summary to include the: (1) Need for proposed programs; (2) number and characteristics of youth and schools to be served; (3) outcomes that will be expected through the use of these funds; and (4) the total and subtotal (by SEA or LEA Priority) amounts of Federal funding requested.

1. Background and Need (Not More Than Eight Pages)

a. Provide evidence of health risks and problems among youth in your agency's jurisdiction related to the priorities for which you are applying. Include an analysis of disparities, especially among communities of color.

b. Describe the current types and levels of efforts being directed to improve school health programs and relevant priorities in your area (including information about the number of schools that provide relevant programs and the number of youth served by these programs).

c. Describe specific needs suggested from the data presented above that can be addressed by activities proposed in your work plan.

d. (SEA Priority 4 and LEA Priority 4 applicants only) Using research from journals, surveys, and other assessment or observational data, describe your understanding of the professional development needs of other seas or LEAVES relative to HIV prevention, school health, or reaching young persons in high-risk situations both in school and out of school.

2. Capacity (Not More Than Ten Pages)

a. (All applicants) Describe your agency's existing organizational structure and how it supports programs intended to improve the health of youth.

b. (SEA applicants only) Describe the organizational structure of the state health agency and how that structure supports the coordination of the existing school health program and priority areas for which you are applying.

c. (SEA applicants only) Describe your agency's current relationship with

each relevant unit within the state health agency. Defining each unit's appropriate role and contributions toward coordinating the implementation of school health programs and priority areas for which you are applying.

d. (SEA Priority 2 applicants only) Describe any activities conducted to assess the current status of the existing State capacity to support school health and reduce health risks that affect young persons. If an assessment was completed, describe any infrastructure development activities that have been planned or implemented based on assessment results.

e. (All applicants) Describe your agency's existing capacity, as well as the capacity of other significant partners, including efforts to:

1. Monitor critical health behaviors and outcomes, and monitor school policies and programs intended to promote health enhancing behaviors and outcomes among youth.

2. In support of the priorities for which you are applying build partnerships, alliances, networks, or coalitions related to increasing and promoting the health of youth. Include participation in state or city HIV prevention planning groups.

3. Reach populations of youth most at risk for health problems (especially among communities of color).

4. Provide professional development, technical assistance, and resources to local school districts and schools to prevent health problems among school-age youth (especially to address the priorities for which you are applying).

5. Inform decision makers, share information about policies and programs, disseminate information related to priority programs and activities related to working with media.

6. Evaluate programs intended to improve the health of youth.

f. (SEA Priority 2 applicants only) Describe how your agency currently uses Federal, State, local, and philanthropic funds, including categorical funds, to support infrastructure development and coordination of school health programs.

g. (SEA and LEA Priority 4 applicants only) Describe any activities conducted to assess the school health professional development needs of other education professionals and how the assessment results were used.

h. (SEA and LEA Priority 4 applicants only) Describe how your agency has planned and conducted multi-day training for a variety of participants.

3. Work Plan (Not More Than Ten Pages for Each Priority or Content Area)

Provide a separate, clearly labeled narrative work plan for each priority for which you are applying. Use of the template displayed in Attachment III is recommended. Applicants applying for SEA Priority 2–B or LEA Priority 3 should provide a separate work plan for each content area for which they are applying for funding (*e.g.*, separate plan to reduce asthma episodes and absences in schools and a separate plan to help reduce food borne illness and improve student awareness of food safety). All applicants applying for more than one priority should describe how the priority area activities will complement one another and how planned activities will be coordinated. Each work plan should address the following:

a. *Goals and Objectives:* List measurable goals that indicate what your agency intends to accomplish, and with whom, by the end of the five-year project period. Goals should directly relate to the purposes of this announcement and the program requirements for the priority area for which you are applying. List objectives that are specific, measurable, and feasible to be accomplished during the first 12-month budget period. The objectives should relate directly to the project goals and program requirements and provide anticipated measures for successful performance.

b. *Methods:* Describe specific activities that are proposed to achieve each of the program's objectives during the first 12-month budget period. If you are establishing new structures and plans, and specific details are incomplete, provide a listing of major steps that will be implemented to establish these new structures and plans.

c. Indicate when each activity will be completed as well as when major steps in the activities will occur. For each activity, describe the roles of the staff and how they will carry out the activities. Summarize activities on a 12-month time line. If other organizations will participate in proposed activities, provide the name(s) of the organization(s) and identify the SEA or LEA staff person who will coordinate or supervise the activity.

d. *Work Plan Evaluation:* Describe how progress in meeting objectives and completing activities will be evaluated.

This description should include a process evaluation tracking plan to document all programmatic activities and accomplishments throughout the first 12 month budget period.

4. Project Management and Staffing Plan (Not More Than Four Pages per Priority or Content Area)

Provide a separate, clearly labeled project management and staffing plan for each priority for which you are applying. In addition, applicants applying for SEA Priority 2–B or LEA Priority 3 should provide a separate project management and staffing plan for each content area for which they are applying for funding (*e.g.*, a separate plan to reduce asthma episodes and absences in schools and a separate plan to reduce food borne illness and improve student awareness of food safety). Assurance should be provided to show staff credentials, training, and skills to carry out Recipient Activities for the priority for which they will be responsible. Each management and staffing plan should immediately follow its corresponding work plan described under (3) Work Plan, above. Applicants applying for more than one priority should describe how the project management and staffing plan will be coordinated among priorities. All applicants should describe how they will communicate with staff working in related programs in other agencies. Each project management and staffing plan should address the following:

a. Provide the following supporting documents related to organizational structure:

1. A description of the proposed program management and control systems. Include an organizational chart that indicates placement of the proposed program in the agency (including the State health agency for SEA Priority 2 applicants) and that show lines of authority, communication, accountability and reporting.

2. A description of proposed SEA or LEA staffing for the project and job descriptions for existing and proposed positions that illustrate the level of responsibility that staff will have for implementing activities. (Also include state health agency staffing for SEA Priority 2 applicants).

3. A description of the business office responsible for monitoring Federal funds and how the office will work with proposed program management and staff. Identify the business staff person who will carry out these responsibilities.

b. In the appendix, include curriculum vitae (limited to two pages per person) for existing staff.

c. In the appendix, provide letters from all consultants or outside agencies named in the work plan that describe their expertise, capacity, and willingness to fulfill their proposed

responsibilities specifically related to the priority area for which you are applying.

5. Program Evaluation (Not More Than Five Pages)

Monitoring and evaluation are considered essential components of this program announcement.

a. Provide plans for evaluating the overall implementation success and accomplishments of your program. Plans should include:

1. A description of monitoring activities that measure the status of school health policies and programs.

2. A specific program evaluation plan for at least one major programmatic activity implemented during the first 12-month budget period.

3. A specific program evaluation plan to assess the results of your program through the five-year project period.

b. Describe how these evaluation activities will be incrementally implemented to track progress made in developing, implementing the program, to measure changes in capacity and short-term outcomes.

c. Describe how evaluation results will be shared with CDC and others.

6. Budget and Budget Justification (Not More Than Eight Pages Per Priority or Content Area)

Provide a separate, clearly labeled budget and budget justification for each priority for which you are applying. In addition, applicants applying for SEA Priority 2–B or LEA Priority 3 should provide a separate budget and budget justification for each content area for which they are applying for funding (*e.g.*, separate budget to reduce asthma episodes and absences in schools and a separate budget to reduce food borne illnesses and improve student awareness of food safety). Each budget and justification should immediately follow its corresponding staffing plan described under (4) Staffing, above. All applicants applying for more than one priority or content area should provide a budget summary page which displays each separate priority budget and also a total budget by object class category.

Each budget and budget justification should include the following:

a. A detailed line item budget for each priority or content area, with accompanying narrative justification of all operating expenses, that is linked to the stated objectives and work plan of the project. The budget justification should describe and justify individual budget items that make up the total amount of funds requested in each object class category for the first 12 month budget period (March 1, 2003 to February 28, 2004).

b. For all contracts and consultants, provide the following: (1) Name of contractor/consultant (2) method of selection (3) period of performance (4) scope of work (5) method of accountability and (6) itemized budget with justification for each contract/consultant.

c. Travel: Participation in CDC sponsored training workshops and meetings is essential to the effective implementation of funded programs. Travel for program implementation should be justified and related to implementation of activities. Participation or attendance in non-CDC sponsored professional meetings (*e.g.*, American School Health Association, (AHA), American Public Health Association, (APHA) and others) may be requested but must be directly relevant to work plan activities. Participation may include the presentation of papers, poster sessions, or exhibits on the project. Specific requests should be submitted with appropriate justification. The annual travel budget should include:

- Travel funds for staff members to participate in national meetings in Atlanta, GA, for two to three days.
- Funds for HIV-funded staff to make one, two to three day trip to Atlanta for the CDC-sponsored National HIV Prevention Conference; and
- Funds for CSP staff members to make one, two to three day trip to Atlanta for CDC-sponsored workshops/meetings, such as the National Conference on Chronic Disease Prevention and Control and the National Conference on Tobacco or Health.

d. Indirect Costs: If indirect costs are requested, include a copy of your agency's current negotiated Federal Indirect Cost Rate Agreement.

F. Submission and Deadline

Letter of Intent (LOI)

On or before October 7, 2002 submit the LOI to the Grants Management

Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and two copies of PHS Form 5161–1 (OMB Approval No. 0937–0189). Forms are available in the application kit and at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.* If you do not have access to the internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section at: (770) 488–2700, and forms will be mailed to you. Applications may not be submitted electronically.

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

Applications must be received by 5 p.m. Eastern Time November 1, 2002. Submit the application and two copies to the: Technical Information Management Section, 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Late Applications: Applications that do not meet the criteria in (a) or (b) above are considered late applications, will not be considered in the current competition, and will be returned to the applicant.

G. Evaluation Criteria (100 Points Total)

Applications for each priority and/or content area will be individually reviewed and scored. Each application will be allocated a total of 100 points, according to the following criteria:

1. Work Plan (35 Points)

The comprehensiveness and quality of the work plan as represented in the goals, objectives, and methods. Plans should be consistent with Recipient Activities for the priority for which you are applying. Plans will be evaluated based on the extent to which the applicant:

a. Proposes project goals that are results oriented.

b. Proposes first year objectives that will contribute to the accomplishment

of the goals and provide reasonable measures for assessing performance.

c. Proposes methods that are likely to achieve each of the objectives for the 12-month budget period.

d. Identifies activities and performance measures that are consistent with the Recipient Activities.

e. Provides a reasonable schedule for implementing those activities.

f. Provides a reasonable plan for evaluating completion of objectives and methods.

2. Capacity (25 Points)

The extent to which the applicant appears likely to be successful in implementing the proposed activities as measured by:

a. The agency's structure and support for related programs.

b. The agency's prior performance reflected in descriptions of related policies and program efforts.

3. Project Management and Staffing Plan (20 Points)

The extent to which:

a. The applicant will establish and maintain staff positions at appropriate levels to carry out responsibilities described in the proposed work plan.

b. Organizational charts demonstrate clear lines of authority for project activities and coordination of related programs.

c. Job descriptions and curricula vitae indicate that staff will have the credentials, knowledge, training, and experience in working with schools and performing assigned responsibilities.

d. The fiscal management of proposed programs is clear, adequate, and business staff are identified.

e. Letters from consultants and organizations demonstrating their understanding, willingness, expertise, and capacity to carry out assigned responsibilities.

4. Program Evaluation (10 Points)

The extent to which the applicant describes plans for monitoring activities that measure the status of school health policies, programs, and evaluate at least one major program activity during the first 12 months. Describe plans for measuring and reporting overall program accomplishments over the five-year project period.

5. Background and Need (10 Points)

The extent and clarity with which the applicant:

a. Presents credible evidence describing relevant health risks and problems and the current status of efforts that target youth in schools and school health priorities.

b. Draws plausible conclusions about the need for proposed project activities and potential for achieving successful results.

c. (For SEA and LEA Priority 4 applicants) Has a clear understanding of the professional development content and delivery strategies that will help SEAS and other LEAVES improve HIV education, school health programs, and reach young persons in high-risk situations, especially among communities of color.

6. Budget and Accompanying Justification (Not scored) The extent to which the applicant provides a detailed budget and justification consistent with the stated objectives, planned activities, and expected performance of the project.

H. Technical Reporting Requirements

1. By October 15th of each of the first four years of the project (2003 thru 2006), submit a semi-annual progress report and continuation plan for the following year. The progress report will be used as evidence of achievement in meeting approved goals and objectives and progress made toward the attainment of the proposed performance measures. Continuation funding decisions will be made on the basis of satisfactory progress on performance measures and the availability of funds. The continuation plan should include:

a. *HIV Assurance of Compliance Forms:* One certifying compliance with Web Site Notice and one signed by the chairperson (CDC Form 0.1113), listing names of panel members, documentation of materials reviewed, stating the panel's decision (approval or disapproval) regarding materials reviewed. (Only grantees funded under SEA Priority 3 and LEA Priority 2 (HIV Prevention)—See Attachment IV).

b. A succinct description of progress made in meeting each program objective during the first six months of the budget period (March 1st thru September 30th). It should consist of no more than 50 pages.

c. Reasons for not meeting any program objectives.

d. A description of any new objectives including strategies to accomplish them and evaluate their effectiveness.

e. A line item budget and budget justification for the upcoming budget period.

f. For all proposed contracts and consultants: (1) The name of contractor or consultant (2) the method of selection (3) the period of performance (4) the scope of work (5) the method of accountability and (6) an itemized budget with justification for each contract or consultant.

2. By June 1st, 90 days after the end of each budget period, submit an annual progress report. The report should include information described in items 1.a., 1.b., and 1.c., except that the period covered should be the entire project year, March 1st thru February 28th, 2008.

3. By June 1st, 90 days after the end of each budget period, submit a financial status report.

4. No more than 90 days after the end of the five-year project period (June 1, 2008) submit final financial and performance reports.

Send an original and two copies of all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

I. Additional Requirements

Projects that involve the collection of information from ten or more individuals and funded by cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Data collection initiated under this cooperative agreement program has been approved by the Office of Management and Budget under OMB Number (0920–0493), ''2001–2003 Youth Risk Behavior Surveys,'' Expiration Date—November 30, 2003.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II of the announcement.

AR–1 Human Subjects Requirement
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–20 Conference Support

This program is not subject to the Public Health System Reporting Requirements.

J. Where To Obtain Additional Information

Other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For general questions about this announcement, contact: Technical Information Section, CDC Procurement

and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2700.

For business management and budget assistance, contact: Dave Wilson, Grants Management Specialist, Acquisitions and Assistance Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2692, Email address: *zbu1@cdc.gov*.

For program technical assistance, contact: Pete Hunt, Chief, School Health Program Section, Program Development and Services Branch, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Burford Highway, NE., Mailstop K–31, Atlanta, GA 30341–3724, Telephone number: (770) 488–6208, e-mail address: *pch0@cdc.gov*.

Potential applicants may obtain copies of Attachments I, II, III, IV, and other documents referenced in the Purpose and Recipient Activities online at the following addresses:

- CDC's HIV Prevention Strategic Plan Through 2005: *http://www.cdc.gov/nchstp/od/news/prevention.pdf*.
- Healthy People 2010: *http://www.health.gov/healthypeople*.
- Guidelines for Effective School Health Education to Prevent the Spread of AIDS; Guidelines for School and Community Programs to Promote Lifelong Physical Activity Among Young People; Guidelines for School Health Programs to Promote Lifelong Healthy Eating; Guidelines for School Health Programs to Prevent Tobacco Use and Addiction; Ten Strategies for Establishing a School Health Program Framework To Support Physical Activity, Nutrition, and Tobacco Use Prevention; Strategies for Coordinated School Asthma Programs; Four Strategies for Establishing a State School Food Safety Program; and Six Strategies for Professional Development in Cooperative Agreements with State Education Agencies, Local Education Agencies, and National Non-governmental Organizations; *http://www.cdc.gov/nccdphp/dash*.

Dated: September 11, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–23555 Filed 9–16–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Committee meeting:

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates: 8:30 a.m.–6 p.m., October 16, 2002. 8 a.m.–2:45 p.m., October 17, 2002.

Place: Atlanta Marriott Century Center, 2000 Century Boulevard, NE., Atlanta, Georgia 30345–3377.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be Discussed: The agenda will include an update on the smallpox vaccination policy; supplemental recommendations for smallpox; 2003 recommended childhood immunization schedule and catch-up child immunization schedule; recommendations for storage of vaccines; 2003 influenza vaccine recommendations; update on influenza vaccine supply; update from the National Immunization Program; update from the Department of Defense; update from the Food and Drug Administration; update from the National Institutes of Health; update from the National Vaccine Program Office; update from Vaccine Injury Compensation Program; update from the National Center for Infectious Diseases; public participation in formulating vaccine policy; vaccinating cochlear implant recipients for meningitis and pneumococcal disease; update on the effect of pneumococcal conjugate vaccine on disease; update on the Institute of Medicine Immunization Safety Review Committee meetings; and Glaxo SmithKline's combination DTaP-HepB-IPV vaccine. Agenda items are subject to change as priorities dictate.

For More Information Contact: Gloria A. Kovach, Program Analyst, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE., m/s E61, Atlanta, Georgia 30333. Telephone 404/639–8096.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 11, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, , Centers for Disease Control and Prevention.

[FR Doc. 02–23556 Filed 9–16–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of October 2002.

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD).

Date and Time: October 24, 2002; 8:30 a.m.–5 p.m. October 25, 2002; 8 a.m.–2:15 p.m.

Place: The Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

The meeting is open to the public.

Purpose: The Advisory Committee provides advice and recommendations on a broad range of issues dealing with programs and activities authorized under section 747 of the Public Health Service Act as amended by The Health Professions Education Partnership Act of 1998, Public Law 105–392. This meeting will provide the basis for the third report of the Advisory Committee which will be submitted to Congress and the Secretary of the Department of Health and Human Services in November 2003. The third report will focus on disparities in health care and their implications in primary care medical education.

Agenda: The meeting on Thursday, October 24 will begin with welcoming and opening comments from the Chair and Executive Secretary of the Advisory Committee. A plenary session will follow, in which four speakers will characterize changing demographics, unequal medical treatment, and needed changes in medical education and their relationship to disparities in health care. The Advisory Committee will then divide into three workgroups which will focus on developing recommendations for improving primary care education and training to lessen health disparities and assure quality of care.

On October 25, workgroups will reconvene in the morning to finalize recommendations. A plenary session will follow, with reports by workgroup chairs, general discussion, and decisions by the Advisory Committee on official recommendations. The Advisory Committee will also discuss plans for future work and provide an opportunity for public comment.

Anyone interested in obtaining a roster of members or other relevant information should write or contact Stan Bastacky, D.M.D., M.H.S.A., Acting Deputy Executive Secretary, Advisory Committee on Training in Primary Care Medicine and Dentistry, Parklawn Building, Room 9A–21, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326. The web address for information on the Advisory Committee is *http://bhpr.hrsa.gov/medicine-dentistry/actpcmd.*

Dated: September 10, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–23560 Filed 9–16–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute of Special Emphasis Panel; Colorectal Screening in Primary Care Practice

Date: October 7, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North, Conference Room C, 6130 Executive Boulevard, Rockville, MD 20852.

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329, (301) 496–7421, *kerwinm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23542 Filed 9–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Molecular Biology and Genetics of Tumor Viruses.

Date: November 20–22, 2002.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Best Western Inn Towner, 2424 University Avenue, Madison, WI 53705.

Contact Person: Shamala K. Srinivas, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8133, Bethesda, MD 20892, 301–594–1224.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23543 Filed 9–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Extension of Radiotherapy Research.

Date: November 5–6, 2002.

Time: 7:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael B. Small, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8127, Bethesda, MD 20892, 301/402–0996.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23544 Filed 9–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cooperative Grants for Nutritional Modulation.

Date: November 6–8, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mary Jane Slesinski, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892, 301/594–1566.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23545 Filed 9–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Calorie Reduction.

Date: September 18, 2002.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, Gateway Building/Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20817.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Initial Review Group, Biological Aging Review Committee.

Date: October 7–8, 2002.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: James P. Harwood, PhD, Deputy Chief, Scientific Review Office, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666, *harwoodj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Initial Review Group, Behavior and Social Science of Aging Review Committee.

Date: October 10–11, 2002.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Arthur D. Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Hearing Loss in Aging Population.

Date: October 16, 2002.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, National Institute of Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date: October 17–18, 2002.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7703, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Senescence and the Genetic Basis of Multiple System Aging.

Date: October 21–22, 2002.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Four Points, 110 Lexington Avenue, San Antonio, TX 78205.

Contact Person: James P. Harwood, PhD, Deputy Chief, Scientific Review Office, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9666, *harwoodj@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Cardiovascular Studies on Gender and Aging in Nonhuman Primates.

Date: October 24–25, 2002.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Newark Airport, Newark International Airport, Newark, NJ 07114.

Contact Person: Arthur D. Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee, Neuroscience of Aging.

Date: October 28–29, 2002.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666, *hsul@exmur.nia.nin.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 10, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23538 Filed 9–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Neurological Disorders and Stroke Council, September 12, 2002, 8:00 AM to September 12, 2002, 10:00 AM, National Institutes of Health, 31 Center Drive, Building 31, Room 8A28, Bethesda, MD 20892 which was published in the **Federal Register** on August 8, 2002, 67 FR 02–20103.

The Council Infrastructure, Neuroinformatics, and Computational Neuroscience Subcommittee will now be held in Building 31, Conference Room 8. The meeting is open from 8 a.m. to 9:15 a.m. and closed from 9:15 a.m. to 10 a.m. The meeting is partially closed to the public.

Dated: September 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23539 Filed 9–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Population Research Subcommittee, 2002 PRC, Reproductive Sciences.

Date: October 3–4, 2002.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Blvd., Rm. 5E01, MSC 7510, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: September 9, 2002.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23540 Filed 9–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Infant Nutrition.

Date: October 21, 2002.

Time: 8 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research: 93.865, Research for Mothers and Children, 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: September 09, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23541 Filed 9–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of The Board of Scientific Counselors of the Warren Grant Magnuson Clinical Center.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the Clinical Center, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: The Board of Scientific Counselors of the Warren Grant Magnuson Clinical Center.

Date: October 7, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Clinical Center Medical Board Room 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: David K. Henderson, MD, Deputy Director for Clinical Care, Office of the Director, Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/402–0244.

Dated: September 10, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23546 Filed 9–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Co-Exclusive License: Prophylactic and/or Therapeutic Vaccine Against Pseudomonas Aeruginosa

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a limited field of use co-exclusive worldwide license to practice the inventions embodied in: U.S. Provisional Patent Application Serial Number 60/257,877, filed December 21, 2000, entitled ''A Chimeric Protein Comprising Non-Toxic Pseudomonas Exotoxin A and Type IV Pilin Sequences'' to Cytovax Biotechnologies Inc. of Alberta, Canada. The United States Government as represented by the Department of Health and Human Services is an assignee of these patent rights.

DATES: Only written comments and/or applications for a license which are received by NIH on or before November 18, 2002 will be considered.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments, and other materials relating to the contemplated license should be directed to: Carol A. Salata, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7735 ext 232; Facsimile: (301) 402–0220; E-mail: *salatac@OD.NIH.GOV*.

SUPPLEMENTARY INFORMATION: The prospective co-exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license may be limited to the field of use as a prophylactic and/or therapeutic vaccine against Pseudomonas aeruginosa. Cytovax Biotechnologies Inc. will use Pseudomonas exotoxin A to target and deliver pathogen Type IV pilin peptide epitopes wherein said pathogen peptide epitopes are inserted into or replace a domain of Pseudomonas exotoxin A. This prospective co-exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent Application Serial Number 60/257,877 describes a chimeric protein wherein key sequences from a Type IV pilin protein are inserted into a non-toxic version of Pseudomonas aeruginosa exotoxin A. This invention provides candidate chimeric vaccines that generate antibodies that interfere with adherence of Pseudomonas aeruginosa exotoxin A to epithelial cells and neutralize the cytotoxicity of exotoxin A.

Note: This is a modification to a previously published Prospective Grant of Exclusive License notice to Trinity Biosystems LLP (67 FR 6940, February 14, 2002). It is contemplated that both Trinity Biosystems Inc. and Cytovax Biotechnologies Inc. will receive co-exclusive licenses to the technology mentioned above.

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 10, 2002.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–23547 Filed 9–16–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by October 17, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–058006

Applicant: Roger Williams Park Zoo, Providence, RI.

The applicant requests a permit to import ten parma wallabies (*Macropus parma*) from the feral population on Kawau Island, New Zealand, for the purpose of enhancement of the survival of the species through captive propagation. The parma wallaby was introduced to Kawau Island and is subject to eradication efforts by the New Zealand government. The import of these animals would serve as an alternative to extermination and introduce new founder stock into captive breeding efforts. The animals would be maintained at Brevard Zoo, Buffalo Zoo, Riverbanks Zoo, Roger Williams Park Zoo, and San Diego Zoo.

PRT–836457

Applicant: West Indian Iguana Specialist Group of the Species Survival Commission of the IUCN, San Diego, CA.

The applicant requests re-issuance of a permit for the import of multiple shipments of biological samples from captive-bred, captive-held and wild specimens of endangered and threatened Cyclura species, worldwide. The permit was originally issued on February 18, 1999. This notification covers activities conducted by the applicant over a period of 5 years.

PRT–061693

Applicant: Scott Alan Collins, Dallas, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd

maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–061767

Applicant: Drexel University, Philadelphia, PA.

The applicant requests issuance of a permit for the import of multiple shipments of biological samples from wild specimens of leatherback sea turtles, *Dermochelys coriacea*, obtained by the Dalhousie University, Halifax, Canada, from stranded specimens for the purpose of scientific research. This notification covers activities conducted by the applicant over a period of 5 years.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: August 29, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–23517 Filed 9–16–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by October 17, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–062165

Applicant: James G. Zimmerly, Boonsboro, MD.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–061335

Applicant: Arizona State University, Tempe, AZ.

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species of plants previously accessioned into the permittee's collection for scientific research. This notification covers activities conducted by the applicant for a five-year period.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete application or requests for a public hearing on this application should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–061289

Applicant: Marine Wildlife Veterinary Care and Research Center, California Department of Fish and Game, Santa Cruz, CA.

Permit Type: Take, Scientific Research.

Name and Number of Animals: Southern sea otter (*Enhydra lutris nereis*), up to 20 animals per year, or in the event of an oil spill or other environmental disaster, up to 200 animals per year.

Summary of Activity to be Authorized: The applicant requests a permit to conduct scientific research by inserting intra-abdominal and/or subcutaneous transmitters on animals held for rehabilitation purposes in order to monitor and evaluate efficacy of rehabilitation activities.

Source of Marine Mammals: Animals held for rehabilitation purposes.

Period of Activity: Up to 5 years if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: September 6, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–23520 Filed 9–16–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Denial of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of denial of permit for marine mammals.

SUMMARY: The following permits were denied.

ADDRESSES: Documents and other information submitted for these applications is available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On June 15, 2001, a notice was published in the

Federal Register (66 FR 32635), that an application had been filed with the Fish and Wildlife Service by Aquamarine Fukushima, Iwaki, Japan, for a permit (PRT–020575) to take from the wild and export to Japan one male and two female northern sea otters (*Enhydra lutris lutris*) for public display purposes. On August 14, 2001, a notice was published in the **Federal Register** (66 FR 42677), re-opening this application for public comment.

Notice is hereby given that on July 26, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service denied the requested permit.

On June 15, 2001, a notice was published in the **Federal Register** (66 FR 32635), that an application had been filed with the Fish and Wildlife Service by Ibaraki Prefectural Oarai Aquairium, Ibaraki, Japan, for a permit (PRT–043001) to take from the wild and export to Japan one male and four female northern sea otters (*Enhydra lutris lutris*) for public display purposes. On August 14, 2001, a notice was published in the **Federal Register** (66 FR 42677), re-opening this application for public comment.

Notice is hereby given that on July 26, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service denied the requested permit.

Dated: August 2, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–23516 Filed 9–16–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application is available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On June 28, 2002, a notice was published in the **Federal Register** (67 FR 43676), that an application had been filed with the Fish and Wildlife Service by Barbara L. Sackman for a permit (PRT–057753) to import one polar bear taken from the Viscount Melville Sound population, Canada, for personal use.

Notice is hereby given that on August 28, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: August 29, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–23518 Filed 9–16–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On May 30, 2002, a notice was published in the **Federal Register** (67 FR 37855), that an application had been filed with the Fish and Wildlife Service by William C. Myer for a permit (*PRT–056909*) to import one polar bear (*Ursus maritimus*) taken from the Viscount Melville Sound population, Canada, for personal use.

Notice is hereby given that on August 26, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On June 28, 2002, a notice was published in the **Federal Register** (67 FR 43677), that an application had been filed with the Fish and Wildlife Service by Thomas Cate for a permit (PRT–058129) to import one polar bear (*Ursus maritimus*) taken from the Lancaster Sound population, Canada, for personal use.

Notice is hereby given that on August 27, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On July 5, 2002, a notice was published in the **Federal Register** (67 FR 44873), that an application had been filed with the Fish and Wildlife Service by Bonnie L. Prochnow for a permit (PRT–058491) to import one polar bear (*Ursus maritimus*) taken from the Lancaster Sound population, Canada, for personal use.

Notice is hereby given that on August 26, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: September 6, 2002.

Michael Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–23519 Filed 9–16–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application is available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On June 25, 2002, a notice was published in the **Federal Register** (67 FR 42792), that an application had been filed with the Fish and Wildlife Service by Robert E. Cogar, for a permit (PRT–057467) to import one polar bear taken from the Northern Beaufort Sea population, Canada, for personal use.

Notice is hereby given that on August 16, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: August 23, 2002.

Anna Barry,

Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–23521 Filed 9–16–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination To Decline To Acknowledge the Muwekma Ohlone Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final determination.

SUMMARY: Pursuant to 25 CFR 83.10(m), notice is hereby given that the Assistant Secretary—Indian Affairs declines to acknowledge the Muwekma Ohlone Tribe petitioner, 1358 Ridder Park Drive, San Jose, California 95131, as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group does not meet all seven criteria set forth in 25 CFR 83.7, as modified by 25 CFR 83.8.

DATES: This final determination is effective December 16, 2002, pursuant to 25 CFR 83.10(l)(4), unless a request for reconsideration is filed pursuant to 25 CFR 83.11.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs (Assistant Secretary) 209 DM 8.

A notice of the proposed finding to decline to acknowledge the Ohlone/Costanoan Muwekma Tribe (now renamed Muwekma Ohlone Tribe) was published in the **Federal Register** on August 3, 2001 (66 FR 40712). An order of the United States District Court for the District of Columbia, dated January 16, 2001, set the close of the period for comment on the proposed finding as October 29, 2001; however, following two extensions granted by the Court in response to the petitioner's motions, the end date for the comment period was set as January 27, 2002, and the end of the period for the petitioner to respond to third-party comments was set as March 28, 2002. The Muwekma Ohlone Tribe petitioner submitted comments on the proposed finding, but did not submit a response to the public comments. The Court granted the Department's request for a 30-day extension to the August 8, 2002, due date for the issuance of a final determination to September 9, 2002. This final determination is made following a review of the petitioner's comments and the public comments on the proposed finding, and is based on all of the evidence in the record.

The Muwekma petitioner has been evaluated under modified requirements provided in section 83.8 of the regulations on the basis of a determination that it had unambiguous Federal acknowledgment as the Verona Band between 1914 and 1927.

Criterion 83.7(a): The petitioner has not demonstrated that it meets the requirements of criterion 83.7(a) as modified by section 83.8(d)(1) with evidence since 1927 of substantially continuous external identifications of the petitioning group as a continuation of a historical ''Verona Band'' or Pleasanton rancheria. Therefore, as provided in section 83.8(d)(5), this final determination evaluated whether the petitioner has demonstrated that it meets the unmodified requirements of section 83.7(a) from 1927 to the present. The review of the available evidence concludes that the evidence demonstrates that the petitioning group was identified as an Indian entity in the years between 1965 and 1971, and again from 1982 to the present. Because the petitioning group was not identified as an Indian entity for a period of almost four decades after 1927, and for only a 6-year period during the 55 years between 1927 and 1982, it has not been identified as an Indian entity on a ''substantially continuous'' basis since 1927. Therefore, the petitioner does not meet the requirements of criterion 83.7(a) as modified by sections 83.8(d)(1) or 83.8(d)(5).

Criterion 83.7(b): The petitioner has not demonstrated that it meets the requirements of criterion 83.7(b) as modified by section 83.8(d)(2) which requires the petitioner to demonstrate that it comprises a distinct community ''at present,'' but need not demonstrate its existence as a community historically. In response to the proposed finding, the petitioner submitted documents pertaining to godparenting, funerals, and the petitioner's activities from 1982 to 1991. It also submitted oral interviews taken by an academic researcher in 1984 and 1986 and by the petitioner's researcher, chairman, and staff since the issuance of the proposed finding. The oral histories, combined with documentary evidence both in the record and newly submitted, demonstrated: some informal social relationships and interactions of the petitioner's ancestors from 1910–1950; actual practices of godparenting, fostering, and adoption before 1950; the informal group involved in preserving an historic Ohlone Cemetery from 1963–1971; an application process organized by individual extended families in 1967–1971 to apply under the 1928 claims act; and previously unknown efforts in 1967–1984 to establish an Ohlone membership organization.

While this new evidence helped demonstrate limited aspects of community which marginally existed as late as 1950 for the petitioner's members and even later for smaller segments, the petitioner did not submit documents or oral histories dealing with the present day, which is the only requirement under criterion (b) for previously acknowledged groups such as this one. The oral histories did not deal with events after 1971, and the newly submitted documents were generally very similar to the documents that had been submitted for the proposed finding and tended to support those previous findings under criterion 83.7(b). Thus, the petitioner does not meet criterion 83.7(b) ''at present'' and therefore does not meet criterion 83.7(b) as modified by 83.8(d)(2) or 83.8(d)(5).

Criterion 83.7(c): The petitioner has not demonstrated that it meets requirements of criterion 83.7(c) as modified by section 83.8(d)(3) because there is insufficient evidence of identifications of leaders or a governing body of the petitioning group by ''authoritative, knowledgeable external sources'' on a ''substantially continuous'' basis since 1927. Thus, as provided in section 83.8(d)(5), this final determination has evaluated whether or not the petitioner has demonstrated that it meets the unmodified requirements of criterion 83.7(c) from 1927 until the present. The petitioner does not meet criterion 83.7(c) at any time based on meeting criterion 83.7(b) with sufficient

levels of evidence described in section 83.7(b)(2). Also, because the available evidence is not sufficient to meet criterion 83.7(b)(1) ''at more than a minimal level,'' such evidence cannot be combined, under the provisions of section 83.7(c)(1)(iv), with other forms of evidence to meet the requirements of criterion 83.7(c).

A review of the available evidence concludes that this evidence is not otherwise sufficient to meet the requirements of criterion 83.7(c) since 1927. The available documentary and oral history evidence does not demonstrate the existence of informal political processes within the petitioning group at any time since 1927, or a political process or a bilateral political relationship between leaders and followers within the petitioner's current organization. Since 1990, participation in the petitioner's activities has been mostly by a core group of 20 individuals, especially by five individuals from one extended family. A predominant portion of the petitioner's membership has not participated in the group's activities. The available evidence, when considered in combination, does not demonstrate that the petitioning group has maintained political influence or authority over its members since 1927. Therefore, the petitioner does not meet the requirements of criterion 83.7(c) as modified by sections 83.8(d)(3) or 83.8(d)(5).

Criterion 83.7(d): This final determination affirms the proposed finding's conclusion that the petitioner submitted a governing document describing its membership criteria and its current governing procedures. Although the petitioner did not submit a comment on this criterion, its comments on other aspects of the proposed finding referenced a version of its constitution and enrollment ordinance amended and adopted later than those reviewed for the proposed finding. The Department obtained copies of the referenced governing documents amended and certified on October 21, 2000, which describe its membership criteria and its current governing procedures. The October 21, 2002, amendments affecting membership requirements did not, however, identify the specific Verona Band individuals from whom descent must be documented. Because the petitioner has a constitution and an enrollment ordinance, certified by most members of its governing body, that describe its membership criteria and the procedures through which it governs its affairs and its members, the petitioner meets the requirements of criterion 83.7(d).

Criterion 83.7(e): This final determination affirms the proposed finding's conclusion that the members of the petitioning group descend from the historical band. In the absence of a membership list of the Verona Band during the 1914–1927 period of last Federal acknowledgment, the proposed finding relied upon two residence lists of Indian settlements, the 1905–1906 Kelsey census of landless Indians living in Pleasanton and Niles and the Indian population schedule of ''Indian town'' on the 1910 Federal Census of Pleasanton Township, to approximate the composition of the Verona Band.

The proposed finding assumed that, for purposes of descent, non-resident siblings of individuals in the Pleasanton or Niles settlements could be considered members of the Verona Band by virtue of their close interaction with those resident siblings. Most of the petitioner's members at the time of the proposed finding (209 of 400) claimed descent from three non-resident Marine siblings who had two siblings on the 1910 Indian population schedule of ''Indian town.'' By the time of this final determination, most of the petitioner's members (264 of 419) claimed descent from four non-resident Marine siblings.

The proposed finding solicited evidence to strengthen or rebut its assumption ''that Avelina (Cornates) Marine was a part of the Indian group at the Pleasanton rancheria prior to Kelsey's census of 1906, and that the siblings of her children on the 1910 Federal Census of 'Indian town' were non-resident members of the Verona Band.'' Since the issuance of the proposed finding, the Department obtained the civil record of Avelina (Cornates) Marine's first marriage in 1877, to Jose Puente, that identified the bride as 15 years old, thereby providing a reasonable basis to conclude she was the same ''Avelina'' [no surname] identified in a Mission San Jose baptism record as a Mission San Jose Indian born in 1863. The petitioner supplied Avelina (Cornates) Puente Marine's 1904 burial record, which placed her in Pleasanton at the time of her death. These two records supported Avelina's genealogical link to the Mission San Jose Indians, a precursor of the Verona Band, and her geographical proximity to the Pleasanton rancheria enumerated by Kelsey shortly after her death, thus strengthening the assumption expressed in the proposed finding that Avelina and her children were part of the Verona Band.

The petitioner submitted an updated membership list dated January 19, 2002, identifying 419 members. This updated list showed the addition of 120 members, the ''disenrollment'' of 99 members, and the deaths of 2 members since the May 29, 1998, membership list reviewed for the proposed finding. The petitioner's governing body certified the updated membership list by resolution, and provided a description of the preparation of this and earlier membership lists, as required under criterion 83.7(e).

A review of the petitioner's membership files concluded that 99 percent of its current members have satisfactorily documented their descent from individuals on the Verona Band proxy list, or siblings thereof. The membership files for the remaining 1 percent lacked adequate evidence linking the member to his or her Indian parent or, in one case, grandparent.

Criterion 83.7(f): This final determination affirms the proposed finding's conclusion that this group is not principally composed of members of another acknowledged North American Indian tribe. Since the proposed finding, the petitioner obtained dual enrollment statements from all of its members, which BIA researchers reviewed in their audit of the membership files. Only one member who indicated membership in a federally acknowledged tribe remained on the petitioner's most current membership list.

Criterion 83.7(g): This final determination affirms the proposed finding's conclusion that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

This determination is final and will become effective December 16, 2002, unless a request for reconsideration is filed pursuant to § 83.11. The petitioner or any interested party may file a request for reconsideration of this determination with the Interior Board of Indian Appeals (§ 83.11(a)(1)). The petitioner's or interested party's request must be received no later than 90 days after publication of the Assistant Secretary's determination in the **Federal Register** (§ 83.11(a)(2)).

Dated: September 6, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–23672 Filed 9–13–02; 12:04 pm]

BILLING CODE 4310–4J–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment VI to the Class III gaming compact between the Burns-Paiute Tribe and the State of Oregon.

DATES: This action is effective September 17, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 28, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–23597 Filed 9–16–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact for Class III Gaming between the Klamath Tribes and the State of Oregon.

DATES: This action is effective September 17, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 24, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–23596 Filed 9–16–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–160–1220–PG]

Notice of Public Meeting, Central 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 (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Resource Advisory Council (RAC) for Central California will meet as indicated below.

DATES: The meeting will be held Friday and Saturday, October 11–12, 2002 at the Patio Room, Tri-County Fairgrounds, Sierra Street and Fair Drive, Bishop, California beginning at 8 a.m. both days. The public comment period will begin at 1 p.m. each day and last one hour. The meeting previously announced for September 13–14, 2002 is cancelled.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 661–391–6010.

SUPPLEMENTARY INFORMATION: The 12 member Central California Resource Advisory Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues associated with public land management in Central California. At this meeting, topics to be discussed include:

Committee assignments for members
National recreation fee guideline policy
Sage Grouse in the eastern Sierra
A field trip to the Bishop Field Office and interaction with the staff

All meetings are open to the public. The public may present written comments to the Council, and a time will be allocated for hearing public comments. Depending on the number of persons wishing to comment and the time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as indicated above.

Dated: September 9, 2002.

Larry Mercer,

Public Affairs Officer.

[FR Doc. 02–23557 Filed 9–16–02; 8:45 am]

BILLING CODE 4310–40–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–965, 971–972, 979, and 981 (Final)]

Certain Cold-Rolled Steel Products From Australia, India, Japan, Sweden, and Thailand

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (the Act),[3] that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Australia, India, Japan, Sweden, and Thailand of certain cold-rolled steel products, provided for in headings 7209, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective September 28, 2001, following receipt of petitions filed with the Commission and Commerce by Bethlehem Steel Corporation, Bethlehem, PA; LTV Steel Co., Inc., Cleveland, OH; National Steel Corporation, Mishawaka, IN; [4] Nucor Corporation, Charlotte, NC; Steel Dynamics Inc., Butler, IN; United States Steel LLC, Pittsburgh, PA; WCI Steel, Inc., Warren, OH; and Weirton Steel Corporation, Weirton, WV.

The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of certain cold-rolled steel

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Lynn M. Bragg dissenting.

[3] 19 U.S.C. 1673d(b).

[4] National Steel Corporation is not a petitioner with respect to Japan.

products from Australia, India, Japan, Sweden, and Thailand were being sold at LTFV within the meaning of section 733(b) of the Act.[5] Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 3, 2002 (67 FR 38291). The hearing was held in Washington, DC, on July 18, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on September 5, 2002. The views of the Commission are contained in USITC Publication 3536 (September 2002), entitled *Certain Cold-Rolled Steel Products from Australia, India, Japan, Sweden, and Thailand: Investigations Nos. 731–TA–965, 971–972, 979, and 981 (Final).*

By order of the Commission.

Issued: September 12, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–23606 Filed 9–16–02; 8:45 am]

BILLING CODE 7020–02–P

[5] 19 U.S.C. 1673b(b).

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for Authorization to Issue Health Care Certificates; Form I–905.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 5, 2002 at 67 FR 16438, allowing for a 60-day public comment period. Ten public comments were received on this information collection. The INS has addressed and reconciled the public comment in the accompanying supporting statement for this collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 17, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725—17th Street, NW., Washington, DC 20530; Attention: Department of Justice Desk Officer, Room 10235.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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 appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Authorization to Issue Health Care Certificates.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–905, Business and Trade Services, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. The data collected on this form is used by the Services to determine eligibility of an organization to issue certificates to foreign health care workers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 4 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: September 11, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–23509 Filed 9–16–02; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–107)]

Conduct of Employees, Notice of Waiver Pursuant to Section 207(j)(5), Title 18, United States Code

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice.

SUMMARY: The Administrator of the National Aeronautics and Space Administration (NASA) has determined, after consultation with the Director of the Office of Government Ethics, that it is in the national interest to waive the post-employment restriction of section 207(c), Title 18, United States Code, with respect to the former International Space Station Expedition Commander for Expedition 3, Frank Culbertson.

FOR FURTHER INFORMATION CONTACT: Laurie P. Rafferty, Office of the General

Counsel, NASA Headquarters, Washington, DC 20546, 202–358–2028.

SUPPLEMENTARY INFORMATION: Section 207(j)(5) of Title 18 of the United States Code authorizes the Administrator of the National Aeronautics and Space Administration to waive the post-employment restriction of section 207(c), to permit a former employee with outstanding qualifications in a scientific, technological, or other technical discipline to make communications solely for the purpose of furnishing scientific or technological information to NASA where it has been determined that the national interest would be served by such communications from the former employee.

It has been established to my satisfaction that Frank Culbertson, the former International Space Station (ISS) Expedition Commander for Expedition 3, has outstanding technological qualifications in a scientific, technological or other discipline. These qualifications include: serving as an Astronaut for 18 years; serving as Program Manager for the Shuttle-Mir Phase 1 ISS Program; being the Commander of Expedition 3 of the ISS and Deputy Program Manager for Operations of ISS; serving on four Space Shuttle mission flights; serving as Lead Astronaut for the Shuttle Avionics Laboratory; serving in key roles in the Challenger accident investigation; and assisting in the development of the Shuttle docking system and the Landing Rollout Systems. I am further satisfied that, as the Program Manager for Science Applications International Corporation (SAIC) on the Safety, Reliability and Quality Assurance (SR&QA) contract between SAIC and NASA, Mr. Culbertson will be required to utilize those qualifications in the performance of his duties and that it will be in the national interest to permit him to communicate scientific or technological information to NASA officials on this contract.

I have, therefore, after consultation with the Office of Government Ethics, waived the post-employment prohibition of section 207(c) of Title 18 of the United States Code in order to permit direct communications for the purpose of furnishing scientific or technological information by Mr. Culbertson to employees of NASA concerning the SR&QA contract.

Dated: September 12, 2002.

Sean O'Keefe,

NASA Administrator.

[FR Doc. 02–23600 Filed 9–16–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–106)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Alphaport, Inc., of Cleveland, Ohio has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 6,081,235, entitled ''High Resolution Scanning Relfectarray Antenna,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Glenn Research Center. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by October 2, 2002.

FOR FURTHER INFORMATION CONTACT: Kent Stone, Patent Attorney, NASA Glenn Research Center, 21000 Brookpark Road, Mail Stop 500–118, Cleveland, OH 44135; (216) 433–8855 or e-mail at *Kent.N.Stone@grc.nasa.gov.*

Dated: September 11, 2002.

Paul G. Pastorek,

General Counsel.

[FR Doc. 02–23599 Filed 9–16–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Application and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, August 23, 2002, through September 5, 2002. The last biweekly notice was published on September 3, 2002 (67 FR 56317).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of

Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 17, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: ''In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest .

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.''

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: July 31, 2002.

Description of amendment request: The proposed amendment would add a Surveillance Requirement (SR) to Technical Specification 3.2.2, ''Minimum Critical Power Ratio (MCPR),'' that requires determination of the MCPR limits following completion of control rod scram time testing. The proposed SR would provide for the required evaluation necessary to apply faster scram times to provide for improved MCPR operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds a new surveillance requirement (SR) to the Minimum Critical Power Ratio (MCPR) Technical Specification (TS) which requires determination of the MCPR operating limit following the completion of scram time testing of the control rods. Use of the scram speed in determining the MCPR operating limit (*i.e.*, Option B) is an alternative to the current method for determining the operating limit (*i.e.*, Option A). The probability of an accident previously evaluated is unrelated to the MCPR operating limit that is provided to ensure no fuel damage results during anticipated operational occurrences. This is an operational limit to ensure conditions following an assumed accident do not result in fuel failure and therefore do not contribute to the occurrence of an accident. No active or passive failure mechanisms that could lead to an accident are affected by this proposed change.

The consequences of a previously evaluated accident are not significantly increased. The proposed change ensures that the appropriate operating limit is in place. By implementing the correct operating limit the safety limit will continue to be ensured. Ensuring the safety limit is not exceeded will result in prevention of fuel failure. Therefore, since there is no increase in the potential for fuel failure there is no increase in the consequences of any accidents previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility or a new or different kind of accident from any accident previously evaluated?

Response: No.

The addition of a new SR to the MCPR TS does not involve the use or installation of new equipment. Installed equipment is not operated in a new or different manner. No new or different system interactions are created, and no new processes are introduced. No new failures have been created by the addition of the proposed SR and the use of the alternate method for determining the MCPR operating limit.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Use of Option B for determining the MCPR operating limit will result in a reduced operating limit in comparison to the use of Option A. However, a reduction in the operating limit margin does not result in a reduction in the safety margin. The MCPR safety limit remains the same regardless of the method used for determining the operating limit. All analyzed transient results remain well within the design values for structure, systems, and components.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

Calvert Cliffs Nuclear Power Plant, Inc., Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of amendment request: August 6, 2002.

Description of amendment request: The proposed amendment would allow the installation of up to four lead fuel assemblies (LFAs) manufactured by Framatome ANP, Inc. (FRA–ANP) into the Unit 2 Cycles 15 and 16 cores. Currently, Technical Specification 4.2.1, Fuel Assemblies, only allows fuel that is clad with either zircaloy or ZIRLO. The FRA–ANP LFA utilizes M5™ alloy for the fuel cladding.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Calvert Cliffs Technical Specification 4.2.1, Fuel Assemblies, states that fuel rods are clad with either zircaloy or ZIRLO. This reflects the requirements of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, Appendix K, which also restricts fuel rod cladding materials to zircaloy or ZIRLO. Calvert Cliffs Nuclear Power Plant, Inc. proposes to insert up to four Framatome ANP, Inc. (FRA–ANP) fuel assemblies into Calvert Cliffs Unit 2 that have fuel rods clad in an alloy that does not meet the definition of zircaloy or ZIRLO. An exemption to the regulations has also been requested to allow these fuel assemblies to be inserted into Unit 2. The proposed change to the Calvert Cliffs Technical Specifications will allow the use of cladding materials that are not zircaloy or ZIRLO for two fuel cycles once the exemption is approved. To obtain approval of new cladding material, 10 CFR 50.12 requires that the applicant show that the proposed exemption is authorized by law, is consistent with common defense and security, will not present an undue risk to the public health and safety, and is accompanied by special circumstances. The proposed change to the Technical Specification is effective only as long as the exemption is effective. The addition of what will be an approved temporary exemption for Unit 2 to Technical Specification 4.2.1 does not change the probability or consequences of an accident previously evaluated.

Supporting analyses indicate that since the lead fuel assemblies (LFAs) will be placed in non-limiting locations, the placement scheme and the similarity of the advanced alloy to zircaloy will assure that the behavior of the fuel rods with this alloy are bounded by the fuel performance and safety analyses performed for the ZIRLO clad fuel rods in the Unit 2 Core. The similarity of ZIRLO to zircaloy was previously approved by the

Nuclear Regulatory Commission. Therefore, the addition of the advanced cladding M5™ does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed change does not add any new equipment, modify any interfaces with existing equipment, change equipment's function, or change the method of operating the equipment. The proposed change does not affect normal plant operations or configuration. Since the proposed change does not change the design, configuration, or operation, it could not become an accident initiator.

Therefore, the proposed change does not create the possibility of a new or different [kind] of accident from any previously evaluated.

3. Would not involve a significant reduction in [a] margin of safety.

The margin of safety for the fuel cladding is to prevent the release of fission products. Supporting analyses indicate that since the LFAs will be placed in non-limiting locations, the placement scheme and the similarity of the advanced alloy to zircaloy will assure that the behavior of the fuel rods with this alloy are bounded by the fuel performance and safety analyses performed for the ZIRLO clad fuel rods in the Unit 2 cores. Therefore, the addition of the advanced cladding M5™ does not involve a significant reduction in the margin of safety.

The proposed change will add an approved temporary exemption to the Unit 2 Technical Specifications allowing the installation of up to four FRA–ANP LFAs. The assemblies use the advanced cladding material M5™ that is not specifically permitted by existing regulations or Calvert Cliffs' Technical Specifications. A temporary exemption to allow the installation of these assemblies has been requested. The addition of an approved temporary exemption to Technical Specification 4.2.1 is simply intended to allow the installation of the LFAs under the provisions of the temporary exemption. The license amendment is effective only as long as the exemption is effective. This amendment does not change the margin of safety since it only adds a reference to an approved, temporary exemption to the Technical Specifications.

Therefore, the proposed change does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 1, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification 3.7.1.1, ''Plant Systems: Turbine Cycle Safety Valves,'' to reflect results of a reanalysis of overpressurization events to reinstate the capability to operate, at corresponding reduced power levels, with up to four main steam line code safety valves in each main steam line inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will revise Specification 3.7.1.1 in accordance with revised overpressurization analyses to reinstate the capability to operate at corresponding reduced power levels with up to four main steam line code safety valves (MSSVs) in each main steam line inoperable. The MSSVs ensure the American Society of Mechanical Engineers (ASME) Code, Section III requirements are maintained to limit secondary system pressure to within 110 percent of design pressure during the most severe anticipated system operational transient. Operation with less than the full number of MSSVs is permitted as long as thermal power is restricted (and the Power Level-High trip setpoint is reset within the specified timeframe). These actions place restrictions on the allowable thermal power so that the energy transfer to the most limiting steam generator (SG) is not greater than the available relief capacity for that generator.

These changes are consistent with the Unit No. 2 Final Safety Analysis Report (FSAR) design description and analysis assumptions where the MSSVs provide the required overpressure protection. The proposed change provides assurance that the secondary side pressure remains within the bounds of the safety analyses; therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change ensures that adequate secondary side overpressure protection is available and properly maintained. This change limits plant power level based on the number of operable MSSVs. The actions require a reduction in power when the number of MSSVs is less than the full complement for each SG and also required a reduction in the Power Level-High trip setpoint.

The proposed change does not involve a physical alteration of the plant or change the plant configuration (no new or different type of equipment will be installed). The proposed change only reinstates a previously authorized mode of operation based upon revised analyses. It does not require any new or unusual operator actions. The change does not alter the way any structure, system, or component functions and does not alter the manner in which the plant is operated. The change does not introduce any new failure modes. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The MSSVs ensure the ASME Code, Section III requirements are maintained to limit the secondary system pressure to within 110 percent of the design pressure. This ensures that the overpressure protection system can cope with all operational and transient events. Plant operation with a reduced number of MSSVs is subject to the same considerations as the condition when all MSSVs are operable, *i.e.*, a transient overpressure event must not exceed the acceptance criteria specified in the Unit No. 2 FSAR. Restricting the thermal power provides this assurance. Reducing the Power Level-High trip setpoint (within the specified timeframe provides additional assurance).

These actions place restrictions on the allowable thermal power so that the energy transfer to the most limiting SG is not greater than the available relief capacity for that generator, consequently these actions ensure the margin of safety is maintained consistent with the analysis bases.

The proposed change does not impact any acceptance criteria for the design basis accidents described in the FSAR and does not impact the consequences of accidents previously evaluated. The proposed change provides assurance that the secondary side pressure remains within the bounds of the safety analyses; therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated. Therefore, the proposed change will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: Jacob I. Zimmerman, Acting.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 7, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification 6.9.1.8, ''Core Operating Limits Report,'' to update the list of documents that describe the analytical methods used to determine the core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to delete the document contained in section 6.9.1.8b.4 is required since it has been superceded by the most recent methodology as described in the document contained in section 6.9.1.8b.15 (renumbered 6.9.1.8b.14). Adding the new document associated with the new section 6.9.1.8b.15 to the list of references is required for completeness. This change has no impact on plant equipment operation. Since the changes only affect description of the safety analysis methodology and do not revise any setpoints assumed in the accident analyses, they cannot affect the likelihood or consequences of accidents. Therefore, this change will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. These changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes have no impact on plant equipment operation. The proposed changes do not revise any setpoints assumed in the analyses and do not affect the acceptance criteria for the Steam Line Break accident. Therefore, the proposed changes will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: Jacob I. Zimmerman, Acting.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 12, 2002.

Description of amendment request: The proposed amendment would change the surveillance requirements for the emergency diesel generators (EDGs) in Technical Specification (TS) 3/4.8.1.1, ''Electrical Power Systems—A.C. Sources—Operating'' and TS 3/4.8.1.2, ''Electrical Power Systems—Shutdown.'' In addition, TS Section 6.0, ''Administrative Controls,'' would be revised to add a new TS to define the program requirements for testing the EDG fuel oil. The TS index and the TS Bases would also be revised to address the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes associated with revising the surveillance requirements for the Millstone Unit No. 2 emergency diesel generators and adding a new specification to define the program requirements for testing of the emergency diesel generator fuel oil will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. The ability of the equipment associated with the proposed changes to mitigate the design basis accidents will not be affected. The proposed Technical Specification surveillance requirements are sufficient to ensure the required accident mitigation equipment will be available and function properly for design basis accident mitigation. In addition, the design basis accidents will remain the same postulated events described in the Millstone Unit No. 2 Final Safety Analysis Report, and the consequences of those events will not be affected. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The additional proposed changes to the Technical Specifications (*e.g.*, renumbering a requirement, modifying an index page, relocating a footnote requirement, relocating requirements to surveillance notes, relocating part of a surveillance requirement to be a separate surveillance requirement, clarifying the EDGs loads required to be energized for at least 5 minutes, clarifying the EDGs loads that should remain energized by offsite power) will not result in any technical changes to the current requirements. Therefore, these additional changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications do not impact any system or component that could cause an accident. The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any unusual operator actions. The proposed changes will not alter the way any structure, system, or component functions, and will not alter the manner in which the plant is operated. There will be no adverse effect on plant operation or accident mitigation equipment. The response of the plant and the operators following an accident will not be different. In addition, the proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification changes associated with revising the surveillance requirements for the Millstone Unit No. 2 emergency diesel generators and adding a new specification to define the program requirements for testing of the emergency diesel generator fuel oil will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. The equipment associatedwith the proposed Technical Specification changes will continue to be able to mitigate the design basis accidents as assumed in the safety analysis. The proposed surveillance requirements are adequate to ensure proper operation of the affected accident mitigation equipment. In addition, the proposed changes will not affect equipment design or operation, and there are no changes being made to the Technical Specification required safety limits or safety system settings. The proposed Technical Specification changes will provide adequate control measures to ensure the accident mitigation functions are maintained. Therefore, the proposed changes will not result in a reduction in a margin of safety.

The additional proposed changes to the Technical Specifications (*e.g.*, renumbering a requirement, modifying an index page, relocating a footnote requirement, relocating requirements to surveillance notes, relocating part of a surveillance requirement to be a separate surveillance requirement, clarifying the EDGs loads required to be energized for at least 5 minutes, clarifying the EDGs loads that should remain energized by offsite power) will not result in any technical changes to the current requirements. Therefore, these additional changes will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Andersen, Acting.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 14, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specifications related to reactivity control systems, power distribution limits, and special test exceptions. The purpose of the proposed changes are to remove ambiguity and improve usability of the current Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes associated with the deletion of special test exceptions in Specifications 3/4.10.3, 3/4.10.4 and 3/4.10.5, changes to reflect the current Millstone Unit No. 2 design (*i.e.* full length CEAs [control element assemblies]), changes that limit the Mode applicability requirement for Shutdown Margin requirements (Specifications 3/4.1.1.1 and 3/4.1.1.2), and changes to action requirements and surveillance requirements will not cause an accident to occur and will not result in any change in operation of the mitigation equipment. The proposed changes in Specification 3/4.1.3.1 have no effect on the operability and alignment ofCEAs. The proposed allowed outage times and shutdown times are reasonable and consistent with the industry guidelines to ensure the accident mitigation equipment will be restored in a timely manner. In addition the design basis accident will remain the same postulated events described in the Millstone Unit No. 2 Final Safety Analysis Report. Since the initial conditions and assumptions included in the safety analyses are unchanged, the consequences of the postulated events remain unchanged. Therefore the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The additional proposed changes to the Technical Specifications (*e.g.*[,] combining requirements, re-ordering requirements, relocating information to the Bases, modifying index pages, deletion or addition of footnotes) will not result in any technical changes to the current requirements. Therefore, these additional changes will not increase the probability or consequences of an accident previously evaluate[d].

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. Since the requirements remain the same, the proposed changes do not alter the way any system, structure, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will not reduce the margin of safety since they have no impact on any accident analysis assumptions. The proposed changes do not decrease the scope of equipment currently required to operate or subject to surveillance testing, nor do the proposed changes affect any instrument setpoints or equipment safety functions. The effectiveness of Technical Specifications will be maintained since the changes will not alter the operation of any component or system, nor will the proposed changes affect any safety limits or safety system settings which are credited in a facility accident analysis. Therefore, there is no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: Victor Nerses, Acting.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 14, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) related to Containment Systems. Specifically, the proposed changes would: (1) Add a new requirement for a Containment Tendon Surveillance Program to TS Section 6.0, ''Administrative Controls;'' (2) delete TS 3/4.6.1.6, ''Containment Structural Integrity;'' (3) revise TS 3/4.6.1.1, ''Containment Integrity,'' to add a new surveillance requirement that would require that containment structural integrity be verified in accordance with the Containment Tendon Surveillance Program; (4) revise TS 3/4.6.3.1, ''Containment Isolation Valves'' to add a new action statement that would increase the allowed outage time (AOT) from 4 hours to 72 hours for Containment Isolation Valves (CIVs) in closed systems; (5) make other changes to the TSs for Containment Integrity and CIVs to provide clarity to the TSs; and (6) make other administrative type changes. In addition, the TS Bases would be revised to address the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes associated with both containment integrity and CIVs that will remove ambiguity, improve usability, and increase AOT for CIVs in closed systems, will not cause an accident to occur. Operablity requirements for containment integrity and CIVs will remain the same. The ability of the equipment associated with the proposed changes to mitigate the design basis accidents will not be affected. The proposed Technical Specification requirements are sufficient to ensure the required accident mitigation equipment will be available and function properly for design basis accident mitigation. The proposed allowed outage time is reasonable and consistent with standard industry guidelines to ensure the accident mitigation equipment will be restored in a timely manner. In addition, the design basis accidents will remain the same postulated events described in the Millstone Unit No. 2 Final Safety Analysis Report, and the consequences of those events will not be affected. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The additional proposed changes to the Technical Specifications (*e.g.*, changes to index, renumbering a requirement) will not result in any technical changes to the current requirements. Therefore, these additional changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications do not impact any system or component that could cause an accident. The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any unusual operator actions. The proposed changes will not alter the way any structure, system, or component functions, and will not alter the manner in which the plant is operated. The response of the plant and the operators following an accident will not be different. In addition, the proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification changes associated with both containment integrity and CIVs that will remove ambiguity, improve usability, and increase AOT for CIVs in closed systems, will not cause an accident to occur. Operablity requirements for containment integrity and CIVs will remain the same. Although, Containment Structural Integrity and Containment Integrity Specifications are combined, operability of the containment structure will continue to be maintained as part of a surveillance program. The equipment associated with the proposed Technical Specification changes will continue to be able to mitigate the design basis accidents as assumed in the safety analysis. The proposed allowed outage time is reasonable and consistent with standard industry guidelines to ensure the accident mitigation equipment will be restored in a timely manner. In addition, the proposed changes will not affect equipment design or operation, and there are no changes being made to the Technical Specification required safety limits or safety system settings. The proposed Technical Specification changes will provide adequate control measures to ensure the accident mitigation functions are maintained. Therefore, the proposed changes will not result in a reduction in a margin of safety.

The additional proposed changes to the Technical Specifications (*e.g.*, changes to index, renumbering a requirement) will not result in any technical changes to the current requirements. Therefore, these additional changes will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Andersen, Acting.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: August 22, 2002.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.8.1 to allow a one-time extension of the completion times for each Keowee Hydro Unit (KHU). This would accommodate a complete inspection and overhaul of each KHU that is expected to take more time than the current TS 3.8.1 completion time would allow.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated[.]

No. The change involves an extension of the Completion Times for TS 3.8.1 Required Action C.2.2.5 and Required Action H.2. During the time that one KHU is inoperable for >72 hours or both KHUs are inoperable, a LCT [Lee combustion turbine] will be energizing both standby buses, two available offsite power sources will be maintained available, and maintenance on electrical distribution systems will not be performed unless necessary. Extending the Completion Times will decrease the likelihood of an unplanned forced shutdown of all three Oconee Units and the potential safety consequences and operational risks associated with that action. Avoiding this risk offsets the risks associated with having a design basis event during the additional completion time for having one or both KHUs inoperable.

Extending the Completion Time does not involve: (1) A physical alteration to the Oconee Units; (2) the installation of new or different equipment; (3) operating any installed equipment in a new or different manner; or (4) a change to any set points for parameters which initiative protective or mitigation action.

There is no adverse impact on containment integrity, radiological release pathways, fuel design, filtration systems, main steam relief valve set points, or radwaste systems. No new radiological release pathways are created.

The consequences of an event occurring during the extended Completion Time are the same as those that would occur during the existing Completion Time. A risk assessment shows that the additional time coupled with compensatory measures results in an acceptable level of risk.

Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

2. Create the possibility of a new or different kind of accident from any kind of accident previously evaluated[.]

No. This change involves an extension of the Completion Times for TS 3.8.1 Required Actions C.2.2.5 and H.2 associated with restoring compliance with TS LCO 3.8.1.C. During the time period that both KHUs are inoperable, the safety function for the emergency power source will be fulfilled by the LCTs. Compensatory measures previously specified will be in place.

Extending the Completion Times does not involve a physical effect on the unit, nor is there any increased risk of a unit trip or reactivity excursion. No new failure modes or credible accident scenarios are postulated from this activity.

Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created.

3. Involve a significant reduction in a margin of safety.

No. This change involves an extension of the Completion Times for TS 3.8.1 Required Actions C.2.2.5 and H.2 associated with restoring compliance with TS LCO 3.8.1.C. During the time period that both KHUs are inoperable, the safety function for the emergency power source will be fulfilled by the LCTs. Compensatory measures previously specified will be in place to minimize electrical power system vulnerabilities.

Extending the Completion Time does not involve: (1) A physical alteration of the Oconee Units; (2) the installation of new or different equipment; (3) operating any installed equipment in a new or different manner; (4) a change to any set points for parameters which initiate protective or mitigation action; or (5) any impact on the fission product barriers or safety limits.

Therefore, this request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: July 10, 2002.

Description of amendment request: The proposed change would increase the control rod scram time testing interval from 120 days to 200 days of full power operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will not adversely impact plant operation. There will be no change in the method of performing the tests. The extended test frequency will provide some positive safety benefits by reducing the complexity of half of the control rod sequence exchange maneuvers, reducing the likelihood of a reactivity or fuel related event.

The actual rod insertion times and control rod reliability are not impacted by this proposed change; only the probability of detecting slow rods is impacted. The potential consequence of the proposed change is that one or more slow rods that would have been detected under the current 120-day frequency, may not be detected due to a reduced number of tests under the 200-day frequency.

Historical data shows that the River Bend Station control rod insertion frequency is highly reliable and rod insertion tests meet the scram time limits 99.949% of the time. Statistical analysis also demonstrates that the extended frequency would have little impact on the ability to detect slow rods in the sampling tests.

There is no safety consequence resulting from ''slow'' rods so long as the plant does not exceed the Technical Specification 3.1.4 Limiting Condition for Operation requirement of no more than 10 slow rods in the entire core or no two OPERABLE ''slow'' rods occupying adjacent positions. It is highly unlikely that a combination of missed detections and known ''slow'' rods would lead to the requirement to take action in accordance with Technical Specification 3.1.4. as discussed in the supporting analysis. Therefore, it is highly unlikely that the reduction in test frequency would have any impact on plant operation or safety.

The plant safety analysis assumes that all 10 slow rods take 7 seconds to reach notch position 13 which is very conservative based on actual rod performance. Control rod data shows that rods that have failed the time requirements are usually only a fraction of a second slower. The low probability of MODE 1 operation with excess slow rods combined with the historically low incidence of failure, leads to the conclusion that the probability or consequences of accidents previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change will make no change to plant configuration or test procedures. The proposed change does not impact the operation of the plant except to reduce the number of required tests and slightly increase the probability of failing to detect a slow control rod. Operating with possibly one or two undetected slow rods does not create the possibility of an accident, since sudden control rod insertion by scram is an accident mitigation action.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The River Bend Station accident analyses assume a certain negative reactivity time function associated with scrams. So long as the Limiting Condition for Operation of Technical Specification 3.1.4 is met, that is, there are no more than 10 slow control rods in the entire core or two operable ''slow'' rods occupying adjacent locations, all accident analysis assumptions are met and there is no reduction in any margin of safety. The proposed change does not impact the Technical Specification Limiting Condition for Operation or any other allowable operating condition. The potential for an increase in the probability of being outside acceptable operating conditions due to this proposed change is insignificant. Calculations have demonstrated that the likelihood of detecting four slow rods with proposed testing frequency over a fuel cycle is lower than that with the current testing frequency by a negligible amount. The difference is even smaller for detecting a greater number of slow rods over a cycle. Therefore, since there is no impact on allowable operating parameters and the likelihood of detecting significant numbers of slow rods is only negligibly affected, there is no significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket No. 50–10, Dresden Nuclear Power Station (DNPS), Unit 1, Grundy County, Illinois

Date of amendment request: August 1, 2002.

Description of amendment request: The proposed changes revise the Operating License to update references to plant documents and delete Technical Specification limiting conditions for required equipment and surveillance requirements that no longer apply or are being relocated to the DNPS Technical Requirements Manual. In addition, the proposed changes delete or revise administrative control and staffing requirements that either no longer apply or have changed due to the Unit 1 Fuel Storage Pool no longer containing irradiated fuel assemblies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accidents previously evaluated in the Defueled Safety Analysis Report (DSAR) affecting nuclear safety only involve the storage and handling of irradiated fuel. In each analyzed accident, irradiated fuel is assumed to be stored in the Dresden Nuclear Power Station (DNPS), Unit 1 Fuel Storage Pool. Since irradiated fuel has been permanently removed from the Unit 1 Fuel Storage Pool, the previously analyzed accidents are no longer credible, and therefore can not possibly occur. The proposed Technical Specifications (TS) changes delete requirements involving storage and handling of irradiated fuel, sealed source contamination, liquid radwaste storage radioactivity, written procedures, the Process Control Program and the unit staff, and reassign plant management responsibilities. The proposed Amended Facility Operating License (OL) changes are administrative in nature in that they only correct references to superseded plant documents. Based on the above, the proposed OL and TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes delete requirements involving storage and handling of irradiated fuel, sealed source contamination, liquid radwaste storage radioactivity, written procedures, the unit staff and the Process Control Program; and reassign plant management responsibilities. Deletion of requirements involving storage and handling of irradiated fuel is consistent with the current plant configuration with irradiated fuel permanently removed from the Unit 1 Fuel Storage Pool and stored in either the ISFSI [independent spent fuel storage installation] or the Unit 3 Spent Fuel Pool. Irradiated fuel in the ISFSI is controlled in accordance with 10 CFR [part] 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste.'' Irradiated fuel in the Unit 3 Spent Fuel Pool is controlled by the DNPS Units 2 and 3 TS in accordance with 10 CFR [part] 50, ''Domestic Licensing of Production and Utilization Facilities.'' Since accident

analysis for Unit 1 irradiated fuel is now controlled by either 10 CFR [part 72 or the DNPS Units 2 and 3 TS, the deletion of DNPS Unit 1 TS requirements involving storage and handling of irradiated fuel will not create new or different kinds of accidents. Relocation of requirements for liquid radwaste storage radioactivity and sealed source contamination will not create new or different kinds of accident[s] since the requirements will still be applicable, but specified in the DNPS Technical Requirements Manual (TRM) not the DNPS Unit 1 TS. Similarly, Process Control Program requirements are redundantly contained in the DNPS Units 2 and 3 Updated Final Safety Analysis Report (UFSAR). Therefore, deletion of requirements for the Process Control Program will not contribute to the creation of a new or different kind of accident from any accident previously evaluated. Deletion of requirements for written procedures and the unit staff, and reassignment of plant management responsibilities are administrative changes only and will not contribute to the creation of a new or different kind of accident from any accident previously evaluated. In addition, the proposed OL changes are also administrative in nature and will not contribute to the creation of a new or different kind of accident from any accident previously evaluated. The proposed changes do not physically alter the plant and will not alter the operation of the structures, systems, and components as described in the DSAR. Therefore, a new or different kind of accident from any accident previously evaluated will not be created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The removal of TS requirements involving storage and handling of irradiated fuel only corrects the TS to conform to the current plant conditions (*i.e.*, irradiated fuel permanently removed from the Fuel Storage Pool). Unit 1 irradiated fuel storage and handling is now controlled in accordance with either 10 CFR [part] 72 or the DNPS Units 2 and 3 TS (required by 10 CFR [part] 50), not the current DNPS Unit 1 TS. Thus, any changes to the DNPS Unit 1 TS involving storage and handling of irradiated fuel do not reduce any margin of safety. The relocation of the sealed source contamination and liquid storage radioactivity requirements from the DNPS Unit 1 TS to the DNPS TRM does not reduce any safety margin since the requirements still pertain. Process Control Program requirements are redundantly contained in the DNPS Units 2 and 3 UFSAR. Therefore, deletion of Process Control Program requirements from the DNPS Unit 1 TS does not reduce any safety margin since UFSAR changes are controlled under the provisions of 10 CFR 50.59, ''Changes, tests, and experiments.'' The deletion of written procedure requirements and unit staff requirements, and reassignment of plant management responsibilities are administrative changes only. In addition, the proposed OL changes are also administrative in nature in that they only correct references to obsolete plant documents. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Stephen Dembek.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: May 31, 2002.

Description of amendment request: The proposed amendment would provide specific actions and increase restoration time for an inoperable battery charger; relocate preventative maintenance surveillance requirements for the battery charger from the Technical Specifications (TSs) to the Technical Requirements Manual (TRM); replace battery specific gravity monitoring with battery float monitoring; relocate battery float voltage and battery cell voltage, level, and temperature from the TSs to the TRM, and revise the associated surveillance requirements; create a new battery monitoring and maintenance program; provide specific actions with increased restoration time for certain battery and battery cell parameter out-of-limits conditions; eliminate the once per 60-month restriction on crediting performance discharge test for service test and restrict its use to the modified performance discharge test; revise the duration of the battery charger service test from 8 hours to 4 hours; revise the frequency of the battery performance discharge test; and delete surveillance requirements that provide excessive detail.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The class 1E direct current (DC) electrical power system including associated battery chargers are not initiators to any accident sequence analyzed in the Updated Final Safety Analysis Report (UFSAR). Operation in accordance with the proposed Technical Specification (TS) ensures that the DC system is capable of performing its function as described in the UFSAR, therefore the mitigative functions supported by the DC system will continue to provide the protection assumed by the analysis. The relocation of preventive maintenance surveillances, certain operating limits and actions to either the Technical Requirements Manual (TRM), TS Bases, or newly-created TS 6.8.4.h, ''Battery Monitoring and Maintenance Program,'' will not challenge the ability of the DC system to perform its design function. Appropriate monitoring and maintenance, consistent with industry standards, will continue to be performed. In addition, the DC system is within the scope of 10 CFR 50.65, ''Requirements for monitoring the effectiveness of maintenance at nuclear power plants,'' which will ensure the control of maintenance activities associated with the DC system.

These changes do not involve any physical change to structures, systems, or components (SSCs) and do not alter the method of operation or control of SSCs. The current assumptions in the safety analysis regarding accident initiators and mitigation of accidents are unaffected by these changes. No additional failure modes or mechanisms are being introduced and the likelihood of previously analyzed failures remains unchanged.

The integrity of fission product barriers, plant configuration, and operating procedures as described in the UFSAR will not be affected by these changes. Therefore, the consequences of previously analyzed accidents will not increase because of these changes.

Based on the above discussion, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. These changes will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. Any alteration in procedures will continue to ensure that the plant remains within analyzed limits, and no change is being made to the procedures relied upon to respond to an off-normal event as described in the UFSAR. As such, no new failure modes are being introduced. The changes do not alter assumptions made in the safety analysis and licensing basis.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The margin of safety is established through equipment design, operating parameters, and

the setpoints at which automatic actions are initiated. The proposed changes are acceptable because the operability of the DC system is unaffected, there is no detrimental impact on any equipment design parameter, and the plant will still be required to operate within assumed conditions. Operation in accordance with the proposed TS ensures that the DC system is capable of performing its function as described in the UFSAR; therefore, the support of the DC system to the plant response to analyzed events will continue to provide the margins of safety assumed by the analysis. The relocation of preventive maintenance surveillances, certain operating limits and actions to either the TRM, TS Bases, or newly-created TS 6.8.4.h, ''Battery Monitoring and Maintenance Program,'' will not challenge the ability of the DC system to perform its design function. Appropriate monitoring and maintenance, consistent with industry standards, will continue to be performed. In addition, the DC system is within the scope of 10 CFR 50.65, ''Requirements for monitoring the effectiveness of maintenance at nuclear power plants,'' which will ensure the control of maintenance activities associated with the DC system. This provides sufficient management control of the requirements that assure the batteries are maintained in a highly reliable condition.

The increased restoration times and revised criteria for monitoring the capacity of the battery and battery chargers to perform their intended function, are reasonable and generally consistent with approved standards, guidance and regulations.

Based on the above discussion, the proposed TS changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Jacob I. Zimmerman, Acting.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Beaver County, Pennsylvania

Date of amendment request: May 31, 2002.

Description of amendment request: The proposed license amendment would revise the Technical Specifications (TSs) to allow the Unit No.1 core to be operated with a positive moderator temperature coefficient (PMTC). TS 3/4.1.1.4, ''Reactivity Control System—Moderator Temperature Coefficient (MTC),'' would be changed from the current MTC limit of 0×10^{-4} Δk/k/°F to $+0.2\times10^{-4}$ Δk/k/°F for power levels up to 70 percent of Rated Thermal Power (RTP) and then ramping lineally from $+0.2\times10^{-4}$ Δk/k/°F at 70 percent RTP to 0×10^{-4} Δk/k/°F at 100% RTP. This change is being requested to address future core design requirements associated with plant operations at higher capacity factors. The amendment would include editorial and format changes as well as repagination in order to incorporate the revision into the TSs.

Basis or proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change from a moderator temperature coefficient (MTC) limit of 0×10^{-4} Δk/k/°F to a positive moderator temperature coefficient (PMTC) of $+0.2 \times 10^{-4}$ Δk/k/°F does not introduce an initiator of any design basis accident or event. The proposed change does not adversely affect accident initiators or precursors nor alter the configuration of the facility or the manner in which the plant is maintained. Thus, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed change to a PMTC does not alter or prevent the ability of structures, systems and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change is consistent with the safety analysis assumptions and resultant consequences. Accident analyses affected by the proposed change have been reanalyzed and all applicable acceptance criteria have been met. Thus, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The change to a PMTC does not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed), subsequently no new or different failure modes or limiting single failures are created. The plant will not be operated in a different manner due to the proposed change. All SSCs will continue to function as currently designed. Thus, the proposed change does not create any new or different accident scenarios.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change to a PMTC does not involve revisions to any safety limits or safety system settings that would adversely impact plant safety. The proposed amendment does not alter the functional capabilities assumed in a safety analysis for any SSCs important to the mitigation and control of design bases accident conditions within the facility.

All of the applicable acceptance criteria (*i.e.*, preventing reactor coolant system [RCS] or main steam system overpressurization, maintaining the minimum departure from nucleate boiling ratio [DNBR], preventing core uncovery, preventing fuel temperatures from exceeding their limit, preventing clad damage, and limiting the number of fuel rods that enter a departure from nucleate boiling [DNB] condition) for each of the analyses affected by the proposed change continue to be met. The conclusions of the Updated Final Safety Analysis Report (UFSAR) remain valid. Thus, since the operating parameters and system performance will remain within design requirements and safety analysis assumptions, safety margin is maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard J. Laufer.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Sation, Unit 2, Beaver County, Pennsylvania

Date of amendment request: July 24, 2002.

Description of amendment request: The proposed license amendment would revise the Beaver Valley Power Station, Unit No. 2, (BVPS 2) Technical Specifications (TS) Surveillance Requirement (SR) 4.7.1.5 to change the valve stroke time limit for full closure of each Main Steam Isolation Valve (MSIV) to within 6 seconds from its current 5-second limit. The amendment would also replace the quarterly partial stroke exercise requirement with criteria to test each MSIV pursuant to Specification 4.0.5. TS 4.0.5 requires testing in accordance with Section 11 of the American Society of Mechanical Engineering (ASME) Code.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes to the surveillance criteria for the Main Steam Isolation Valves (MSIVs) do not introduce any new initiator of a design basis accident. These proposed changes do not involve any physical modifications to the MSIVs. The proposed changes do not adversely affect accident initiators or precursors nor alter the configuration of the facility or the manner in which the plant is maintained. The proposed frequency change would reduce the potential for an (inadvertent) event initiator of full MSIV closure and resulting plant transient while retaining a sufficient test frequency to identify potential MSIV malfunctions, based on industry operating experience. Thus, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes are consistent with the safety analyses assumptions and resultant consequences. Accident analyses potentially affected by the proposed change have been reviewed and all applicable acceptance criteria continue to be met. Thus, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change to the surveillance criteria for MSIVs do not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed). Subsequently, no new or different failure modes or limiting single failures are created. The plant will not be operated in a different manner due to the proposed change. All SSCs will continue to function as currently designed. Thus, the proposed changes do not create any new or different accident scenarios.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change to the surveillance criteria for MSIVs do not involve revisions to any safety limit or safety system settings that would adversely impact plant safety. The proposed amendment does not alter the functional capabilities assumed in a safety analysis for any SSCs important to the mitigation and control of design basis accident conditions within the facility. The proposed frequency change would reduce the potential for an (inadvertent) event initiator of full MSIV closure and resulting plant transient while retaining a sufficient test frequency to identify potential MSIV malfunctions, based on industry operating experience.

All of the applicable acceptance criteria for each of the analyses affected by the proposed changes continue to be met. The conclusions of the Updated Final Safety Analysis Report (UFSAR) remain valid. Thus, since the operating parameters and system performance will remain within designed requirements and safety analysis assumptions, safety margin is maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard J. Laufer.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Sation, Unit 2, Beaver County, Pennsylvania

Date of amendment request: May 31, 2002.

Description of amendment request: The proposed license amendment would revise the Beaver Valley Power Station (BVPS) Unit No. 2 Technical Specification (TS) Design Feature 5.3.1, Criticality, where the new fuel (fresh fuel) racks enrichment limit specified in Section 5.3.1.2.a would be increased to 5.00 weight percent (w/o) from its current 4.85 w/o limit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change to the new fuel storage racks enrichment limit does not introduce an initiator of any design basis accident. The text change on [the] tolerance is added for clarification of the criteria associated with [the] new fuel enrichment limit. The proposed changes do not adversely affect accident initiators or precursors nor alter the configuration of the facility or the manner in which the plant is maintained. Thus, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

The proposed changes do not alter or prevent the ability of structures, systems and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptable limits. The proposed changes are consistent with the safety analyses assumptions and resultant consequences. Accident analyses potentially affected by the proposed change have been reviewed and all applicable acceptance criteria continue to be met. Thus, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change to the new fuel storage racks enrichment limit and its associated text clarifications do not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed). Subsequently, no new or different failure modes or limiting single failures are created. The plant will not be operated in a different manner due to the proposed change. All SSCs will continue to function as currently designed. Thus, the proposed changes do not create any new or different accident scenarios.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change to the new fuel storage racks enrichment limit and its associated text clarifications do not involve revisions to any safety limit or safety system settings that would adversely impact plant safety. The proposed amendment does not alter the functional capabilities assumed in a safety analysis for any SSCs important to the mitigation and control of design basis accident conditions within the facility.

All of the applicable acceptance criteria for each of the analyses affected by the proposed changes continue to be met. The conclusions of the Updated Final Safety Analysis Report (UFSAR) remain valid. Thus, since the operating parameters and system performance will remain within design requirements and safety analysis assumptions, safety margin is maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard J. Laufer.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: November 21, 2001, as supplemented January 25, 2002, and August 15, 2002.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS)

Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from ''* * * up to 24 hours to permit completion of the surveillance when the allowable outage time limits of the ACTION requirements are less than 24 hours'' to ''* * * up to 24 hours or up to the limit of the specified frequency, whichever is greater.'' In addition, the following requirement would be added to SR 4.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.'' The proposed amendments are consistent with TS Task Force traveler TSTF–358, which has been approved by the NRC. The TS Bases will be revised under the licensee's existing TS Bases control program to be consistent with TSTF–358. Lastly, a proposed administrative change moves two sentences dealing with operability requirements from SR 4.0.3 to SR 4.0.1 to make the revised TS consistent with the Standard TS for Combustion Engineering plants.

With regard to the first two changes, the NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the model NSHC determination in its application dated November 21, 2001, as supplemented January 25, 2002, and August 15, 2002.

With respect to the administrative changes, the licensee provided an additional NSHC determination in its August 15, 2002, supplement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration for the changes associated with extending the delay period for a missed surveillance is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for the proposed administrative changes, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments are administrative in nature and they do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. These proposed changes do not change the existing administrative controls on performance of Surveillance Requirements. The changes only relocate the existing requirements to SR 4.0.1 to closely conform to the Standard Technical Specifications. Further, the proposed changes do not alter the design, function, or operation of any plant component. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed are administrative in nature and do not introduce a new mode of plant operation or surveillance requirement, nor involve a physical modification to the plant. Therefore, the design, function, or operation of any plant component is not altered. The changes propose to relocate specific controls from SR 4.0.3 to SR 4.0.1 to closely conform to the Standard Technical Specifications. Therefore, operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes conform closely to the industry and NRC approved TSTF–358 and relates to the relocation of TS specific controls for Surveillance Requirements from SR 4.0.3 to SR 4.0.1. The specific controls are not changed only relocated to closely conform to the Standard Technical Specifications. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Kahtan N. Jabbour, Acting.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: August 15, 2002.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) Section 6.8.4.h, Containment Leakage Rate Testing Program, to allow a one-time 5-year extension to the current 10-year test interval for the containment integrated leak rate test (ILRT). The proposed changes are submitted on a risk-informed basis as described in Regulatory Guide 1.174, *An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis.* The risk-informed analysis supporting the proposed changes indicates that the increase in risk from extending the ILRT test interval from 10 to 15 years is insignificant.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendments of the Technical Specifications add a one time extension to the current surveillance interval for Type A testing (ILRT). The current test interval of 10 years, based on performance history, would be extended on a one time basis to 15 years from the last Type A test. The proposed extension to Type A testing cannot increase the probability of an accident previously evaluated since the containment Type A test is not a modification, nor a change in the way that plant systems, structures, or components (SSC) are operated, and is not an activity that could lead to equipment failure or accident initiation. The proposed extension of the test interval does not involve a significant increase in the consequences of an accident since research documented in NUREG–1493, *Performance Based Containment Leak-Test Program,* has found that generically, very few potential leak paths are not identified with Type B and C tests. NUREG–1493 concluded that an increase in the test interval to 20 years resulted in an imperceptible increase in risk. St. Lucie Units 1 and 2 provide a high degree of assurance through testing and inspection that the containment will not degrade in a manner only detectable by Type A testing. Inspections required by the ASME code and the Maintenance Rule are performed in order to identify indications of containment degradation that could affect leak-tightness. Type B and C testing required by 10 CFR part 50 part Appendix J are not affected by this proposed extension to the Type A test interval and will continue to identify containment penetrations leakage paths that would otherwise require a Type A test.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not result in operation of the facility that would create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed extension to Type A testing does not create a new or different type of accident for St. Lucie because no physical plant changes are made and no compensatory measures are being imposed that could potentially lead to a failure. There are no operational changes that could introduce a new failure mode or create a new or different kind of accident. The proposed changes only add a one time extension to the current interval for Type A testing and do not change implementation aspects of the test.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes would not result in operation of the facility involving a significant reduction in a margin of safety. The proposed license amendments add a one time extension to the current interval for Type A testing. The current test interval of 10 years, based on historical performance, would be extended on a one time basis to 15 years from the last Type A test. The NUREG–1493 generic study of the effects of extending the Type A test interval out to 20 years concluded that there is an imperceptible increase in plant risk. Further, the extended test interval would have a minimal affect on such risk since Type B and C testing detect over 95 percent of potential leakage paths. A plant specific risk calculation, as part of the CEOG [Combustion Engineering Owners Group] joint application report, on this topic obtained results consistent with the generic conclusions of NUREG–1493. The overall increase in risk contribution was determined as 0.49 percent for Unit 1 and 0.30 percent for Unit 2.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Kahtan N. Jabbour, Acting.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: July 23, 2002.

Description of amendment requests: The proposed amendments would revise certain 18 month surveillance requirements by eliminating the condition that testing be conducted ''during shutdown,'' or ''during the *cold shutdown* or *refueling mode''* (*i.e.*, shutdown conditions).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

Probability of Occurrence of an Accident Previously Evaluated

The proposed change would eliminate the requirement to perform certain 18-month surveillance tests during a shutdown condition. These surveillance tests verify that equipment will perform its intended safety function of mitigating an accident. Performing the surveillance tests during power operation does not affect any existing accident initiators or precursors. The proposed change will not create any adverse interactions with other systems that could result in initiation of a design basis accident. The format and capitalization changes are proposed to improve readability and appearance, and do not alter any requirements. Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased.

Consequences of an Accident Previously Evaluated

The proposed change does not reduce the ability of the mitigating equipment to perform its safety function. The [technical specification] TS will continue to require the surveillance tests be performed on an 18 month periodicity to verify operability. One train will be verified as operable prior to testing equipment in the other train, thereby making it available to mitigate an accident. The accident analyses assume only one train is operable in the event of an accident. As a

result, the ability of the mitigating equipment to perform its safety function is unaffected by the proposed change. The format and capitalization changes are proposed to improve readability and appearance, and do not alter any requirements. Therefore, the safety related systems and components that are supported by the equipment to mitigate the consequences of an accident are not affected by the proposed change.

In summary, the probability of occurrence and the consequences of an accident previously evaluated are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not create any new or different accident initiators or precursors. The mitigating equipment will continue to function as before the change, and will continue to be tested at the same surveillance test interval for operability. The proposed change does not create any new failure modes for the mitigating equipment and does not affect the interaction between the equipment and any other system. The format and capitalization changes are proposed to improve readability and appearance, and do not alter any requirements. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margins of safety applicable to the proposed change are those associated with the capability of the mitigating equipment to perform its safety function. The proposed change allows the surveillance test to be performed during power operation without significantly reducing the capability of the mitigating equipment to perform in accordance with its safety margin. The format and capitalization changes are proposed to improve readability and appearance, and do not alter any requirements. Therefore, the proposed change does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, *Esq.,* 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: July 31, 2002.

Description of amendment requests: The proposed change will revise Diablo Canyon Power Plant (DCPP) Technical Specification (TS) 5.6.6, ''Reactor Coolant System (RCS) Pressure and Temperature Limits Report (PTLR),'' to reference WCAP–14040–NP–A, ''Methodology Used to Develop Cold Overpressure Mitigating System Setpoints and RCS Heatup and Cooldown Limit Curves,'' as the approved methodology for the PTLR.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification (TS) changes provide the reference for the NRC approved methodology for the Diablo Canyon Power Plant (DCPP) Pressure And Temperature Limits Report (PTLR). The TS and PTLR were developed using the guidance of NRC Generic Letter (GL) 96–03, ''Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits,'' dated January 31, 1996, which provides guidance on relocating reactor coolant system (RCS) pressure/temperature (P/T) limit curves and low-temperature overpressure (LTOP) system limits from TS to a PTLR. NRC approval of the DCPP specific application of the PTLR methodology will allow PG&E [Pacific Gas and Electric Company] to use the approved PTLR methodology in the future to calculate new P/T and LTOP limits without prior NRC staff approval.

The proposed PTLR was developed using methodology previously approved by the NRC, primarily WCAP–14040–NP–A, Revision 2, ''Methodology Used to Develop Cold Overpressure Mitigating System Setpoints and RCS Heatup and Cooldown Limit Curves,'' dated January 1996. PG&E has evaluated this methodology and concludes it is applicable for use at DCPP. As a result, use of this methodology does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change completes relocation of the RCS P/T and LTOP limits from the TS to the PTLR. The DCPP PTLR submitted with this amendment has been developed primarily using the NRC-approved methodology of WCAP–14040–NP–A, Revision 2.

The proposed change makes no changes to plant equipment, and does not physically alter or change the function of any structures, systems or components that could initiate an accident. Through the PTLR, it provides operational controls to assure that current RCS P/T and LTOP limits are not violated. It provides for use of NRC-approved methodology for changing the RCS P/T and LTOP limits in the future without requiring prior NRC approval. As a result, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change completes relocation of the RCS P/T and LTOP limits from the TS to the PTLR, and submits the DCPP PTLR methodology for NRC approval. The DCPP PTLR submitted with this amendment has been developed using the methodology of WCAP–14040–NP–A, Revision 2, which has previously been approved by the NRC.

The proposed change makes no changes to plant equipment, and does not physically alter or change the function of any structures, systems or components that could affect any margin of safety. Through the PTLR, it provides operational controls to assure that current RCS P/T and LTOP limits are not violated. It provides for use of NRC approved methodology for changing the RCS P/T and LTOP limits in the future without requiring prior NRC approval. As a result, the proposed change has no affect on any margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: July 19, 2002.

Brief description of amendment request: The proposed amendment would revise Technical Specification Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours'' to ''* * * up to 24 hours or up to the limit of the specified surveillance interval, whichever is greater.'' In addition, the following requirement would be added to SR 4.0.3: ''A risk evaluation shall be performed for any surveillance delayed greater than 24 hours and the risk impact shall be managed.'' The proposed amendment would also make administrative changes to SRs 4.0.1 and 4.0.3 to be consistent with NUREG–1432, Revision 2.

Date of publication of individual notice in the ***Federal Register:*** August 22, 2002 (67 FR 54497).

Expiration date of individual notice: September 23, 2002.

Duke Energy Corporation, et al., (the Licensee) for Operation of the Catawba Nuclear Station, Units 1 and 2, Docket Nos. 50–413 and 50–414 , and McGuire Nuclear Station, Units 1 and 2, Docket Nos 50-369 and 50–370, located in York County, South Carolina and Mecklenburg County, North Carolina

Date of amendment request: October 7, 2001, as supplemented by letter dated August 7, 2002.

Brief description of amendment request: The proposed amendments would revise Technical Specification (TS) 5.6.5 regarding the Core Operating Limits Report (COLR). TS 5.6.5.a lists the parameters for which the limiting values have been relocated by previous TS amendments from the TS to the COLR. Specifically, for both Catawba and McGuire Nuclear Stations, the amendments would revise the TS 5.6.5.a by (1) adding ''60 ppm'' to Item 5.6.5.a.1 regarding the moderator temperature coefficient (MTC) surveillance limit for Specification 3.1.3, and (2) by adding Item 5.6.5.a.12, ''31 EFPD [effective full-power day] surveillance penalty factors for Specifications 3.2.1 and 3.2.2.'' In addition, for Catawba Nuclear Station, the amendments would add Item 5.6.5.a.13, ''Reactor makeup water pumps combined flow rates limit for Specifications 3.3.9 and 3.9.2.''

The limiting values for these parameters were previously relocated from the TS to the COLR without the parameter identifier being retained in the TS. Inclusion of the parameter identifier in the TS will improve consistency between the TS and the COLR. The amendments would also change Bases 3.2.1 and 3.2.3 to remove the specific date of the referenced topical report.

Date of publication of individual notice in the ***Federal Register:*** August 23, 2002 (67 FR 54680).

Expiration date of individual notice: September 23, 2002.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: May 14, 2002.

Brief description of amendment request: The proposed changes would modify technical specification (TS) requirements for a missed surveillance through revision of Specifications 4.0.1 and 4.0.3. The delay period would be extended from the current limit of ''* * * up to 24 hours to permit the completion of the surveillance when the allowable outage time limits of the ACTION requirements are less than 24 hours'' to ''* * * up to 24 hours or up to the limit of the specified Surveillance time interval, whichever is greater.'' In addition, the following requirement would be added to Surveillance Requirement 4.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.'' The proposed revision would also add a TS Bases Control Program to the Limerick Generating Station (LGS) TS.

The proposed amendment would make administrative changes to TS 6.2.2.g to revise the designation of which manager in the operations department shall hold a senior reactor operator license and to TS 6.5.1.2 to revise the LGS Plant Operations Review Committee (PORC) member composition.

Date of publication of individual notice in the ***Federal Register:*** August 27, 2002 (67 FR 55041).

Expiration date of individual notice: September 26, 2002.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: September 10, 2001.

Brief description of amendment: The amendment revised the requirements in Technical Specification Section 3.9, changing the number of operable source range monitors (SRMs) from one SRM nearest the core alteration to two SRM channels, one with its detector located in the core quadrant where core alterations are being performed, and

another with its detector located in an adjacent quadrant.

Date of Issuance: September 5, 2002.

Effective date: As of the date of issuance, to be implemented within 30 days of issuance.

Amendment No.: 229.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in the ***Federal Register:*** November 28, 2001 (66 FR 59501). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 5, 2002.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: March 25, 2002.

Brief Description of amendments: The proposed amendment would revise Surveillance Requirement 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance at the Brunswick Steam Electric Plant, Units 1 and 2.

Date of issuance: August 26, 2002.

Effective date: As of date of issuance and shall be implemented within 60 days from date of issuance.

Amendment Nos.: 224 and 249.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the Technical Specifications.

Date of initial notice in the ***Federal Register:*** May 28, 2002 (67 FR 36927). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 26, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: October 1, 2001 as supplemented on May 13 and July 1, 2002.

Brief description of amendment: The amendment modifies the Millstone Power Station, Unit No. 3 Technical Specifications to increase the emergency diesel generator (EDG) allowed outage time, to perform a verification of the offsite circuits within 1 hour prior to, or after entering, the condition of either an inoperable offsite source or inoperable EDG, to revise the requirements for the pressurizer heaters and the pressurizer power operated relief and block valves, and to improve the format of the electrical power sources action requirements.

Date of issuance: August 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 210.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in the ***Federal Register:*** January 22, 2002 (67 FR 2920). The May 13 and July 12, 2002, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination and was within the scope of the original application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: March 26, 2002, as supplemented by letter dated June 3, 2002.

Brief description of amendments: The amendments revise the Technical Specification section 1.1, ''Definitions,'' to eliminate response time testing requirements for selected sensors and specified instrumentation loops for the engineered safety features system and the reactor trip system.

Date of issuance: August 23, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 206/187.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in the ***Federal Register:*** April 30, 2002 (67 FR 21286). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 23, 2002.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: February 20, 2001, as supplemented by letters dated July 5, 2001, March 28, 2002, and June 14, 2002.

Brief description of amendment: The amendment consists of changes to Columbia Generating Station Physical Security Plan pertaining to the independent spent fuel storage facility installation (ISFSI).

Date of issuance: August 27, 2002.

Effective date: August 27, 2002, and shall be implemented within 30 days from the date of issuance.

Amendment No.: 178.

Facility Operating License No. NPF–21: The amendment revised the operating license.

Date of initial notice in the ***Federal Register:*** April 4, 2002 (66 FR 17966). The July 5, 2001, September 13, 2001, March 28, 2002, and June 14, 2002, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 2002.

The Safety Evaluation contains Safeguards information and is not publicly available.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: June 21, 2001, as supplemented on February 8, 2002.

Brief description of amendment: The amendment revises the control rod block instrumentation requirements contained in Technical Specifications (TS) 2.1.B, Figure 2.1.1, and Tables 3.2.5 and 4.2.5. Some of the control rod block trip functions are being relocated to the Vermont Yankee Technical Requirements Manual and some of the requirements for the retained trip functions are clarified. Two trip functions are being added to the TSs.

Date of issuance: August 27, 2002.

Effective date: As of the date of issuance, and shall be implemented within 90 days.

Amendment No.: 211.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in the ***Federal Register:*** March 19, 2002 (67 FR 12608). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 27, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: June 12, 2002.

Brief description of amendment: The amendment revises Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: August 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 152.

Facility Operating License No. NPF–29: The amendment revises the Technical Specifications.

Date of initial notice in the ***Federal Register:*** July 23, 2002 (67 FR 48217). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: February 15, 2002, as supplemented by letter dated June 25, 2002.

Brief description of amendments: These amendments revised the reactor water cleanup system (RWCS) steam leak detection temperature isolation actuation instrumentation setpoints contained in Table 3.3.2–2 concerning items 3.b and 3.c for RWCS area temperature—high and RWCS area ventilation differential temperature—high.

Date of issuance: August 30, 2002.

Effective date: As of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 161/123.

Facility Operating License Nos. NPF–39 and NPF–85: The amendments revised the Technical Specifications.

Date of initial notice in the ***Federal Register:*** June 11, 2002 (67 FR 40024). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 30, 2002.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: January 25, 2002.

Brief description of amendments: The amendments revise the Technical Specifications, Appendix B, ''Environmental Protection Plan (Non-Radiological)'' to incorporate by reference the revised terms and conditions of the Incidental Take Statement included in the Biological Opinion issued by the National Marine Fisheries Service (NMFS) on May 4, 2001, as modified by NMFS letter dated October 8, 2001. They also incorporate administrative revisions necessary to change references to the National Pollutant Discharge Elimination System Permit to the Wastewater Permit, based on a change in administrative authority over these permits.

Date of issuance: August 28, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 183 and 126.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in the ***Federal Register:*** February 19, 2002 (67 FR 7419). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 28, 2002.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: May 23, 2002, as supplemented July 15, 2002.

Brief description of amendments: Revised Technical Specifications to remove the requirement for operability of certain systems when handling fuel assemblies that have decayed a sufficient period of time such that dose consequences of the postulated fuel handling accident remain below the limits of 10 CFR part 100 and the NRC Standard Review Plan with these systems unavailable.

Date of issuance: August 30, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 184 and 127.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in the ***Federal Register:*** June 25, 2002 (67 FR 42827). The July 15, 2002, supplement did not affect the original proposed no significant hazards determination, or expand the scope of the request as noticed in the **Federal Register**. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 30, 2002.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: June 28, 2002.

Brief description of amendment: The amendment revises Section 6.14, ''Systems Integrity,'' of the Technical Specifications to eliminate the Post Accident Sampling System (PASS) as a potential leakage path outside the primary containment. In addition, the amendment supersedes the previous requirements for installing and maintaining the PASS, which were imposed by NRC confirmatory orders dated March 14, 1983, and June 12, 1984.

Date of issuance: August 26, 2002.

Effective date: August 26, 2002.

Amendment No.: 174.

Facility Operating License No. DPR–63: Amendment revised the Technical Specifications.

Date of initial notice in the ***Federal Register:*** July 23, 2002 (67 FR 48219). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 2002.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: March 15, 2002.

Brief description of amendment: The amendment revised Section 4.6.4, ''Shock Suppressors (Snubbers),'' following the guidance of Generic Letter 90–09, ''Alternative Requirements for Snubber Visual Inspection and Corrective Actions,'' dated December 11, 1990.

Date of issuance: August 28, 2002.

Effective date: As of the date of its issuance and shall be implemented prior to the spring 2003 refueling outage.

Amendment No.: 175.

Facility Operating License No. DPR–63: Amendment revised the Technical Specifications.

*Date of initial notice in the **Federal Register:*** April 16, 2002 (67 FR 18645). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 28, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: September 27, 2001, as supplemented by letter dated May 14, 2002.

Brief description of amendment: The amendment (1) revises the diesel fuel supply volume required for diesel generator (DG) operability, (2) clarifies existing wording in the Technical Specifications (TS), (3) adds a TS limiting condition for operation (LCO), and a TS Surveillance Requirement (SR) regarding the DG air receivers, (4) deletes a current TS SR concerning DG starting air compressors, and (5) restructures and renumbers the TS LCOs and SR for applicability and administrative purposes.

Date of issuance: August 27, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 129.

Facility Operating License No. DPR–22: Amendment revised the Technical Specifications.

*Date of initial notice in the **Federal Register:*** October 17, 2001 (66 FR 52801). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: May 29, 2002, as supplemented July 12, 2002.

Brief description of amendments: These amendments revise Technical Specification 3.8.1, ''AC Sources—Operating,'' to allow portions of Surveillance Requirement 3.8.1 to be performed with the units in Mode 1, 2, 3, or 4. The proposed amendments are consistent with changes made to NUREG–1431, Standard Technical Specifications, Westinghouse Plants, by Technical Specification Task Force (TSTF) Traveler, TSTF–283, Revision 3.

Date of issuance: August 29, 2002.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 204 and 209.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

*Date of initial notice in the **Federal Register:*** July 9, 2002 (67 FR 45571). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 29, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: March 20, 2002.

Brief description of amendments: The amendments revise Technical Specification 3.7.8 to allow the service water (SW) system to be operable with five operable SW pumps, provided one unit is in Mode 5 or 6, or defueled, and the SW system is capable of providing the required cooling water flow to required equipment.

Date of issuance: August 29, 2002.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 205 and 210.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

*Date of initial notice in the **Federal Register:*** May 14, 2002 (67 FR 34490). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 29, 2002.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: July 24, 2001, as supplemented April 4, 2002, May 7, 2002, June 17, 2002, July 2, 2002, July 15, 2002, and July 25, 2002.

Brief description of amendment: This amendment increases the spent fuel pool storage capacity by replacing all 11 existing rack modules with 12 new storage racks. The rerack increases the storage capacity from 1,276 storage cells to 1,712 storage cells. The degrading Boraflex neutron-absorbing material in the existing racks will be replaced by Boral material that will be used in the new racks.

Date of issuance: August 30, 2002.

Effective date: August 30, 2002.

Amendment No.: 160.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

*Date of initial notice in the **Federal Register:*** June 25, 2002 (67 FR 42810), and repeated on August 20, 2002 (67 FR 53993). The supplements listed above contained clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 2002.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 10, 2001, as supplemented by letter dated May 23, 2002.

Brief description of amendments: The amendments revise Technical Specifications (TSs) Surveillance Requirements (SRs) 4.0.1 and 4.0.3, and incorporate a Bases Control Program in new TS 6.8.3m, in accordance with the U. S. Nuclear Regulatory Commission (NRC) staff's position on missed surveillances as described in TS Task Force—358, Revision 6. The change to SR 4.0.3 extends the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours'' to ''* * * up to 24 hours or up to the limit of the specified surveillance interval, whichever is greater.'' In addition, the following requirement is added to SR 4.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.'' In addition to revising SR 4.0.3, part of SR 4.0.3 is relocated to SR 4.0.1 and SR 4.0.1 is revised to conform to wording contained in the improved Standard TSs.

Date of issuance: August 27, 2002.

Effective date: August 27, 2002.

Amendment Nos.: Unit 1–141; Unit 2–129.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

*Date of initial notice in the **Federal Register:*** February 5, 2002 (67 FR 5337). The May 23, 2002, supplemental letter provided clarifying information that was within the scope of the original

Federal Register notice and did not change the staff's initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 2002.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: November 29, 2001, as supplemented June 18, 2002.

Brief description of amendment: These amendments establish a new operating domain for the containment partial pressure.

Date of issuance: September 5, 2002.

Effective date: As of the date of issuance and shall be implemented at the end of the Cycle 16/17 refueling outage for Unit 1, and at the end of the Cycle 15/16 refueling outage for Unit 2.

Amendment Nos.: 232/214.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments change the Technical Specifications.

*Date of initial notice in the **Federal Register:*** April 30, 2002 (67 FR 21295). The June 18, 2002, supplement contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial application. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 5, 2002.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket No. 50–339, North Anna Power Station, Unit 2, Louisa County, Virginia

Date of application for amendment: February 11, 2002, as supplemented May 16, 2002.

Brief description of amendment: This amendment revises the Facility Operating License (FOL) to allow the operation of one lead test assembly containing zirconium-based alloy for one cycle, with a lead rod burnup not to exceed 75,000 MWD/MTU.

Date of issuance: September 4, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 213.

Facility Operating License No. NPF–7: Amendment changes the FOL.

*Date of initial notice in the **Federal Register:*** April 30, 2002 (67 FR 21296). The May 16, 2002, supplement contained clarifying information only, and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 4, 2002.

No significant hazards consideration comments received: No

Dated at Rockville, Maryland, this 6th day of September, 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–23358 Filed 9–16–02; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Limited Exception to the Postal Service's Voter Registration Regulations

ACTION: Notice.

SUMMARY: The Postal Service is publishing notice that it is providing a temporary exception to postal regulations in 39 CFR 232.1, which prescribe the conditions under which voter registration may take place on postal property. Specifically, we are providing a limited exception to the requirement in 39 CFR 232.1(h)(4)(viii) that confines registration activities to an ''appropriate period before an election.''

DATES: The exception is effective when published in the Postal Bulletin (issue 22083) on September 5, 2002.

ADDRESSES: You can view the Postal Bulletin article online at *http://www.usps.com/cpim/ftp/bulletin/pb.htm.*

FOR FURTHER INFORMATION CONTACT: Susan Koetting, 202–268–4818.

SUPPLEMENTARY INFORMATION:

Questions and Answers About the Temporary Exception

The Postal Service is providing a temporary exception to the requirement in 39 CFR 232.1(h)(4)(viii) that confines registration activities to an ''appropriate period before an election.'' Information about the exception is provided as follows in a question-and-answer format:

Why Is the Postal Service Providing the Exception?

Beginning in September 2002 and continuing for a little over 2 years, the Postal Service is participating in the Declaration of Independence Road Trip (Road Trip), a nonpartisan public information and voter registration campaign. The Postal Service is mainly participating in this event by transporting one of the original broadsheets of the Declaration of Independence between display locations around the nation. Although most of the activities associated with the Road Trip will not be held on postal property, it is possible that some might. Any voter registration activities associated with the Road Trip that take place on postal property must comply with the Postal Service's voter registration regulations, except that for the purposes of the Road Trip only, the Postal Service will not require associated voter registration activities that may take place on postal property to be ''limited to an appropriate period before an election.''

How Long Will the Exception Be in Effect?

The Postal Service has allowed a temporary exception to 39 CFR 232.1(h)(4)(viii) through November of 2004, which is the scheduled end of the Road Trip.

Does the Exception Affect All of the Regulations Concerning Conduct on Postal Property?

No. The exception applies only to the single provision in 39 CFR 232.1(h)(4)(vii), which limits registration activities to ''an appropriate period before an election.'' The exception only applies to activities related to the Road Trip. All other voter registration activities that may take place on postal property must comply with the Postal Service's voter registration regulations as written in 39 CFR 232.1(h)(4)(viii).

Who Should I Contact for More Information About the Exception?

For more information about the exception, contact Susan Koetting at 202–268–4818.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–23610 Filed 9–16–02; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46474; File No. 4–208]

Intermarket Trading System; Order Granting Approval of the Nineteenth Amendment to the ITS Plan Relating to the Philadelphia Stock Exchange, Inc.'s Implementation of a Remote Specialist Program

On May 3, 2002, the Intermarket Trading System Operating Committee (''ITSOC'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 11A3a3–2 thereunder,[2] a proposed amendment (''Nineteenth Amendment'') to the restated ITS Plan.[3] The proposed amendment recognized the Phlx's implementation of a remote specialist program. Notice of the proposed amendment appeared in the **Federal Register** on June 26, 2002.[4] The Commission received no comments on the proposed amendment. This order approves the proposed amendment.

The proposed amendment recognizes the Phlx's implementation of its remote specialist program.[5] Specifically, the ITSOC proposes to amend Sections 1 (''Definitions''), 6(a)(i)(A) (''Receipt of Quotations''), 6(a)(ii) (''Description of ITS Transactions''), and 8(a) (''System Access'') of the ITS Plan to include references regarding the premises of Phlx Remote Specialists on which ITS stations are located, and define the terms ''Phlx Remote Specialist,''[6] ''Phlx Registered Specialist,''[7] and ''Phlx Designated Specialist.''[8]

The Commission finds that the proposed amendment is consistent with the Act and the rules and regulations thereunder applicable to the ITS and, in particular, Sections 11A(a)(1)(C)(ii) and (D) of the Act,[9] and Rule 11A3–2(c)(2) thereunder,[10] which require among other things, that a plan amendment must be necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and shall remove impediments to, and perfect the mechanisms of, a national market system.

The proposal provides for the recognition of the Phlx's use of remote specialists to carry out their specialist operations off the floors of the Phlx, similar to the BSE and the PCX.[11] The Commission believes that the proposed amendment should improve the efficiency and reliability of ITS.

It is therefore ordered, pursuant to Section 11A(a)(3)(B) of the Act,[12] that the proposed Nineteenth Amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23605 Filed 9–16–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] The ITS is a National Market System (''NMS'') plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

The ITS Participants include the American Stock Exchange LLC (Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Chicago Stock Exchange, Inc. (''CHX''), the Cincinnati Stock Exchange, Inc. (''CSE''), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc. (''NYSE''), the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (''Participants'').

[4] *See* Securities Exchange Act Release No. 46091 (June 19, 2002), 67 FR 43182.

[5] *See* Securities Exchange Act Release No. 45184 (December 21, 2001), 67 FR 622 (January 4, 2002) (order approving SR–Phlx–2001–98).

[6] The term ''Phlx Remote Specialist'' is defined in the proposed amendment as a Phlx Registered Specialist who is authorized by Phlx Rule 461 to conduct his/her regular specialist trading activities at remote locations off the floor of the Phlx.

[7] The term ''Phlx Registered Specialist'' is defined in the proposed amendment as a Phlx member who has been appointed and registered pursuant to Phlx Rule 202 to act as a market maker in one or more securities traded through ITS.

[8] The term ''Phlx Designated Specialist'' is defined in the proposed amendment as a Phlx Registered Specialist appointed by the Phlx to coordinate the handling of commitments to trade received by the Phlx.

The Designated Specialist (''DS'') is responsible for responding to incoming ITS Commitments. In the case of a Commitment that has been divided among more than one Specialist, the DS is (a) the Specialist who has been allocated the largest individual portion of the Commitment pursuant to the split, or (b) if two or more Specialists each receives an equal amount of the Commitment split which is larger than the amount allocated to any other Specialist, the Specialist who first quoted the volume. Any portion of the Commitment that remains unallocated after the Commitment split (the ''Remaining Portion'') is made available for execution by the Primary Specialist and the Remaining Portion is ignored for purposes of determining the Designated Specialist.

Inbound ITS Commitment volume is split based on PHLX ''available volume'' at the time the Commitment arrives, which may consist of two or more Specialists. The ''available volume'' is (1) the displayed bid or offer size, plus (2) any non-displayed automatic matchable interest (in each case, less any volume that has been marked by the system as unavailable because of either a trade that has occurred or because of another incoming Commitment that was received prior to the arrival of the Commitment with respect to which the split is being made).

Automatic matchable interest represents manually quoted interest and round lot limit order volume other than (a) block limit orders that have not been displayed, (b) All Or None limit orders, and (c) Short Sale limit orders that have not been displayed. The incoming ITS Commitment is split among the available volume based on price, then account type (agency before principal) and then time, if the available volume is greater than the inbound ITS Commitment. For instance, as between two principal quotes at the same price, the earlier in time participates first and may fill the entire incoming Commitment up to the size of his or her bid/offer.

In the case of a Commitment divided among more than one Specialist, after a certain time has expired (exposing their split of the ITS Commitment to eligible specialists and allowing the non-Designated Specialists to respond), then the Designated Specialist may respond, which causes a single Phlx response to be sent. *See* email from Carla Behnfeldt, Phlx, to Katherine England, Assistant Director, Joseph Morra, Special Counsel, and Lisa N. Jones, Attorney, Division of Market Regulation, Commission, dated Septeber 5, 2002.

[9] 15 U.S.C. 78k–1(a)(1)(C) (ii) and (D).

[10] 17 CFR 240.11A3–2(c)(2).

[11] *See* Securities and Exchange Act Release No. 43520 (November 3, 2000), 65 FR 68165 (November 14, 2000) (order approving the recognition of BSE's and PCX's remote specialist programs in ITS).

[12] 15 U.S.C. 78k–1(a)(3)(B).

[13] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46479; File No. SR–Amex–2002–57]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to the Automatic Execution of Broker-Dealer Options Orders

September 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. On August 2, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On

[1] 15 U.S.C 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer L. Colihan, Special Counsel, Division of Market Regulation (''Division''), Commission, dated August 1, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange: (1) Re-numbered the last paragraph of Amex Rule 933 as ''(e)''; (2) clarified that options orders that are routed to the specialist's Amex Options Display Book (''AODB'') are manually executed; (3) deleted a footnote relating to trading on the International Securities Exchange; and (4)

September 4, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 933 to permit off-floor and on-floor broker-dealer options orders to be executed, on a case-by-case basis, through the Exchange's automatic execution system (''Auto-Ex''). Below is the text of the proposed rule change. Proposed new language is italicized; deletions are bracketed.

Rule 933. Automatic Execution of Options Orders

(a) Only non-broker/dealer customer orders shall be eligible for execution on the Exchanges Automatic Execution System (Auto-Ex), *except that the Options Floor Trading Committee (''Floor Committee'') may determine, on an issue-by-issue basis, to allow the following types of orders to be executed on Auto-Ex:*

(1) *Broker-dealer orders; or*

(2) Broker-dealer orders that are not for the accounts of market makers or specialists on an exchange who are exempt from the provisions of Regulation T of the Federal Reserve Board pursuant to Section 7(c)(2) of the Securities Exchange Act of 1934.

For the purposes of this Rule, the term broker/dealer includes foreign broker/dealers.

(b) Broker-dealer orders entered through the Exchange's order routing system will not be automatically executed against orders in the limit order book. Broker-dealer orders may interact with orders in the limit order book only after being re-routed to the Amex Options Display Book (AODB) for execution.

(c) If the Floor Committee permits broker-dealer orders to be automatically executed in an issue pursuant to this Rule, then it may also permit the following with respect to such orders:

(1) The maximum order size eligibility for broker-dealer orders may be less than the applicable order size eligibility for non-broker-dealer customer orders; and

(2) Non-broker-dealer customer orders may be eligible for automatic execution at the current best bid or offer displayed by another options exchange pursuant to Commentary .01 while broker-dealer orders are not so eligible.

(d) Exchange Registered Options Traders must assure that orders for their own accounts are not entered on the Exchange and represented or executed in violation of the following provisions: Rule 157 (Orders With More Than One Broker), Rule 103(b) (Initiation of Transaction for Joint Acct), Rule 111(c) (Concurrent Representation), and Section 9 of the Securities Exchange Act of 1934 (Wash Sales).

(e) [(b)] The Exchange shall determine the size parameters of orders eligible for entry into its Automatic Execution System (Auto-Ex). An Auto-Ex eligible order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 15 seconds between entry of each such order in a call class and/or a put class for the same option issue. Members and member organizations are responsible for establishing procedures to prevent orders in a call class and/or a put class for the same option issue for any account in which the same person is directly or indirectly interested from being entered at intervals of less than 15 seconds.

Commentary

.01 No change
.02 No change
.03 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex initiated Auto-Ex in certain index options in the mid-1980s and later extended its application to equity options.[5] The introduction of the Exchange's Auto-Ex system was a response to member firm initiatives indicating that customers would gain confidence in the listed options markets if quick, single-price executions at posted prices were available.

Due to technological advances over the past several years, a greater number of customers and other market participants now have obtained the ability to use a combination of high speed automated market watch and electronic order routing systems to enter orders directly and indirectly into Auto-Ex. In recent years, the Exchange received Commission approval to enhance Auto-Ex by providing automatic price matching and improvement for orders executed through Auto-Ex, thereby eliminating the need for certain orders to be routed to the specialist's AODB.[6]

For the purpose of permitting both on-floor and off-floor broker-dealer orders access to the Exchange's Auto-Ex system, the Exchange is proposing to permit entry of broker-dealer orders in Auto-Ex, subject to Options Floor

replaced the order designation described as ''CUST/BD'' with ''BD.''

[4] See Letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer L. Colihan, Special Counsel, Division, Commission, dated September 3, 2002 (''Amendment No. 2''). In Amendment No. 2, the Exchange deleted the reference to ''other broker-dealers'' in proposed subparagraph (d) of Amex Rule 933.

[5] *See* Securities Exchange Act Release Nos. 22610 (November 8, 1985), 50 FR 47480 (November 18, 1985) (pilot program for XMI options); 23544 (August 20, 1986), 51 FR 30601 (August 27, 1986) (permanent approval of XMI pilot); and 24714 (July 17, 1987), 52 FR 28396 (July 29, 1987) (expansion to competitively traded options). Auto-Ex is an automated execution system that enables member firms to route public customer market and limit orders in options for automatic execution at the bid or offer displayed at the time the order is entered. According to the Exchange, Auto-Ex executes, at the displayed bid or offer, customer market and immediately executable limit option orders up to a specified number of contracts routed through the Common Message Switch (''CMS'') and the Amex Order File (''AOF''). There are, however, some situations in which orders otherwise eligible for execution on Auto-Ex are routed to the specialist's book, known as the ''AODB,'' for an execution. These situations occur when (i) the best bid or offer is represented by a limit order on the AODB, (ii) the best bid or offer is locked or crossed, (iii) there is a better bid or offer being displayed by a competing market or (iv) when certain systems allowable parameters have been exceeded. Automatic executions through Auto-Ex are currently available for public customer orders of 250 contracts or less in all series of options traded on the Exchange except for options on the QQQ. For QQQ options, automatic executions are available up to 2,000 contracts for the two near term series and 1,000 contracts for all other series. *See* Securities Exchange Act Release Nos. 45756 (April 15, 2002), 67 FR 19603 (April 22, 2002) and 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002).

[6] In particular, the recent Auto-Ex enhancements provide: (1) automatic price matching when the best bid or offer for that series being displayed by a competing market is within a specified number of trading increments or ''ticks'' of the bid or offer being displayed by the Amex; and (2) automatic price improvement on Auto-Ex for orders within the established order size parameters when Amex is displaying the best bid or offer and specialists and ROTs wish to improve upon their own bid or offer by a specified number of trading increments. *See* Commentary .01 to Amex Rule 933.

Committee (the ''Floor Committee'') approval. The Floor Committee would be permitted to approve a specialist's request for: (a) automatic execution of broker-dealer orders, regardless of type, in particular options issues; or (b) automatic execution of broker-dealer orders in particular options issues, excluding those orders that are for the accounts of registered market makers [7] and specialists.

Under the proposed rule change, if the Floor Committee permits automatic execution of all broker-dealer orders, then any order, regardless of type in a particular option issue, for the account of a registered market maker or specialist, including orders for Amex Registered Options Traders (''ROTs''), would be eligible for automatic execution through Auto-Ex. However, execution of broker-dealer orders would be provided outside of Auto-Ex when orders reside in the limit order book.[8] Specifically, if there is a customer limit order in the in the limit order book that is priced at the national best bid or offer (''NBBO''), then an inbound market or limit order for the account of a broker-dealer will be re-routed to the specialist's AODB for manual execution.

Under the proposed rule, automatically executed broker-dealer orders may be subject to certain limitations. First, broker-dealer orders may have a smaller order size eligibility parameter for automatic execution than public customer orders. Second, broker-dealer orders in an issue may be ineligible for NBBO step-up while customer orders in that issue are eligible for NBBO step-up pursuant to Commentary .01 to Amex Rule 933.[9] Accordingly, unless automatic step-up executions on Auto-Ex are authorized by the Floor Committee for eligible broker-dealer orders, such orders would be rejected and re-routed to the specialist's AODB for manual execution.

The Exchange's electronic order routing system currently distinguishes between customer and non-customer orders based upon the provided order origin information. Consistent with Amex Rules, order tickets are required to designate the type of account as part of the terms for each order. For example, the current account type codes for options transactions are as follows: (1) ''BD'' indicates a broker-dealer order for a customer order; (2) ''CUST'' identifies a clearing member's account that handles only transactions cleared and positions carried by a clearing member on behalf of its customers; such an account does not handle transactions of market makers and specialists, which are cleared through their own accounts; (3) ''FIRM'' identifies a clearing member's account that handles only transactions cleared and positions carried on behalf of non-customers; (4) ''PRIN'' identifies a member's market maker account that handles only transactions cleared and positions carried on behalf of an Amex ROT; and (5) ''NMEM'' identifies a non-member's market maker account that handles only transactions cleared and positions carried on behalf of a non-member market maker. Currently, only orders with ''CUST'' designations, and which are not designated ''BD,'' are permitted to be automatically executed through Auto-Ex. The proposal would give the Floor Committee the discretion to allow orders with ''BD,'' ''FIRM, ''PRIN,'' and ''NMEM'' designations to be automatically executed.

In connection with permitting the automatic execution of orders for the accounts of Amex ROTs and other Amex broker-dealers, certain limitations under current Amex rules will apply. First, Amex Rule 157 prohibits members, member firms or subsidiaries of such firms to use more than one broker for the same order or orders for the same principal. Amex Rule 157, designed to prohibit unfair competition, would prohibit a member from entering an electronic order that could match against an order for an affiliated account represented by a broker or affiliated trader in the crowd.[10] Second, Amex Rule 103(b) prohibits on-floor transactions for joint accounts with non-members and other persons over which the Exchange does not have jurisdiction.[11] Therefore, a member cannot enter an order for a joint account in which a non-member has an interest.[12] Third, Amex Rules 111(c), 950(c) and Commentary .06 to Amex Rule 958 prohibit a ROT, while on the floor of the Exchange, from effecting transactions for his own account while also handling as a broker off-floor orders in the same security during the same trading session. Fourth, Amex Rules 111(d), 950(c), Commentary .01 to Amex Rule 950(c) and Commentary .06 to Amex Rule 958 restrict ROTs and market makers located on an exchange or trading floor other than the Amex (''Competing Market Makers'') from retaining priority over, or having parity with, an off-floor order when establishing or increasing positions.[13] Accordingly, pursuant to Amex Rule 950(c) and Commentary .01 to Amex Rule 950(c), orders establishing or increasing positions for ROTs and Competing Market Makers are required to be so identified so that such orders are routed to the specialist's AODB for manual handling. However, orders to liquidate or cover an existing position could be permitted an automatic execution via Auto-Ex. Lastly, the automatic execution of orders for the accounts of Amex ROTs and other Amex broker-dealers would not be permitted if that same ROT or an associated market maker or specialist has signed onto Auto-Ex in that security as a ''wash sale'' may result in violation of Article V, Section 4(c) of the Exchange's Constitution as well as section 9 of the Act.[14]

These prohibitions against ''dual representation'' would be violated in the following situation: A ROT in the XYZ trading crowd enters an order in XYZ options for his own account with a floor broker. The floor broker then represents the order while the market maker is still present in the XYZ trading crowd. A similar violation would occur if, a ROT in the XYZ trading crowd initiated an order in XYZ options with his upstairs

[7] Section 3(a)(38) of the Act defines ''market maker'' as any specialist permitted to act as a dealer, any dealer acting in the capacity of a block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications systems or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis. 15 U.S.C. 78c(3)(38).

[8] Similar to the Pacific Exchange, Inc. (''PCX'') and the Chicago Board Options Exchange, Inc. (''CBOE''), the Amex will not automatically execute broker-dealer orders against orders residing in the limit order book, but instead, such broker-dealer orders will be routed to the AODB for manual execution. The PCX and CBOE both prohibit broker-dealer orders from an automatic execution against orders residing in the limit order book. Accordingly, at the PCX and CBOE broker-dealer orders are required to be re-routed to a floor broker for representation in the trading crowd in order to interact with orders in the limit order book. In addition, the rules of the PCX and CBOE both prohibit broker-dealer orders from being placed in the limit order book. *See* Securities Exchange Act Release Nos. 45032 (November 6, 2001), 66 FR 57145 (November 14, 2001) (SR–PCX–00–05) and 45967 (May 20, 2002), 67 FR 37888 (May 30, 2002) (SR–CBOE–2002–22).

[9] This would provide the Floor Committee with the discretion to permit automatic ''step-up'' for eligible Auto-Ex broker-dealer orders or distinguish between public customer orders and eligible broker-dealer orders.

[10] Telephone call between Jeffrey P. Burns, Assistant General Counsel, Amex and Jennifer Colihan, Special Counsel, Division, Commission, on August 13, 2002.

[11] This prohibition does not apply to a joint account maintained solely for effecting bona fide arbitrage or to any purchase or sale by a specialist or odd-lot dealer for any joint account permitted by Amex Rules 175(b) or 203.

[12] Telephone call between Jeffrey P. Burns, Assistant General Counsel, Amex and Jennifer Colihan, Special Counsel, Division, Commission, on August 13, 2002.

[13] Commentary .03 to Amex Rule 950(c) provides an exception for orders for the account of a member or broker-dealer, which establish or increase a position.

[14] 15 U.S.C. 78i.

brokerage firm and the brokerage firm routed the order to the Amex where it was either automatically executed or routed to the AODB. In either case, the ROT will have violated Amex Rule 111(c). Likewise, if the ROT were trading in person for a joint account in that situation, and that same ROT initiated the order on behalf of the same joint account which order was then routed to the Amex for execution then that ROT would have violated Amex Rule 111(c) and Amex Rule 103(b), which provide a similar prohibition on concurrent representation when a ROT is trading in a joint account. In addition, if a ROT enters an order for his own account with a brokerage firm, and the order is routed to the Amex where it is executed against the same ROT's account, there will be a possible ''wash sale'' rule violation regardless of whether the trade was subsequently nullified.

The Exchange believes that the proposal is consistent with the Commission's approval of the Options Intermarket Linkage Plan (the ''Linkage Plan'').[15] Although the Linkage Plan limits access to eligible market makers on behalf of public customer orders and market maker and specialist principal accounts, the Commission in the Linkage Plan Release indicated its support for broader access between options markets, *i.e.* non-market maker broker-dealers.[16] The Exchange submits that by potentially permitting all broker-dealers to utilize Auto-Ex, the instant proposal furthers the goals of a national market system by assuring that quotes can be promptly accessed by *all* market participants.

The Exchange believes that the proposed rule change to permit the automatic execution of all broker-dealer orders, subject to Floor Committee approval, is a legitimate means for the Amex to compete for orders for the accounts of Competing Market Makers, as well as other broker-dealers. The Exchange notes that the CBOE, PCX, and the Philadelphia Stock Exchange, Inc. (''Phlx'') all have the ability to automatically execute broker-dealer orders in varying degrees.[17]

2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5),[19] in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by providing broker-dealers access to the Exchange's Auto-Ex system. The Exchange believes that this should provide additional incentives for Amex market participants to quote competitively, and in turn, should result in competitive pricing and enhanced liquidity on the Exchange and the options markets. In addition, the Exchange further represents that the proposed rule change is consistent with section 11(a) of the Act[20] and Rule 11a2–2(T) thereunder.[21]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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 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-2002–57 and should be submitted by October 8, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act[23] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.[24]

The Commission finds that it is consistent with the Act to allow broker-dealer orders to be eligible for automatic execution through the Exchange Auto-Ex system, subject to the approval for the Floor Committee, and limitations on dual representation and wash sales. The Commission believes that the proposal should allow the Exchange to improve the efficiency with which orders for the accounts of broker-dealers are executed. By providing prompt execution for broker-dealer orders, the proposal also may help attract broker-dealer options orders to the Exchange, and thus help improve the depth and liquidity of the Exchange's options market. Further, the Commission notes that the Amex represented that Auto-Ex has sufficient capacity to handle the processing of the potential increased order flow.[25]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date

[15] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000)(''Linkage Plan Release'').

[16] *Id. See also* Amex Rule 940 (Interim Options Linkage Program) and Securities Exchange Act Release No. 44271 (May 7, 2001), 66 FR 26887 (May 15, 2001).

[17] *See supra* note 8. The Phlx also received approval on a six-month pilot basis permitting off-floor broker-dealer orders to have electronic access to the specialist's limit order book and automatic execution under certain conditions. *See* Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78k(a).

[21] 17 CFR 240.11a2–2(T).

[22] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] The Exchange submitted a letter to the Division representing that the proposal is consistent with section 11(a) of the Act and Rule 11a2–2(T) under the Act. *See* letter to Catherine McGuire, Chief Counsel, Division, Commission, from Jeffrey P. Burns, Assistant General Counsel, Amex, dated June 27, 2002. In response to the Exchange's request, Commission staff has provided interpretive guidance to the Exchange under section 11(a) of the Act, 15 U.S.C. 78k(a). *See* letter from Paula R. Jenson, Deputy Chief Counsel, Division, Commission, to Jeffrey P. Burns, Assistant General Counsel, Amex, dated July 9, 2002.

[25] Telephone call between Jeffrey P. Burns, Assistant General Counsel, Amex and Jennifer Colihan, Special Counsel, Division, Commission, on August 13, 2002.

of publication of the notice thereof in the **Federal Register**. CBOE, Phlx, and PCX all permit, to some extent, broker-dealer orders to be executed on their automatic execution systems. Accordingly, the Commission believes that no new issues are being raised by Amex's proposed rule change. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with sections 6 and 19(b) of the Act.[26]

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR-Amex-2002–57) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23531 Filed 9–16–02; 8:45 am]

BILLING CODE 8010–01–P

[26] 15 U.S.C. 78f and 78s(b).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46483; File No. SR–Amex–2002–47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the American Stock Exchange LLC Relating to Non-Member Fees for Transactions in Nasdaq Securities Traded on an Unlisted Basis

September 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt transaction fees for non-member trades in Nasdaq securities admitted to dealings on an unlisted basis. The text of the proposed revision to the Exchange's fee schedule is below. Additions are italicized.

* * * * *

Floor Fees through Registration and IDC Fees (No change)

Equity Fees

Amex Listed Company Equity Fee Schedule (No change)

Nasdaq UTP Equity Fee Schedule

Non-Member Competing Market Maker trades: $.15 per 100 shares

Non-Member Customer trades: $.15 per 100 shares

Notes:

1. A ''competing market maker'' is defined as a specialist or market maker registered as such on a registered stock exchange (other than the Amex) or on Nasdaq, or a market maker bidding and offering over-the-counter, in an Amex traded security.

2. The term ''customer'' includes any market participant other than a ''competing market maker.''

3. The transaction charge for crosses is subject to a maximum charge of $50 per side.

Amex Exchange Traded Funds Fee Schedule (No change)

Bond Charges through Other Fees (No change)

* * * * *

(b) Not applicable.

(c) Not applicable.

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 the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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

The Exchange is implementing a program to trade Nasdaq securities on an unlisted basis. The Exchange, accordingly, is implementing a separate fee schedule for transactions in Nasdaq securities admitted to dealings so that the Amex can be competitive with other market centers that trade Nasdaq securities. The proposed fees are in line with similar fees charged by other market centers for transactions in Nasdaq securities.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act[5] in general and furthers the objectives of Section 6(b)[6] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its member, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed fee change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On June 11, 2002, Amex filed Amendment No. 1 to clarify that the $50.00 cap on transaction charges for cross trades applies to each side of the trade. On August 27, 2002, Amex filed Amendment No. 2 to reduce transaction fees for non-member competing market makers from $0.40 per 100 shares to $0.15 per 100 shares.

[4] *See* Securities Exchange Act Release No. 46484 (September 10, 2002), which implements these same fees for members.

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

[6] 15 U.S.C. 78f(b)(4).

including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–47 and should be submitted by October 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23535 Filed 9–16–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46484; File No. SR–Amex–2002–59]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Fees for Transactions in Nasdaq Securities Traded on an Unlisted Trading Privileges Basis

September 10, 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 27, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt transaction fees for trades in Nasdaq securities traded pursuant to Unlisted Trading Privileges (''UTP''). The text of the proposed rule change is below. Proposed new language is in italics.

* * * * *

Floor Fees through **Registration and IDC Fees** (No change)

Equity Fees

Amex Listed Company Equity Fee Schedule (No change)

Nasdaq UTP Equity Fee Schedule

Specialist trades:	*$.10 per 100 shares*
Member Competing Market Maker trades:	*$.15 per 100 shares*
Amex Option Market Maker trades:	*$.15 per 100 shares*
Trades by Amex Equity Traders:	*$.15 per 100 shares*
Member Customer trades:	*$.15 per 100 shares*

Notes:

1. The Exchange will waive the transaction charge for specialist principal trades for six months after the start of Nasdaq UTP trading for specialist firms that do not charge any commission to ''customers'' in Nasdaq UTP securities.

2. A ''competing market maker'' is defined as a specialist or market maker registered as such on a registered stock exchange (other than the Amex) or on Nasdaq, or a market maker bidding and offering over-the-counter, in an Amex traded security.

3. The term ''customer'' includes any market participant other than a ''competing market maker.''

4. The transaction charge for crosses is subject to a maximum charge of $50 per side per trade.

Amex Exchange Traded Funds Fee Schedule (No change)

Bond Charges through **Other Fees** (No change)

* * * * *

(b) Not applicable.

(c) Not applicable.

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 the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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

The Exchange proposes to implement a program to trade Nasdaq securities on a UTP basis.[5] The Exchange, accordingly, is implementing a separate fee schedule for transactions in Nasdaq securities admitted to trading on the Exchange pursuant to UTP to make the Amex competitive with other market centers trading Nasdaq securities. The Exchange asserts that the proposed fees are similar to those charged by other market centers for transactions in Nasdaq securities traded pursuant to UTP.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and the provisions of Section 6(b)(4) of the Act,[7] in particular, which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposal was originally filed on June 28, 2002. On August 19, 2002, Amex filed Amendment No. 1 to clarify that the proposed transaction fees only apply to member transactions. On August 27, 2002, Amex filed Amendment No. 2 to reduce transaction fees for member competing market makers from $0.40 per 100 shares to $ 0.15 per 100 shares. Because this is a substantive amendment, the Commission deems the proposal to have been filed on the date it received Amendment No. 2.

[4] *See* Securities Exchange Act Release No. 46483 (September 10, 2002), which proposes to implement these fees for non-members.

[5] *See* Securities Exchange Act Release No. 45365 (January 30, 2002), 67 FR 5626 (February 6, 2002) (SR–Amex–2001–106) (Notice of Amex's proposed trading rules for Nasdaq securities traded pursuant to UTP).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [8] and subparagraph (f)(2) of Rule 19b–4 [9] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing date, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–59 and should be submitted by October 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23536 Filed 9–16–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46486; File No. SR–Amex–2002–71]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Extend a Suspension of Transaction Charges for Certain Exchange Traded Funds

September 10, 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 29, 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, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] 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 Amex proposes to extend until September 30, 2002, the suspension of Amex transaction charges for the Lehman 1–3 year Treasury Bond Fund; iShares Lehman 7–10 year Treasury Bond Fund; Lehman 20+ year Treasury Bond Fund; and iShares GS $ InvesTop Corporate Bond Fund for specialist, Registered Trader and broker-dealer orders. The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. 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

The Amex has suspended transaction charges for transactions in the iShares Lehman 1–3 year Treasury Bond Fund (Symbol: SHY); iShares Lehman 7–10 year Treasury Bond Fund (Symbol: IEF); iShares Lehman 20+ year Treasury Bond Fund (Symbol: TLT); and iShares GS $ InvesTop Corporate Bond Fund (Symbol: LQD)(''Funds'') (collectively, ''Securities'') for (1) customer orders and (2) until August 31, 2002, specialist, Registered Trader and broker-dealer orders.[6] With this proposed rule change, the Amex is extending until September 30, 2002, the suspension of transaction charges for specialist, Registered Trader, and broker-dealer orders. No other changes are proposed with this filing, and this filing has no bearing on the suspension of transaction charges as they pertain to customer orders.[7]

The Exchange believes a suspension of fees for the Securities is appropriate to enhance the competitiveness of executions in the Securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission pursuant to Section 19(b)(3)(A) of the 1934 Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(4) [9] in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 46384 (August 20, 2002), 67 FR 55048 (August 27, 2002)(SR–Amex–2002–64).

[7] In its proposed rule change, the Amex states that certain charges that were suspended by SR-Amex-2002–64 are currently in place, the Amex confirmed that the suspension of charges that was established in SR-Amex-2002–64 remains in effect, and that the only purpose of the instant filing is to extend the suspension of transaction charges for specialist, Registered Trader, and broker-dealer orders in the Securities until September 30, 2002. *See* footnote 6, *supra.* The Amex clarified that this statement inaccurately implies that certain charges exist, when in actuality, these charges were suspended in SR-Amex-2002–64, and that this proposed rule change simply extends until September 30, 2002 the suspension of transaction charges for specialist, Registered Trader, and broker-dealer orders in the Securities. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Joseph P. Morra, Special Counsel, Commission, September 10, 2002.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among the Amex's members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the 5-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the notice requirement and acceleration of the operative date will permit the Amex to suspend these fees immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2002–71 and should be submitted by October 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23537 Filed 9–16–02; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46480; File No. SR–BSE–2002–07]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Competing Specialists and Objections to Competing Specialist Competition

September 10, 2002.

I. Introduction

On June 25, 2002, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change related to competing specialists and objections to competing specialist competition. The proposed rule change was published for comment in the **Federal Register** on July 30, 2002.[3] No comments were received on the proposal. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Description of the Proposal

The Exchange proposes to amend the section of the Exchange's Competing Specialist Initiative (''CSI'') procedures relating to objections to competition filed by a regular specialist. The Exchange is seeking to implement a procedure that would permit competition pending a final review of any objection to competition filed by a regular specialist.

Under current CSI procedures set forth in Chapter XV, *Dealer Specialists,* Section 18, *Procedures for Competing Specialists,* any objection to competition by a regular specialist will prevent a competing specialist from trading, and competing with the regular specialist, in the security at issue, until the objection is adjudicated by the Exchange's Market Performance Committee (''MPC''). In order to streamline this process, the Exchange is proposing that a majority of the floor members of the MPC be able to vote to permit competition in a security pending the formalization of a regular specialist's objection and the subsequent convening of a full meeting of the MPC to review the objection.

III. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[4] in general, and section 6(b)(5) of the Act,[5] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.[6]

The Commission believes that the proposal should enhance competition to the ultimate benefit of investors, while still offering the regular specialist the opportunity to formalize an objection, and have that objection fully considered. Moreover, the Commission

[3] *See* Securities Exchange Act Release No. 46238 (July 19, 2002), 67 FR 49378.

[4] 15 U.S.C. 78f(b).

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

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation 15 U.S.C. 78c(f).

believes that the proposal should prevent a disingenuous regular specialist from abusing the competition objection process by objecting to specialist competition solely as leverage for objections unrelated to specialist competition.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–BSE–2002–07) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23532 Filed 9–16–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46482; File No. SR–BSE–2002–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to an Interpretation of Its Execution Guarantee Rule

September 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 4, 2002, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On September 10, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.[3]

The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement an interpretation of its Execution Guarantee Rule in response to Commission action regarding *de minimis* trades through of certain Exchange Traded Funds (''ETFs'') in ITS.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to add Paragraph .07 to the Interpretations and Policies section of Chapter II, *Dealings on the Exchange,* Section 33, *Execution Guarantee,* of the BSE Rules. This proposed rule change is in response to a Commission Order issued August 28, 2002, granting a *de minimis* exemption for transactions in certain ETFs from the Trade-Through Provisions of the Intermarket Trading System (''ITS'') Plan (''Order'').[4]

As of the implementation date of the Order, September 4, 2002, certain executions that take place according to the rules of the Exchange may be deemed violative of the provisions thereof. Accordingly, the Exchange is seeking to implement this proposed rule change on a temporary basis, for a period of thirty days.

In Chapter II, *Dealings on the Exchange,* Section 33, *Execution Guarantee* of the BSE Rules, paragraph (c)(2) states that ''All agency limit orders will be filled if one of the following conditions occur * * * (2) there has been price penetration of the limit in the primary market. * * *'' Moreover, in various sections of Chapter XV, *Dealer Specialists,* there are similar provisions.[5] These provisions, in particular those set forth in Chapter II, guarantee that a limit order in a BSE specialist's book will be filled if the primary market trades through the limited price. The BSE specialist provides this protection to its customer limit orders in part due to the fact that the specialist can seek relief through ITS in the event of a trade-through.

As a result of the Commission's Order, certain primary market trades-through in ETFs will constitute exempt trades-through, but will still, under BSE Rules, trigger an obligation on the part of a BSE specialist to provide trade-through protection. However, the specialist will no longer be able to seek recourse to seek satisfaction through ITS from the primary market. Accordingly, the BSE specialist will be competitively disadvantaged if this section of its rules is strictly enforced, while the *de minimis* exemption exists for other ITS participants. Therefore, the BSE is seeking to implement an Interpretation of Chapter II, Section 33(c)(2) of its rules permitting the Exchange to not enforce the provision following a *de minimis* trade through of certain ETFs outlined in the Order.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act[6] and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, in that it is designed to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John Boese, Assistant Vice President, Legal and Regulatory, BSE, to Alden Adkins, Associate Director, Division of Market Regulation, Commission, dated September 9, 2002 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 46428 (August 28, 2002). Participants of the ITS Plan are exempt from Section 8(d) of the Plan for the period of September 4, 2002 until June 4, 2003 with respect to transactions in QQQs, DIAMONDs, and SPDRs, that are executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS.

[5] *See, e.g.,* Commentary to Section 1, Specialists, which sets forth a specialist's obligations in relation to buying and selling on a principal basis while holding unexecuted orders in his book; Section 2, *Responsibilities,* which sets forth, in part, a specialist's primary duties as agent; Section 4, *Precedence to Orders in the Book,* which sets forth the precedence parameters a specialist must adhere to; and Section 18, *Procedures for Competing Specialists,* which sets forth, in various paragraphs, obligations which may conflict with the *de minimis* exemption in the Order.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore, has become effective pursuant to section 19(b)(3)(A)(i) of the Act [8] and subparagraph (f)(1) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to the File No. SR–BSE–2002–13 and should be submitted by October 8, 2002.

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23534 Filed 9–16–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46489; File No. SR–BSE–2002–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Boston Stock Exchange, Inc. To Amend Its Fee Schedule

September 11, 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 8, 2002, the Boston Stock Exchange, Incorporated (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 20, 2002, the BSE amended the proposal.[3] The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the BSE under section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective upon filing with the Commission. 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 BSE proposes to amend its Floor Operations Fees Schedule. The text of the proposed rule change is available at the BSE and at the Commission.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* August 19, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, and attachments (''Amendment No. 1''). Amendment No. 1 completely replaces and supersedes the original filing. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 20, 2002, the date the BSE filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Floor Operation Fees schedule to ensure that the Exchange recovers the fixed costs of providing services to floor members. Generally, the fee changes reflect a pass-through of direct costs in certain expense areas which are not fully paid for by floor members today. These fees that the BSE is amending in this proposed rule change apply to members only, and the changes are applied on a non-discriminatory basis.

The proposed changes to the Floor Operation Fees schedule are (1) increasing the Specialist/Floor Trader Technology Fee (per BEACON terminal per month) from $250 to $500; (2) implementing a Designated Examining Authority (''DEA'') fee of $400 per month per firm where the Exchange is not the primary examining authority, and $600 per month per firm where the Exchange is the primary examining authority; (3) implementing a $100 SRO Fee (per specialist account); (4) implementing a $250 Floor Facility Fee (per month per person who regularly accesses the trading floor); (5) increasing the Specialist Post Clearing and Cashiering fee from $500 to $750 (per account for the first 3 accounts a specialist firm has and $100 for any accounts a firm may have in excess of 3); (6) decreasing the Round Lot fee (per order) from $.75 to $.50 and; (7) implementing a Clearing Fee (per order) of $.05.

The Exchange is seeking these fee increases, and direct cost reimbursements to, in part, fund technology initiatives. However, the Exchange seeks to charge its members in an equitable and fair manner for its products and services while funding these initiatives, and at the same time

continue to provide a high quality marketplace at competitive prices. The Exchange's decreasing of its Round Lot Fee, as well as its relatively minor adjustments to other fees, is reflective of this objective.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,[5] in general, and furthers the objectives of section 6(b)(4) of the Act,[6] in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the BSE's members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder,[8] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–BSE–2002–12, and should be submitted by October 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23602 Filed 9–16–02; 8:45 am]

BILLING CODE 8010–01–P

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

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46488; File No. SR–BSE–2002–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the Boston Stock Exchange, Inc. To Amend Its Floor Operations and Transaction Fees Schedules

September 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 22, 2002, the Boston Stock Exchange, Incorporated (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 2, 2002, the BSE amended the proposal.[3] The BSE amended the proposal again on August 20, 2002.[4] The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the BSE under section 19(b)(3)(A)(ii) of the Act,[5] which renders the proposal effective upon filing with the Commission. 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 BSE proposes to amend its Floor Operations and Transaction Fees Schedules. The text of the proposed rule change is available at the BSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Floor Operation Fees and Transaction Fees schedules to allow the Exchange to continue to charge in an appropriate and equitable manner for the products and services it provides to its customers. The changes proposed are made in conjunction with SR–BSE–2002–10, and the timing and implementation of this proposal will be subject to Commission approval of SR–BSE–2002–10. The fees that the BSE is amending in this proposed rule change apply to members only, and the changes are applied on a non-discriminatory basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* August 1, 2002 letter from John A. Boese, Assistant Vice President (''AVP''), Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), SEC, and attachments (''Amendment No. 1''). Although Amendment No. 1 makes no substantive changes to the original filing, Amendment No. 1 completely replaces and supersedes the original filing, so as to ensure that the proposed rule change is in proper format.

[4] *See* August 19, 2002 letter from John A. Boese, AVP, Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division, SEC, and attachments (''Amendment No. 2''). Amendment No. 2 completely replaces and supersedes Amendment No. 1 and the original filing. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have begun on August 20, 2002, the date that the BSE filed Amendment No. 2. Additionally, the Commission notes that the BSE inadvertently labeled the cover page of Amendment No. 2 incorrectly. While the cover page says ''Amendment No. 1,'' the remaining pages are correctly labeled. The Commission notes this error to clarify any confusion this minor, technical error may cause.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

The proposed changes to the Floor Operation Fees schedule will separate the Specialist Trade Processing fees into two components. The first component, the basic Specialist Trade Processing Fee, will be reduced from $.75 to $.50 per order. Additionally, the requirement that an issue be part of the Exchange's Competing Specialist (CSI) Program will be removed. All stocks, regardless of whether or not they are part of the BSE's CSI program, will be capped at the appropriate levels. The Exchange believes that, because most of the stocks in the CTA top 500 now offer competition on the BSE, the condition that a stock be part of the CSI program is no longer necessary. The second component proposed for implementation is a Specialist Clearing Fee of $.05 per trade. This fee will be levied on all trades executed by BSE specialists and will be used to offset the variable costs of providing clearing services for this segment of business.

The proposed changes to the Transaction Fees schedule will eliminate the monthly transaction fee maximum for all automated BSE volume and will implement a new lower Value Charge rate for those firms that generate in excess of $50,000 in automated BSE transaction fees. Once a firm generates $50,000 in automated BSE transaction fees, the current $.20 per 100 shares rate will be reduced to $.035 per 100 shares. This rate will only apply to those trades that are eligible to be charged this rate. Additionally, the Exchange proposes to remove the condition on its Value Charges invoice that only non self-directed market and marketable limit orders up to and including 2,500 shares are free. All market and marketable limit orders up to and including 2,500 shares will now not be levied a Value Charge fee.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(4) of the Act,[7] in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the BSE's members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder,[9] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–BSE–2002–11, and should be submitted by October 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23603 Filed 9–16–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46462; File No. SR–CBOE–2002–45]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Establish CBOE Rule 4.20 Requiring Each Member and Member Organization To Develop and Implement an Anti-Money Laundering Compliance Program

September 5, 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 21, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 CBOE. 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 CBOE proposes to adopt CBOE Rule 4.20, *Anti-Money Laundering Compliance Program* (the ''Rule''). The Rule requires each member and member organization to develop and implement an anti-money laundering compliance program (''Program'') consistent with applicable provisions of the Bank Secrecy Act and the regulations thereunder. The text of the proposed rule change is below. Proposed new language is in italics.

Anti-Money Laundering Compliance Program

Rule 4.20 Anti-Money Laundering Compliance Program. Each member organization and each member not associated with a member organization shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor compliance with the Section 352(a) requirements of the USA PATRIOT Act (Public Law 107–56), amending Section 5318 of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each member organization's anti-money laundering program must be approved,

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

in writing, by a member of senior management. The anti-money laundering programs required by this Rule shall, at a minimum:

(1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;

(2) Establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with Section 5318(h) of the Bank Secrecy Act and the implementing regulations thereunder;

(3) Provide for independent testing for compliance to be conducted by member or member organization personnel or by a qualified outside party;

(4) Designate, and identify to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number) a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the Exchange regarding any change in such designation(s); and

(5) Provide ongoing training for appropriate persons.

* * * * *

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 CBOE 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 CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 26, 2001, President Bush signed into law the USA PATRIOT Act (the ''PATRIOT Act''), which amends among other laws the Bank Secrecy Act as set forth in Title 31 of the United States Code (the ''Code''). The PATRIOT Act expands government powers to fight the war on terrorism and requires that financial institutions,[3] including broker-dealers, implement policies and procedures to that end.

Title III of the PATRIOT Act, separately known as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (''MLAA''), focuses on the requirement that financial institutions establish anti-money laundering monitoring and supervisory systems. Specifically, MLAA Section 352, which amends Section 5318(h) of the Code, requires each financial institution to establish anti-money laundering programs by April 24, 2002 that include, at minimum: (1) The development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs.

Proposed CBOE Rule 4.20 incorporates MLAA Section 352 requirements and also requires that the Program be in writing and approved, in writing, by member organizations' senior management; that a designated ''contact person'' or persons, primarily responsible for each member's or member organization's Program, be identified to the Exchange; and that the Program's policies, procedures, and internal controls be reasonably designed to achieve compliance with applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder, as they become effective.

Further, the Rule addresses members' and member organizations' obligation to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) (''Reporting of Suspicious Transactions'') and the implementing regulations thereunder. This reflects the MLAA Section 356 directive that the Department of the Treasury (''Treasury'') publish such implementing regulations, specifically applicable to registered broker-dealers, in the **Federal Register** by specified dates.

Accordingly, the Financial Crimes Enforcement Network (''FinCEN''), through authority granted by the Secretary of the Treasury, filed proposed amendments[4] to the Bank Secrecy Act regulations on December 28, 2001. MLAA Section 356 requires publication of these regulations in final form not later than July 2, 2002.

Generally, FinCEN's proposed regulations require the filing of Suspicious Activity Reports (''SARs'') in a central location, to be determined by FinCEN, within a specified timeframe initiated by the detection of facts constituting a basis for the filing. Proposed reporting criteria stress the development of a sound risk-based program.

The Rule also highlights members' and member organizations' existing and ongoing obligation to comply with applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder, as they become effective.

Accordingly, and particularly in light of the PATRIOT Act amendments, members and member organizations should be cognizant of all existing and pending Bank Secrecy Act requirements. These include, but are not limited to: (1) MLAA Section 313 (''Prohibition on United States Correspondent Accounts with Foreign Shell Banks'')—Effective 12/25/01, covered financial institutions operating in the United States must sever correspondent banking relationships with foreign ''shell banks,'' *i.e.*, banks without a physical presence in any country, that are not affiliated with a bank that both has a physical presence in a country and is subject to supervision by a banking authority that regulates the affiliated bank; (2) MLAA Section 312 (''Special Due Diligence for Correspondent Accounts and Private Banking Accounts'')—Effective 7/23/02, financial institutions must be prepared to apply ''* * * appropriate, specific, and, where necessary, enhanced, due diligence'' with respect to foreign private banking customers and international correspondent accounts; and (3) MLAA Section 326 (''Verification of Customer Identity'')—Effective 10/26/02, financial institutions must comply with a regulation issued by the Secretary of the Treasury requiring the implementation of ''reasonable procedures'' with respect to the verification of customer identification upon opening an account, maintaining records of information used for such verification, and the consultation of a government-provided list of known or suspected terrorists.

2. Statutory Basis

The CBOE believes that the proposed rule is consistent with Section 6(b) of the Act[5] in general and further, the objectives of Section 6(b)(5)[6] in particular, in that they are designed to

[3] As defined in 31 U.S.C. 5312(a)(2).

[4] Financial Crimes Enforcement Network; Proposed Amendments to the Bank Secrecy Act Regulations—''Requirement of Brokers or Dealers in Securities to Report Suspicious Transactions;''—66 FR 67670 (December 31, 2001).

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

[6] 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2002–45 and should be submitted by October 8, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the CBOE's proposed rule change and finds, for the reasons set forth below, the proposed rule change is consistent with the requirements of Section 6 of the Act [7] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act [8] because it will promote just and equitable principles of trade and protect investors and the public interest by requiring the CBOE's members and member organizations to establish, implement, and improve anti-money laundering compliance programs.

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the Rule is substantially similar to anti-money laundering compliance program rules adopted by The New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that the Commission approved after full notice and comment.[9] The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.[10]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–2002–45) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23529 Filed 9–16–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exchange Act Release No. 45798 (April 22, 2002), 67 FR 20854 (April 26, 2002)(order approving SR–NASD–2002–24 and SR–NYSE–2002–10).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46475; File No. SR–CHX–2001–32]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Stock Exchange, Incorporated, Relating to CHX Article XX, Rule 37 Governing Automatic Execution of Market and Marketable Limit Orders

September 9, 2002.

On December 26, 2001, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), 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 amend CHX Article XX, Rule 37, which governs, among other things, automatic execution of market and marketable limit orders, to provide CHX order-sending firms with greater flexibility relating to automatic execution of orders by CHX specialists. Specifically, the proposed rule change would (a) in the case of Dual Trading System issues, commonly referred to as listed issues, permit immediate execution (or execution in 15 seconds or less) of orders if there is no expression of market interest by a person physically present at the specialist's post; and (b) refine existing CHX algorithms relating to automatic execution of partial orders and price improvement of such orders. On June 19, 2002, the CHX amended the proposal.[3] The CHX again amended the proposed rule change on July 26, 2002.[4] Notice of the proposed rule change, as amended by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on August 15, 2002.[5] The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change, as amended, and finds that it is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[6] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 6(b)(5) [7] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. For these reasons, the Commission finds that the proposed rule change is consistent with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* June 18, 2002 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), SEC, and attachments (''Amendment No. 1''). Amendment No. 1 completely replaced and superseded the original filing.

[4] *See* July 25, 2002 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division, SEC, and attachments (''Amendment No. 2''). Amendment No. 2 completely replaced and superseded Amendment No. 1.

[5] Securities Exchange Act Release No. 46321 (August 7, 2002), 67 FR 53369.

[6] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

provisions of the Act, in general, and with Section 6(b)(5)[8] in particular.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In the notice, the Commission indicated that it would consider granting accelerated approval of the proposal after a 15-day comment period. The Commission received no comments on the proposal during the 15-day comment period. Additionally, the Commission believes that the proposed rule change should satisfy the concerns of order-sending firms that require immediate executions, while preserving the fundamental protections of an auction market environment. The Commission also believes that the proposed rule change as it relates to the refinement of automatic execution sequences and price improvement algorithms should provide benefits to investors, and therefore, the Commission believes accelerated approval is appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CHX–2001–32), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23530 Filed 9–16–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46485; File No. SR–PCX–2002–59]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes in Marketing Fees

September 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 2002, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to change its marketing fee for certain options and to adopt new marketing fees for recently listed options. The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PCX recently adopted a payment-for-order-flow program under which it charges a marketing fee ranging from $0 to $1.00 per contract on a per-issue basis.[3] The PCX segregates the funds from this fee by trading post and makes the funds available to lead market makers for their use in attracting orders in the options traded at the posts. The PCX charges the marketing fees as set forth in the Schedule of Rates.

The PCX is proposing to change the marketing fee for certain options as set forth in the Schedule of Rates beginning at the commencement of the September trade month and continuing until further notice. The PCX proposes to change only the amounts of the fees that it charges for transactions in the options that are included in the proposed Schedule of Rates. Any fees currently being charged for transactions in options that are not listed in this amendment to the Schedule of Rates would not be affected by the proposed rule change. The PCX believes that its proposed rule change is reasonable and equitable because it is designed to enable the PCX to compete with other markets in attracting options business. Only the amount of the fee is being changed.

The PCX believes that the proposal is consistent with Section 6(b) of the Act,[4] particularly Section 6(b)(4),[5] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

[3] *See* Securities Exchange Act Release No. 44830 (September 21, 2001), 66 FR 49728 (September 28, 2001) (SR–PCX–2001–37).

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)[7] because it changes a PCX fee. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(2).

the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the PCX. All submissions should refer to File No. SR–PCX–2002–59 and should be submitted by October 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23604 Filed 9–16–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46481; File No. SR–Phlx–2002–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to PACE Guarantees in Securities Subject to ITS Plan Exemption

September 10, 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 September 4, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On September 9, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.[3]

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to exempt transactions, beginning September 4, 2002 for a period of 30 days ending on October 4, 2002, in certain exchange-traded fund (''ETF'') shares from Supplementary Material Section .10(a)(iii) of Exchange Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System (''PACE'').[4] Section .10(a)(iii) of Exchange Rule 229 currently provides that if 100 or more shares print through the limit price on any exchange(s) eligible to compose the PACE Quote[5] after the time of entry of any such order into PACE, the specialist shall execute all such orders at the limit price without waiting for an accumulation of 1000 shares to print at the limit price on the New York market.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt an exemption from Phlx Rule 229.10(a)(iii) beginning September 4, 2002 for a period of 30 days ending on October 4, 2002. This exemption would apply to the ETFs tracking the Nasdaq-100 Index (''QQQs''), the Dow Jones Industrial Average (''DIAMONDs''), and the Standard & Poor's 500 Index (''SPDRs'').[7] This exemption would correlate with a recent exemption from the ITS Plan issued by the Commission (the ''ITS Exemption'').[8]

Phlx Rule 229.10(a)(iii) requires a Phlx specialist to execute certain orders that are traded-through by another market center. Previously, although the specialist had this obligation the specialist was, in turn, entitled to ''satisfaction'' of those orders pursuant to Section 8(d) of the ITS Plan. Now, where trading through is no longer prohibited by the ITS Plan, as enumerated in the ITS Exemption, the specialist does not have recourse to seek ''satisfaction'' for these orders and is alone responsible for those executions. Thus, the Phlx believes that its provision guaranteeing an execution no longer makes sense. Moreover, the provision now unduly burdens the specialist by requiring the specialist to execute orders in situations where the specialist does not have access to trading at that price.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated September 6, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange consented to the Commission's treatment of the proposed rule change as being filed as a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule pursuant to section 19(b)(3)(A) of the Exchange Act. 15 U.S.C. 78s(b)(3)(A). In addition, in Amendment No. 1, the Exchange provided rule text to accompany the proposed rule change.

[4] PACE is the Exchange's Automated Communication and Execution System. PACE provides a system for the automatic execution of orders on the Exchange equity floor under predetermined conditions.

[5] PACE Quote is defined in Rule 229 as the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific or Philadelphia Stock Exchange, or the Intermarket Trading System/Computer Assisted Execution System (''ITS/CAES'') quote, as appropriate.

[6] To be understood, Section .10(a)(iii) must be read in conjunction with the preceding Section of the PACE Rule. Supplementary Material Section .10(a)(ii) provides as follows:

Non-Marketable Limit Orders—Unless the member organization entering orders otherwise elects, round-lot limit orders up to 500 shares and the round-lot portion of PRL limit orders up to 599 shares which are entered at a price different than the PACE Quote will be executed in sequence at the limit price when an accumulative volume of 1000 shares of the security named in the order prints at the limit price or better on the New York market after the time of entry of any such order into PACE. For each accumulation of 1000 shares which have been executed at the limit price on the New York market, the specialist shall execute a single limit order of a participant up to a maximum of 500 shares for each round-lot limit order up to 500 shares or the round-lot portion of a PRL limit order up to 599 shares.

[7] The Exchange does not currently trade DIAMONDs or SPDRs but may determine to do so in the future. The Exchange does trade QQQs. The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. (''Nasdaq'') and have been licensed for use for certain purposes by the PHLX pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index'' (the ''Index'') is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[8] See Securities Exchange Act Release No. 46428 (August 28, 2002) (Order Pursuant to section 11A of the Securities Exchange Act of 1934 and Rule 11Aa3–2(f) thereunder Granting a De Minimis Exemption for Transactions in Certain Exchange-Traded Funds from the Trade-Through Provisions of the Intermarket Trading System.). The ITS Plan is a national market system plan approved by the Commission pursuant to section 11A of the Act and Rule 11Aa3–2 thereunder.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with section 6(b) of the Act [9] in general and furthers the objectives of Section 6(b)(5)[10] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, 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 and a national market system; and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. By adopting the proposed exemption, the Exchange avoids burdening specialists with the obligation to fill an order in circumstances where an external event triggered the execution obligation and the specialist could not access trading at that price.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore, has become effective pursuant to section 19(b)(3)(A)(i) of the Act [11] and subparagraph (f)(1) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(i).

[12] 17 CFR 240.19b–4(f)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–48 and should be submitted by October 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23533 Filed 9–16–02; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3440]

State of Wisconsin

As a result of the President's major disaster declaration on September 10, 2002, I find that Barron, Burnett, Chippewa, Clark, Dunn, Langlade, Lincoln, Marathon, Polk, Portage, Price, Rusk, Sawyer, Shawano, St. Croix, Taylor, Washburn, Waupaca and Wood Counties in the State of Wisconsin constitute a disaster area due to damages caused by severe storms, tornadoes and flooding occurring on September 2, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 12, 2002 and for economic injury until the close of business on June 10, 2003 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Adams, Ashland, Bayfield, Brown, Douglas, Eau Clair, Forest, Iron, Jackson, Juneau, Menominee, Oconto, Oneida, Outagamie, Pepin, Pierce, Vilas, Waushara and Winnebago in the State of Wisconsin; Chisago, Pine and Washington counties in the State of Minnesota.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	7.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	3.500
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.500

The number assigned to this disaster for physical damage is 344011. For economic injury the number is 9R5100 for Wisconsin; and 9R5200 for Minnesota.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 11, 2002.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–23598 Filed 9–16–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4122]

Determination Related to Colombian Armed Forces Under Section 567(a)(1) of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations, 2002 (Pub. L. 107–115)

Pursuant to the authority vested in me as Secretary of State, including under section 567 of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public. Law. 107–115) (the ''FOAA''), I hereby determine and certify that: (A) ''[t]he Commander General of the Colombian Armed Forces

is suspending from the Armed Forces those members, of whatever rank, who have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary groups;'' (B) ''[t]he Colombian Armed Forces are cooperating with civilian prosecutors and judicial authorities (including providing requested information, such as the identity of the persons suspended from the Armed Forces and the nature and cause of the suspension, and access to witnesses and relevant military documents and other information), in prosecuting and punishing in civilian courts those members of the Colombian Armed Forces, of whatever rank, who have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary groups;'' and (C) ''[t]he Colombian Armed Forces are taking effective measures to sever links (including by denying access to military intelligence, vehicles, and other equipment or supplies, and ceasing other forms of active or tacit cooperation), at the command, battalion, and brigade levels, with paramilitary groups, and to execute outstanding orders for capture for members of such groups.'' The Department of State has consulted with internationally recognized human rights organizations regarding the Colombian Armed Forces' progress in meeting the conditions contained in section 567(a)(1).

This Determination shall be published in the **Federal Register** and copies shall be transmitted to the appropriate committees of Congress.

Dated: September 9, 2002.

Richard L. Armitage,

Deputy Secretary of State, Department of State.

[FR Doc. 02–23623 Filed 9–16–02; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice 4123]

Determination on Provision of Assistance in Support of the South African Special Protection Unit in Burundi To Help Advance the Burundi Peace Process

Pursuant to the authority vested in me as Secretary of State by the laws and Constitution of the United States, including by section 451 of the Foreign Assistance Act of 1961, as amended, (the ''Act'') (22 U.S.C. 2261) and section 1–100 of Executive Order 12163, as amended, I hereby authorize, notwithstanding any other provision of law, the use of up to $5.0 million in FY 2002 Peacekeeping Operations (PKO) funds made available under Chapter 6 of Part II of the Act, in order to provide assistance authorized by Part I of the Act to support the South African Special Protection Unit to help protect returning opposition leaders participating in the Transitional Government inaugurated in Burundi on November 1, 2001.

This Determination shall be reported to Congress promptly and published in the **Federal Register**.

Dated: September 9, 2002.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 02–23624 Filed 9–16–02; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 23–17A, Systems and Equipment Guide for Certification of Part 23 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance and availability.

SUMMARY: Advisory Circular (AC) 23–17A, Systems and Equipment Guide for Certification of Part 23 Airplanes provides information and guidance concerning acceptable means, but not the only means of compliance with Title 14 of the Code of Federal Regulations (14 CFR) part 23, subpart D from 23.671 and subpart F, applicable to the systems and equipment installation in normal, utility, acrobatic, and commuter category airplanes. The AC consolidates existing policy documents, and certain AC's that cover specific paragraphs of the regulations, into a single document and adds new guidance. Material in the AC is neither mandatory nor regulatory in nature and does not constitute a regulation.

DATES: AC 23–17A was issued by the Small Airplane Directorate, Aircraft Certification Service, on June 27, 2002.

How to Order: A copy of AC 23–17A may be purchased from the Superintendent of Documents, Post Office Box 371954, Pittsburgh, PA 15250-7954, or from any of the Government Printing Offices located in major cities throughout the United States. Identify the publication as AC 23–17A, Systems and Equipment Guide for Certification of Part 23 Airplanes, Stock Number 050–007–01332–9. The cost is $34.00 per copy for orders mailed within the U.S. and $44.50 for orders mailed outside of the U.S. Send a check or money order, made payable to Superintendent of Documents, with your request. No c.o.d. orders are accepted. Also, the AC is available on the internet either at *http://www.faa.gov/certification/aircraft/small_airplane_directorate_advisory.htm* or at *http://www. faa. gov/certification/aircraft/ air_index.htm,* then click on ''Advisory Circulars'' in the left hand frame.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Nininger, Standards Office, Small Airplane Directorate, Aircraft Certification Service, Kansas City, Missouri 64106, telephone (816) 329–4129, fax (816) 329–4090.

Issued in Kansas City, Missouri, on August 28, 2002.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–23615 Filed 9–16–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property and Manchester Airport, Manchester, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: The FAA is requesting public comment on the City of Manchester, New Hampshire's request to change a portion (10.463 acres) of Airport property from aeronautical use to non-aeronautical use. The property is located at 80–84 Harvey Road (Tax Map 14, Lot 19–1) is currently vacant. The United States Army Reserve will use the property for storage of vehicles and heavy equipment. The property was acquired under FAA Project No. 9–27–0018–C605. In exchange for the subject property, the City of Manchester, New Hampshire will receive a parcel of land of equal value needed for Airport development

DATES: Comments must be received on or before October 17, 2002.

ADDRESSES: Documents are available for review by appointment by contacting Mr. Richard Fixler, Assistant Airport Manager, Engineering & Planning at Manchester Airport, One Airport Road, Manchester, New Hampshire 03103, Telephone 603–624–6539 or Donna R.

Witte, Federal Aviation Administration, 16 New England Executive Park, Burlington, Massachusetts, Telephone 781–238–7624.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone 781–238–7624.

SUPPLEMENTARY INFORMATION: Section 125 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) requires the FAA to provide an opportunity for public notice and comment to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport property for aeronautical purposes.

Issued in Burlington, Massachusetts on September 4, 2002.

Vincent A. Scarano,

Manager, Airports Divisions, New England Region.

[FR Doc. 02–23616 Filed 9–16–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Draft Environmental Impact Statement for Atlantic City International Airport, NJ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of a Draft Environmental Impact Statement for airport layout plan approval and Federal funding at Atlantic City International Airport, New Jersey.

SUMMARY: Notice is given that the Federal Aviation Administration (FAA) has prepared and released a Draft Environmental Impact Statement (DEIS) for improvement projects at Atlantic City International Airport. The DEIS addresses a proposal by the South Jersey Transportation Authority (SJTA) to construct the new or expanded facilities needed to continued operating the airport in a safe, efficient, and more productive manner. The airport is located in an ecologically sensitive area, and a variety of natural resources could be adversely affected if the proposed projects are implemented. Accordingly, the DEIS analyzes, evaluates, and discloses the potentially significant environmental impacts associated with reasonable alternatives, including the alternative of taking no action. The public is invited to comment on the DEIS during the 45-day comment period as well as to attend a public hearing, which will be schedule shortly.

DATES: Comments on the DEIS will be accepted for 45 days following the date that the US Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) in the **Federal Register**, which should be on or after September 16th, 2002; the comment due date would then be Monday, October 28th, 2002. However, the FAA will notify all parties on the project mailing list of the exact dates that comments will be accepted. Future notification regarding the public hearing date, expected in mid-October 2002, will be provided through public notices, local news media releases, and/or mailings. These notifications will be provided at least 15 days in advance of the public hearing and 30 days in advance of the deadline for submitting comments.

The FAA asks that comments on the DEIS be as specific as possible, including references to page numbers, chapters, or appendices. Comments that include suggested changes, sources, or methodologies are more helpful. Comments containing only opinions or preferences will not receive a formal response; however, they will be considered and included as part of the decision-making process.

ADDRESSES: Written comments on the DEIS should be sent to the FAA's Project Manager, Daisy Mather, Federal Aviation Administration, Eastern Region Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, NY 11434 (or alternatively by e-mail: *daisy.mather@faa.gov*).

SUPPLEMENTARY INFORMATION: The SJTA has completed a master plan, an airport layout plan, and an environmental assessment (EA) for future development projects at Atlantic City International Airport (ACY). Based on the EA and the related agency comments, the FAA determined that the proposed improvements had the potential to cause significant adverse impacts to the environment and that a DEIS should be prepared.

A Notice of Intent (NOI) to prepare an EIS was published in the **Federal Register** [FR Doc. 00–24935]. Scoping meetings were held with the public as well as with regulatory agencies that were involved in the EA process. Scoping identified the following environmental impact categories as being significant issues or concerns; noise, secondary and induced impacts, air quality, water resources, biotic communities, threatened and endangered species, wetlands, hazardous waste, and cumulative effects.

The proposal involves four near-term development projects. The SJTA has requested that FAA take environmental action on these projects' therefore, they are ripe for decision. They include terminal area development, auxiliary area development, hotel-conference center construction, and Runway 13–31 instrument landing system (ILS) upgrade. Because there are several environmental concerns associated with the proposed projects, certain mitigation measures have been incorporated early on in an effort to provide solutions to potential environmental impacts. The proposed mitigation projects include, but are not limited to, a mitigation and management plan for grassland habitat and a storm water management plan. For each of these near-term projects, the FAA's preferred alternative is identified, as is the environmentally-preferred alternative, which are the same for all but one project.

Major aspects of the terminal area development project are terminal building improvements and construction of new gates; construction of a public parking garage, rental car maintenance facility, airline cargo warehouses, general aviation hangars, and a deicing apron; and implementation of grassland mitigation and management projects and storm water best management practices. Five different locations on the airport were identified as candidate sites for terminal area development, but four of these were dismissed as being unreasonable because they failed to accomplish the project objectives, or they resulted in greater environmental harm, or both. Accordingly, two alternatives are evaluated in the DEIS: The Build Alternative and the No-Action Alternative.

The Build Alternative has the potential to benefit the airport and the local economy in terms of job creation and economic growth. Water resources would also benefit by implementing the storm water best management practices and by a having an engineered facility to control the runoff of deicing and anti-icing agents. However, the Build Alternative requires 58 acres of open space to be developed, resulting in a loss of 49 acres of grassland and nine acres of upland forest. Almost all of the affected grassland is classified as critical habitat for two state-listed threatened and endangered bird species—the upland sandpiper and the grasshopper sparrow. To compensate for the loss, the *Upland Sandpiper and Grasshopper Sparrow Mitigation and Management Plan* has been prepared, which demonstrates that sufficient suitable habitat could be created and managed in the northwest quadrant of the airport so that there would be no net loss in

grassland habitat value on the airport. The No-Action Alternative fails to meet the project's objectives. Therefore, the FAA proposes to implement the Build Alternative, with mitigation measures that reduce adverse environmental impacts to the extent practicable.

Major aspects of the auxiliary area development project are construction of aircraft maintenance hangars, air-freight warehouses, a parallel taxiway, an aircraft parking apron and connector taxiways, an access roadway, auto parking areas; and implementation of the grassland mitigation and management projects and storm water best management practices. Three alternatives are evaluated in the DEIS: two build alternatives and the No-Action Alternatives Build Alternative 1 utilizes the northwest quadrant of the airport, while Build Alternative 2 utilizes the southwest quadrant. Build Alternative 1 causes the most significant environmental impacts. It requires up to 70 acres of grassland to develop, which would result in substantial habitat loss and fragmentation, severely impacting several state-listed grassland bird species. This alternative also conflicts with the SJTA's plan to use the northwest quadrant of the airport for grassland mitigation and management for all of the near-term projects, so mitigation for habitat losses may not be feasible.

Build Alternative 2 would cause less environmental harm when compared with Build Alternative 1. The Build Alternative site is smaller and is centrally located amidst other developed areas. This would reduce habitat loss to 39 acres of grassland and reduce fragmentation, thereby minimizing the potential for adverse effects to state-listed grassland bird species. To compensate for the impacts to their habitat, the *Upland Sandpiper and Grasshopper Sparrow Mitigation and Management Plan* demonstrates that sufficient suitable habitat could be created and managed in the northwest quadrant of the airport so that there would be no net loss of grassland habitat value on the airport. The No-Action Alternative fails to meet the project's objectives. Therefore, the FAA proposes to implement Build Alternative 2, with mitigation measures to minimize and compensate for adverse environmental impacts to the extent practicable.

For the hotel/conference center project, major aspects of the proposal include a two-to-three story building with 150 suites, lobby and amenities, swimming pool, outbuildings, parking, and storm water best management practices. Three alternatives are evaluated in the DEIS; two build alternatives and the No-Action Alternative. The Build Alternative 1 location is along Amelia Earhart Boulevard, and Build Alternative 2 location is near the Airport Circle. Build Alternative 1 requires 10.5 acres of pine-oak forest to be cleared near a reported Cooper's hawk nest site. It has not been determined for certain whether this nesting territory is currently active, but it is being treated as if it were. In contrast, Build Alternative 2 requires 13.5 acres of pine-oak forest to be removed from two New Jersey Department of Environmental Protection (JNDEP) designated protected habitat zones—one for the Cooper's hawk and the other for the barred owl. Although these protected areas do not currently contain nest sites, they may still provide suitable breeding habitat, and the NJDEP recommends that such areas be set aside for habitat protection. The No-Action Alternative fails to meet the project objectives. Although Build Alternative 2 is considered to be the environmental preferred alternative, Build Alternative 1, with mitigation measures to reduce adverse environmental impacts to the extent practicable, is the FAA's preferred alternative, because it better meets the project purpose and need.

For the ILS upgrade, major aspects of the proposal include installation of a glide slope antenna and a medium intensity approach light system. Three alternatives are evaluated in the DEIS: two build alternatives and the No-Action Alternative. Build Alternative 1 would involve installation of a new ILS on Runway 31. Build Alternative 2 would involve relocating the existing ILS from Runway 13 to Runway 31 and installing a new, upgraded ILS system on Runway 13. The potential environmental impacts associated with the two build alternatives are virtually the same. Build Alternative 2, which by definition includes Build Alternative 1, has additional direct loss of biotic communities, but the total is still less than one acre. The same is true for loss of habitat for the grassland bird species upland sandpiper and grasshopper sparrow: the loss of habitat would be less than one-third of an acre, which would be compensated for under the *Upland Sandpiper and Grasshopper Sparrow Mitigation and Management Plan.* The No-Action Alternative fails to meet the project objectives. Therefore, the FAA proposes to implement Build Alternative 2.

In addition to the near-term projects ripe for decision, the DEIS discusses four long-range projects that are not. Because the long-range projects are not reasonably foreseeable, the FAA will not take an environmental action on them at this time. Once they are ripe for decision, however, additional environmental review and will be necessary. The projects include construction of a direct airport access roadway, extension of Runway 4–22, construction of high-speed taxiway exists, and non-aviation related development along the White Horse Pike. In response to scoping comments, these long-range projects are included in the DEIS so that the agencies and the public have a clear understanding of the entire airport development plan and the potential environmental consequences associated with it.

Obtaining Copies of the DEIS: The complete Draft Environmental Impact Statement is a very large document. It includes a 350-page technical report and nine technical and administrative appendices. Copies are available upon written request to Daisy Mather (see contact information below). The first copy of each printed document is free. Additional copies are available, but may be provided at a reduced cost. Copies of the Executive Summary are free and available upon request.

FOR FURTHER INFORMATION CONTACT: Daisy Mather, Federal Aviation Administration, Eastern Region Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, NY 11434; telephone (718) 553–2511; fax (718) 995–5694, or e-mail: *daisy.mater@faa.gov.*

Issued on September 10, 2002, in Jamaica, New York.

Sharon A. Daboin,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 02–23618 Filed 9–16–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Revision to Operations Specifications (OpSpec) A010, Aeronautical Weather Data

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of new requirement for Qualified Internet Communications Provider (QICP) for Internet communications of aviation weather and NOTAMs for Title 14 of the Code of Federal Regulation (14 CFR) part 121 and part 135 certificate holders under OpSpec A010 and request for comments.

SUMMARY: This notice announces a new requirement for 14 CFR part 121 and part 135 certificate holders that obtain

approved weather data via the public Internet for use in flight operations. These carriers must use a Qualified Internet Communications Provider (QICP) for Internet communications of aviation weather and NOTAMs. A QICP is a person or organization that provides access to aviation weather and NOTAMs via the public Internet and has FAA-approved Internet communication practices for reliability, accessibility, and security (*e.g.,* protection of data from unauthorized modifications). A current list of all QICPs can be found on the FAA public Web page.

All 14 CFR part 121 and part 135 air carriers that obtain aviation weather and NOTAMs via the public Internet will be required to amend their Operations Specifications to incorporate the use of QICPs. Operations Specification (OpSpec) A010 authorizes the carrier to use any eligible QICP on the FAA public Web page.

OpSpec A010, which amends FAA Order 8400.10 will read: ''For Internet communications of aviation weather and NOTAMs used in flight operations, all part 121 and part 135 operators are required to use an approved Qualified Internet Communications Provider (QICP).

(1) The QICPs used by the operator must be listed in OpSpec A010.

(2) The QICP used must be obtained from the approved list provided by the FAA.

(3) For more detailed information with regard to QICPs, refer to the appropriate AC pertaining to Internet Communications of Aviation Weather and NOTAMs and Volume 3, Chapter 7, Section 5, of this Order.''

Accessing aviation weather and NOTAM information via the public Internet using an approved QICP enhances public safety as a result of the increased security, reliability, and accessibility of the weather and aviation-related documents that are relied upon by part 121 and part 135 certificate holders.

DATES: Comments must be received on or before October 17, 2002.

ADDRESSES: Send all comments on the proposed revision to: Federal Aviation Administration, Air Transportation Division (Attention: AFS–260), 800 Independence Avenue, SW., Washington, DC 20591, or electronically to *connie.streeter@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Connie Streeter, AFS–260, at the address above, by e-mail at *connie.streeter@faa.gov,* or telephone at (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed revision by submitting such written data, views, or arguments as they may desire. Please identify Operations Specification A010, Aeronautical Weather Data, and submit comments, either hard copy or electronic, to the appropriate address listed above. Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

Issued in Washington, DC, on September 9, 2002.

Louis C. Cusimano,

Deputy Director, Flight Standards Service.

[FR Doc. 02–23617 Filed 9–16–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–08–C–00–MFR To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rogue Valley International-Medford Airport, Submitted by Jackson County, Rogue Valley International-Medford Airport, Medford, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Rogue Valley International-Medford Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before October 17, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bern E. Case, Airport Director, at the following address: 3650 Biddle Road, Medford, OR 97504. Air Carriers and foreign air carriers may submit copies of written comments previously provided to Rogue Valley International-Medford Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 02–08–C–00–MFR to impose and use PFC revenue at Rogue Valley International-Medford Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 10, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jackson County, Rogue Valley International-Medford Airport, Medford, Oregon, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 19, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: May 1, 2004.

Proposed charge expiration date: July 1, 2004.

Total requested for use approval: $105,000.

Brief description of proposed project: Security Enhancements.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Operations by Air Taxi/Commercial Operators when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, student instruction, non-stop sightseeing flights that begin and end at the airport and are concluded within a 25 mile radius of the airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rogue Valley International-Medford Airport.

Issued in Renton, Washington on September 10, 2002.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–23619 Filed 9–16–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Request for Grant Proposals for an Operational Test for the Implementation of Advanced Technologies in Rural Transit Service

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Request for grant proposals.

SUMMARY: FTA is issuing a request for grant proposals (RFP) for an operational test, which is funded at one million dollars ($1,000,000) to demonstrate and evaluate innovative approaches to integrating Advanced Public Transportation System (APTS) technologies (also referred to as Intelligent Transportation Systems (ITS) technologies for transit or Transit ITS) and available Information Technology (IT) systems. The purpose of the test is to better coordinate subsidized transportation services in rural areas among multiple transit operators. The cooperative project will require coordination among various funding agencies, such as the FTA, Department of Health and Human Services, Department of Interior, Department of Agriculture, and Department of Labor. The integration and use of APTS technologies and IT systems will enable rural transit providers to coordinate their services better and operate their transit and/or paratransit system(s) more efficiently, thus improving subsidized rural transportation services. FTA may award multiple grants for this project.

DATES: FTA will accept proposals immediately, as of September 17, 2002. Request for grant proposals may be viewed at *http://www.fta.dot.gov/research/fleet/its/otrfp.html.* A rolling application process will be used for this solicitation; therefore, there is no specific closing date for receipt of proposals. The solicitation will remain open until all funds for this project are obligated.

ADDRESSES: Proposals shall be addressed to Mr. Ronald Boenau, Advanced Public Transportation Systems (APTS) Division, Room 9402, TRI–11, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and shall reference ''Implementation of Advanced Technologies in Rural Transit Service.''

FOR FURTHER INFORMATION CONTACT: Request for grant proposals may be viewed at: *http://www.fta.dot.gov/research/fleet/its/otrfp.html.* Technical questions or concerns may be directed to Mr. Ronald Boenau or Mr. William Wiggins via phone at 202–366–4995 or via e-mail at *Rural.RFP@fta.dot.gov.* Legal questions or concerns may be directed to Mr. James LaRusch via phone at 202–366–1936 or via e-mail at *James.LaRusch@fta.dot.gov.* Office hours are 8:30 a.m. to 5:00 p.m. EST, Monday, through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION: FTA is seeking proposals from community groups and public and private transportation providers currently establishing, operating, coordinating, or brokering a rural transit service. Public transit agencies, state DOTs, health and human service agencies, federally recognized Indian tribes, and metropolitan planning organizations are encouraged to apply. FTA also welcomes proposals from Community Access Program (CAP) grantees. All agencies submitting proposals in response to this notice consent to be publicly identified as respondents.

Issued on: September 12, 2002.

Jennifer L. Dorn,

Administrator.

[FR Doc. 02–23620 Filed 9–16–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20992]

Laidlaw Inc.—Intra-Corporate Family Transaction Exemption

Laidlaw Inc. (Laidlaw), a noncarrier, has filed a verified notice of exemption under the Board's class exemption procedure at 49 CFR 1182.9.[1] The exempt transaction involves the transfer of issued and outstanding shares of stock in five motor passenger carriers from Laidlaw's subsidiary Laidlaw Transit Ltd. (Laidlaw Transit)[2] to Laidlaw's subsidiary Greyhound Canada Transportation Corp. (Greyhound Canada). Additionally, after control of the five carriers has been transferred, Laidlaw seeks to merge Chatham into Penetang-Midland with Penetang-Midland as the surviving entity.

The transaction was expected to be consummated on August 31, 2002.

The transaction is intended to restructure Laidlaw's organization by separating its special and charter operations from its school bus operations. Specifically, control of the five special and charter operations bus lines will be transferred from Laidlaw Transit, which will retain school bus operations, to Greyhound Canada, where intercity, charter and tour bus operations will be concentrated. In addition, the proposed merger of Chatham into Penetang-Midland is intended to simplify Laidlaw's corporate structure by eliminating overlapping management functions and reducing duplicate overhead and fixed costs.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1182.9. Laidlaw states that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. Laidlaw also states that, because it directly or indirectly holds all of the stock of the affected companies, no contract or agreement will be entered into, except for the corporate documentation and filings required to effect the merger. Laidlaw further states that there will be no effect upon employees because all of them will be retained.

If the verified notice contains false or misleading information, the Board shall summarily revoke the exemption and require divestiture. Petitions to revoke the exemption under 49 U.S.C. 13541(d) may be filed at any time. *See* 49 CFR 1182.9(c).

An original and 10 copies of all pleadings, referring to STB Docket No. MC–F–20992, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each

[1] The Board exempted intra-corporate family transactions of motor carriers of passengers that do not result in significant operational changes, adverse changes in service levels, or a change in the competitive balance with carriers outside the corporate family in *Class Exemption for Motor Passenger Intra-Corporate Family Transactions*, STB Finance Docket No. 33685 (STB served Feb. 18, 2000).

[2] Laidlaw, through Laidlaw Transit, indirectly or directly controls Gray Line of Vancouver Holdings, Ltd. (MC–357855), The Gray Line of Victoria Ltd. (MC–380234) and its subsidiary Victoria Tours Limited (MC–404543), Penetang-Midland Coach Lines Limited (Penetang-Midland) (MC–139953), and J.I. DeNure (Chatham) Limited (Chatham) (MC–111143) all of which are Canadian motor passenger carriers rendering special and charter operations in the United States.

pleading must be served on Fritz R. Kahn, 1920 N Street, NW., (8th floor), Washington, DC 20036–1601.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: September 6, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–23198 Filed 9–16–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for 941 TeleFile

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning 941 TeleFile, Employer's Quarterly Federal Tax Return.

DATES: Written comments should be received on or before November 18, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.),* Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employer's Quarterly Federal Tax Return.

OMB Number: 1545–1509.

Form Number: 941 TeleFile.

Abstract: 941 TeleFile is used by employers to report by telephone payments made to employees subject to income and social security/Medicare taxes and the amounts of these taxes. It may be used instead of filing Form 941.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and state, local, or tribal governments.

Estimated Number of Responses: 920,000.

Estimated Time Per Response: 5 hours, 58 minutes.

Estimated Total Annual Burden Hours: 4,968,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 11, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–23611 Filed 9–16–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Notice 99–43

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 99–43, Nonrecognition Exchanges under section 897.

DATES: Written comments should be received on or before November 18, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Nonrecognition Exchanges under Section 897.

OMB Number: 1545–1660.

Notice Number: Notice 99–43.

Abstract: Notice 99–43 announces modification of the current rules under Temporary Regulation section 1.897–6T(a)(1) regarding transfers, exchanges and other dispositions of U.S. real property interests in nonrecognition transactions occurring after June 18, 1980. The notice provides that, contrary to section 1.897–6T(a)(1), a foreign taxpayer will not recognize a gain under Code 897(e) for an exchange described in Code section 368(a)(1)(E) or (F), provided the taxpayer receives substantially identical shares of the same domestic corporation with the same divided rights, voting power, liquidation preferences, and convertability as the shares exchanged without any additional rights or features.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 10, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–23612 Filed 9–16–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–38–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–38–90 (TD 8382), Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund (§§ 1.6694–2(c) and 1.6694–3(e)).

DATES: Written comments should be received on or before November 18, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or Claim for Refund.

OMB Number: 1545–1231.

Regulation Project Number: IA–38–90 (Final).

Abstract: These regulations set forth rules under section 6694 of the Internal Revenue Code regarding the penalty for understatement of a taxpayer's liability on a Federal income tax return or claim for refund. In certain circumstances, the preparer may avoid the penalty by disclosing on a Form 8275 or by advising the taxpayer or another preparer that disclosure is necessary.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 30 min.

Estimated Total Annual Burden Hours: 50,000 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 6, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–23613 Filed 9–16–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 67, No. 180

Tuesday, September 17, 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.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Membership of the National Oceanic and Atmospheric Administration Performance Review Board

Correction

In notice document 02–23053 appearing on page 57580 in the issue of Wednesday, September 11, 2002, make the following correction:

On page 57580, in the third column, in the signature, ''*Undersecretary for Oceans and Atmosphere*'' should read ''*Deputy Undersecretary for Oceans and Atmosphere*''.

[FR Doc. C2–23053 Filed 9–16–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Programmatic Environmental Impact Statement (DEIS) for the Florida Keys Water Quality Improvements Program

Correction

In notice document 02–23004 beginning on page 57413 in the issue of Tuesday, September 10, 2002, make the following correction:

On page 57413, in the second column, under the heading **SUPPLEMENTARY INFORMATION**, in the 27th line, ''waterwater'' should read, ''wastewater''.

[FR Doc. C2–23004 Filed 9–16–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 97N–0023]

RIN 0910–AA99

Use of Ozone–Depleting Substances; Essential–Use Determinations

Correction

In rule document 02–18610 beginning on page 48370 in the issue of Wednesday, July 24, 2002 make the following correction:

On page 48371, in the first column, under the **DATES** heading, in the sixth line, ''August 25, 2002'' should read ''July 24, 2003''.

[FR Doc. C2–18610 Filed 7–16–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208280–86; REG–136311–01]

RIN 1545–AJ57; RIN 1545–BA07

Exclusions From Gross Income of Foreign Corporations

Correction

In proposed rule document 02–19127 beginning on page 50510 in the issue of Friday, August 2, 2002, make the following corrections:

§ 1.883–1 [Corrected]

1. On page 50525, in § 1.883–1, in the second column, in paragraph (h)(2), in the fifth line, ''(i) through (viii) of this section pararaph (h)(2)'' should read, ''paragraph (h)(2)(i) through (viii) of this section''.

2a. On the same page, in the same section, in the third column, in paragraph (h)(3)(iii), in the third line, ''1.833–2'' should read, ''1.883–2''.

2b. In the seventh line, ''1.833–2'' should read, ''1.883–2''.

§ 1.883–4 [Corrected]

3. On page 50530, in § 1.883–4, in the first column, in paragraph (a), in the eighth line, ''A 1.883–1(c)(2)'' should read, ''§ 1.883–1(c)(2)''.

[FR Doc. C2–19127 Filed 9–16–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
September 17, 2002

Part II

The President

Presidential Determination No. 02–31 of September 13, 2002—Continuation of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Federal Register
Vol. 67, No. 180
Tuesday, September 17, 2002

Presidential Documents

Title 3—

The President

Presidential Determination No. 02–31 of September 13, 2002

Continuation of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Memorandum for the Secretary of State [and] the Secretary of the Treasury

Under section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note), and a previous determination on September 12, 2001 (66 *Fed. Reg.* 47943), the exercise of certain authorities under the Trading with the Enemy Act is scheduled to terminate on September 14, 2002.

I hereby determine that the continuation for 1 year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

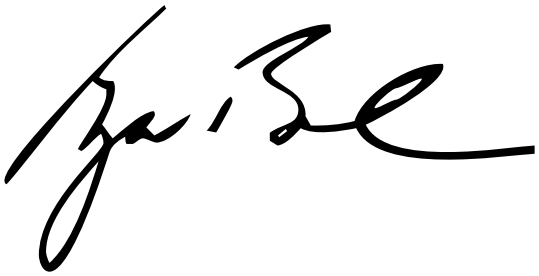
Therefore, pursuant to the authority vested in me by section 101(b) of Public Law 95–223, I continue for 1 year, until September 14, 2003, the exercise of those authorities with respect to countries affected by:

(1) the Foreign Assets Control Regulations, 31 C.F.R. part 500;

(2) the Transaction Control Regulations, 31 C.F.R. part 505; and

(3) the Cuban Assets Control Regulations, 31 C.F.R. part 515.

The Secretary of the Treasury is authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 13, 2002.

[FR Doc. 02–23790
Filed 9–16–02; 10:35 am]
Billing code 4810–31–M

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 223/P.L. 107–211

To amend the Clear Creek County, Colorado, Public Lands Transfer Act of 1993 to provide additional time for Clear Creek County to dispose of certain lands transferred to the county under the Act. (Aug. 21, 2002; 116 Stat. 1050)

H.R. 309/P.L. 107–212

Guam Foreign Investment Equity Act (Aug. 21, 2002; 116 Stat. 1051)

H.R. 601/P.L. 107–213

To redesignate certain lands within the Craters of the Moon National Monument, and for other purposes. (Aug. 21, 2002; 116 Stat. 1052)

H.R. 1384/P.L. 107–214

Long Walk National Historic Trail Study Act (Aug. 21, 2002; 116 Stat. 1053)

H.R. 1456/P.L. 107–215

Booker T. Washington National Monument Boundary Adjustment Act of 2002 (Aug. 21, 2002; 116 Stat. 1054)

H.R. 1576/P.L. 107–216

James Peak Wilderness and Protection Area Act (Aug. 21, 2002; 116 Stat. 1055)

H.R. 2068/P.L. 107–217

To revise, codify, and enact without substantive change certain general and permanent laws, related to public buildings, property, and works, as title 40, United States Code, ''Public Buildings, Property, and Works''. (Aug. 21, 2002; 116 Stat. 1062)

H.R. 2234/P.L. 107–218

Tumacacori National Historical Park Boundary Revision Act of 2002 (Aug. 21, 2002; 116 Stat. 1328)

H.R. 2440/P.L. 107–219

To rename Wolf Trap Farm Park as ''Wolf Trap National Park for the Performing Arts'', and for other purposes. (Aug. 21, 2002; 116 Stat. 1330)

H.R. 2441/P.L. 107–220

To amend the Public Health Service Act to redesignate a facility as the National Hansen's Disease Programs Center, and for other purposes. (Aug. 21, 2002; 116 Stat. 1332)

H.R. 2643/P.L. 107–221

Fort Clatsop National Memorial Expansion Act of 2002 (Aug. 21, 2002; 116 Stat. 1333)

H.R. 3343/P.L. 107–222

To amend title X of the Energy Policy Act of 1992, and for other purposes. (Aug. 21, 2002; 116 Stat. 1336)

H.R. 3380/P.L. 107–223

23 To authorize the Secretary of the Interior to issue right-of-way permits for natural gas pipelines within the boundary of Great Smoky Mountains National Park. (Aug. 21, 2002; 116 Stat. 1338)

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