AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

1–10–03 Friday
Vol. 68 No. 7 Jan. 10, 2003
Pages 1359–1512

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Printed on recycled paper.

Contents

Federal Register

Vol. 68, No. 7

Friday, January 10, 2003

Agency for Toxic Substances and Disease Registry
NOTICES
Grants and cooperative agreements; availability, etc.:
Public Health Conference Support Program, 1463–1467

Agricultural Marketing Service
RULES
Fresh cut flowers and greens promotion and information order; termination, 1364–1366
Oranges and grapefruit grown in—
Texas, 1362–1364
Plant Variety Protection Office; fee increase, 1359–1360

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
NOTICES
Emergency declarations:
California; exotic Newcastle disease; backyard poultry, 1432

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Oriental fruit fly, 1360–1362

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Mountain Health Care, 1478–1482

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

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Public Health Conference Support Program, 1463–1467

Centers for Medicare & Medicaid Services
RULES
Medicare and Medicaid:
Fire safety standards for certain health care facilities, 1374–1388
NOTICES
Agency information collection activities:
Proposed collection; comment request, 1467–1468
Submission for OMB review; comment request, 1468

Coast Guard
RULES
Drawbridge operations:
Massachusetts, 1366

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
See Technology Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 1433–1434
Procurement list; additions and deletions, 1434–1436

Comptroller of the Currency
PROPOSED RULES
Community and economic development entities, community development projects, and other public welfare investments, 1394–1399

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 1443

Defense Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 1443–1444

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 1444
Submission for OMB review; comment request, 1444–1445
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
Rehabilitation Engineering Research Centers Program, 1445–1448

Employment and Training Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 1482–1483

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 1483–1484

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; notice of intent:
Nevada Test Site, NV; Wind Farm; withdrawn, 1448

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Indiana, 1370–1373

Air quality implementation plans; approval and promulgation; various States:
Ohio, 1366–1370
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Indiana, 1414
NOTICES
Agency information collection activities:
Proposed collection; comment request, 1454–1458
Environmental statements; availability, etc.:
Agency statements—
Weekly receipts, 1458
Meetings:
Environmental Policy and Technology National Advisory Council, 1458–1459

Federal Aviation Administration
RULES
Noise certification standards:
Subsonic jet airplanes and subsonic transport category large airplanes; correction, 1512

Federal Emergency Management Agency
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 1459–1460
Disaster and emergency areas:
Alaska, 1460–1461
Guam, 1461
Northern Mariana Islands, 1461–1462
Meetings:
National Fire Academy Board of Visitors, 1462

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Canadian Niagara Power Co., Ltd., et al., 1452–1453
Hydroelectric applications, 1453–1454
Applications, hearings, determinations, etc.:
Cargill Power Markets, LLC, 1448–1449
Chandeleur Pipe Line Co., 1449
Gulf South Pipeline Co., LP, 1450
Janke, Williard, et al., 1450
Northwest Pipeline Corp., 1450–1452

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Scott and Carver Counties, MN, 1507–1508

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control; correction, 1463
Permissible nonbanking activities, 1463

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 1511

Fish and Wildlife Service
RULES
Migratory bird hunting:
Tungsten-iron-nickel-tin shot approval as nontoxic for waterfowl and coots hunting, 1388–1392

Food and Drug Administration
NOTICES
Human drugs:
New drug applications—
REZULIN (troglitazone); approval withdrawn, 1469
Reports and guidance documents; availability, etc.:
Medical devices—
User fee rates and interim procedures; correction, 1469

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
Madera County, 1433
Ravalli County, 1432–1433
Tehama County, 1432

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 1474–1475

Indian Affairs Bureau
NOTICES
Environmental statements; notice of intent:
Jamul Indian Village 101-Acre Fee-to-Trust Transfer and Casino Project, CA, 1475

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping:
Cut-to-length carbon steel plate from—
Ukraine, 1438–1439
Cut-to-length carbon steel plate products from—
Japan, 1436–1438
Fresh crawfish tail meat from—
China, 1439–1441
Export trade certificates of review, 1441–1442

International Trade Commission
NOTICES
Meetings; Sunshine Act, 1478

Justice Department
See Antitrust Division

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Environmental statements; notice of intent:
Clark County Regional Flood Control District, NV; Flood Control Master Plan, 1475–1476

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Monterey Coal Co. et al., 1484–1486

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
International Exhibitions Federal Advisory Committee, 1486

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety stanards:
Event data recorders, 1508
Reports and guidance documents; availability, etc.:
Child restraints; child safety seat registration evaluation; review; technical report, 1508–1509

National Institutes of Health
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 1469–1470
Meetings:
National Institute of Allergy and Infectious Diseases, 1470
National Institute of Mental Health, 1471
National Institute on Aging, 1471–1472
National Institute on Alcohol Abuse and Alcoholism, 1470–1471

National Labor Relations Board
NOTICES
Meetings; Sunshine Act, 1486

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
North Pacific Groundfish Observer Program; correction, 1392–1393
International fisheries regulations:
Northwest Atlantic Fisheries Organization Regulatory Area; fish quotas and effort allocation; correction, 1392
PROPOSED RULES
Fishery conservation and management:
Atlantic highly migratory species—
Atlantic tunas, swordfish, and sharks, and Atlantic billfish; exempted fishing activities, 1430–1431
Marine mammals:
Commercial fishing authorizations—
Fisheries categorized according to frequency of incidental takes; 2003 list, 1414–1430

National Park Service
NOTICES
Environmental statements; availability, etc.:
Lake Mead National Recreation Area, NV; lake management plan, 1476–1478

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 1486–1487

Nuclear Regulatory Commission
NOTICES
Reports and guidance documents; availability, etc.:
Nuclear Material Safety and Safeguards Office; consolidated decommissioning guidance; financial assurance, recordkeeping, and timeliness, 1487–1488
Applications, hearings, determinations, etc.:
Dominion Nuclear Connecticut, Inc., 1487

Occupational Safety and Health Administration
PROPOSED RULES
Safety and health standards:
Commercial diving operations, 1399–1414

Patent and Trademark Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 1442–1443

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Exemption applications—
Van Kampen Funds Inc. et al., 1489–1490
Order applications—
Gladstone Capital Corp., 1490–1492
Meetings; Sunshine Act, 1492–1493
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 1493–1495
New York Stock Exchange, Inc., 1495–1497
Philadelphia Stock Exchange, Inc., 1497–1505
Applications, hearings, determinations, etc.:
Public utility holding company filings, 1488–1489

Small Business Administration
NOTICES
Disaster loan areas:
Alaska, 1505
Guam, 1505
New York, 1505
North Carolina, 1505
Northern Mariana Islands, 1505
Texas, 1506

State Department
NOTICES
Meetings:
Great Lakes Basin; water uses; hearings, 1506

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 1472–1473

Submission for OMB review; comment request, 1473–1474

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
East West Resorts Transportation LLC et al., 1510
Railroad services abandonment:
Union Pacific Railroad Co., 1510–1511

Technology Administration
NOTICES
Senior Executive Service:
Performance Review Board; membership, 1443

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 1506–1507

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Comptroller of the Currency

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
97.....1359
301.....1360
906.....1362
1208.....1364

12 CFR

Proposed Rules:
24.....1394

14 CFR
21.....1512
36 (2 documents) 1512
91.....1512

29 CFR

Proposed Rules:
1910.....1399

33 CFR
117.....1366

40 CFR
52 (2 documents) 1366, 1370
81.....1370

Proposed Rules:
52.....1414
81.....1414

42 CFR
403.....1374
416.....1374
418.....1374
460.....1374
482.....1374
483.....1374
485.....1374

50 CFR
20.....1388
300.....1392
679.....1392

Proposed Rules:
229.....1414
635.....1430

Rules and Regulations

Federal Register
Vol. 68, No. 7
Friday, January 10, 2003

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 97

[Docket ST–02–01]

RIN 0581–AC22

Plant Variety Protection Office, Fee Increase

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing Plant Variety Protection (PVP) Office application, search, and certificate issuance fees by approximately 35 percent. The last fee increase in September 2000 is no longer adequate to cover current program obligations for administrative and information technology needs. The PVP Act requires that reasonable fees be collected from applicants seeking certification of protection in order to maintain the program.

EFFECTIVE DATE: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Fabian Q. Generao, USDA, AMS, Science and Technology, 14th & Independence Avenue, Room 3521–South Bldg., Washington, DC 20250, Tel. 202/720–0195, Fax. 202/720–4631

SUPPLEMENTARY INFORMATION:

1. Executive Order 12866

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

II. Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 670 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small business entities. There are more than 800 users of the PVP, of whom about 100 may file applications in a given year. Some of these users are small business entities under the criteria established by the Small Business Administration (13 CFR 121.201). The AMS has determined that this action would not have a significant economic impact on a substantial number of these small business entities.

The Plant Variety Protection (PVP) Office administers the PVP Act of 1970 (7 U.S.C. 2321 *et seq.,*), and issues Certificates of Protection that provide intellectual property rights to developers of new varieties of plants. A Certificate of Protection is awarded to an owner of a variety after examination indicates that it is new, distinct from other varieties, genetically uniform, and stable through successive generations. This action will raise the fee charged to users of plant variety protection. The AMS estimates that the rule will yield an additional $270,000 during fiscal year (FY) 2003. The costs to private and public business entities will be proportioned to their use of the service, and shared equitably. The costs to individual users will be increased by 35 percent, or about $1,059.00 per application. Plant Variety Protection is a voluntary service. Any decision by developers to discontinue to the use of plant variety protection will not hinder private and public entities from marketing their varieties in commercial markets.

Every year, AMS reviews it user fee financial program to determine their fiscal condition. In the most recent review of the PVP program, the cost analysis indicated that the existing fee schedule will not generate sufficient revenues to cover program services and obligations while maintaining an adequate program reserve balance. From 1995 and through 2002, the PVP Office absorbed accumulated national and locality salary increases for Federal employees totaling 36 and 19 percent, respectively. These costs were offset by a fee increase of only 10 percent in September 2000.

AMS calculated the new fee schedule by projecting FY 2002 revenues of $903,000 and program obligations of $1,231,000. This indicates a projected loss to the program of $328,000 for FY 2003. At this rate, the trust fund balance would be nearly depleted by the end of FY 2004. With a fee increase of 35 percent, FY 2003 revenues and expenditures are projected to be $1,041,000 and $1,189,000, respectively. The trust fund balance is expected to be maintained at the FY 2003 level of $853,000, which satisfies Agency requirements.

III. Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect, nor will it preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposed rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of the rule.

IV. Paperwork Reduction Act

This rule does not contain any information collection or record keeping requirements that are subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Background Information

The PVP Program is a voluntary, user fee-funded service, conducted under the Authority of the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*). The Act authorizes the Secretary of Agriculture to provide intellectual property rights that facilitate marketing of new varieties of seed-propagated crops and potatoes. The Act also requires that reasonable fees be collected from the users of the services to cover the costs of maintaining the program.

On August 2, 2000, AMS published a rule in the **Federal Register** (65 FR 47243) that increased Plant Variety Protection fees that became effective September 1, 2000.

In its analysis of projected costs for FY 2002, AMS identified administrative and information technology support as well as a 10 percent decrease in the number of applications submitted to the office. For FY 2002, user fee revenues and program obligations are projected to be $903,000 and $1,231,000, respectively, resulting in an estimated $328,000 program deficit. With a fee increase, FY 2003 revenues and

expenditures are projected to be $1,041,000 and $1,189,000 respectively. We estimate this rule would yield an additional $270,000 during FY 2003 that will offset increased program operating costs. The program will take additional cost cutting measures to eliminate the remaining deficit.

AMS used the fees currently charged as a base for calculating the new fee schedule for FY 2003. The fees set forth in Sec. 97.175 would be increased. The application fee will be increased from $320 to $432, the search fee from $2,385 to $3,220, and the issuance fee from $320 to $432. The fees for reviving an abandoned application, correcting or re-issuance of a certificate are increased from $320 to $432. The charge for granting an extension for responding to a request is increased from $55 to $74. The hourly charge for any other service not specified will increase from $66 to $89. The fee for appeal to the Secretary (refundable if appeal overturns the Commissioner's decision) is increased from $3,050 to $4,118. Reproduction of records, drawings, certificates, exhibits or printed materials, late payment, and replenish of seeds will increase by 35 percent. These fee increases are necessary to recover the costs of this fee-funded program.

The Plant Variety Protection Advisory Board has been informed of cost increases, including anticipated salary increases, and consulted on a fee increase in November 2001. The Board recommended that fees be increased. This rule makes the minimum changes in the regulations to implement the recommended increased fees to maintain the program as a fee-funded program.

Summary of Public Comment

A notice of the proposed rule was published in the **Federal Register** (67 FR 61545) on October 1, 2002. A 30-day comment period was provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impact of this action on small business.

The only comment received in response to the proposed revised regulatory text questioned whether the 35 percent increase of the existing fee schedule was truly warranted. Every year, AMS reviews it's user fee financed programs to determine their fiscal condition. In the most recent review of the PVP program, the cost analysis indicated that the existing fee schedule will not generate sufficient revenues to cover program services and obligations while maintaining an adequate program reserve balance. We estimate the final rule would yield an additional $270,000 during FY 2003, offsetting increased program operating costs, salaries and benefits, and technology improvements. From October 1, 2001 to September 30, 2002, the PVP program has reduced the backlog by 21 percent. With sufficient funds to cover overall operating costs, the program will continue to improve the efficiency and turnaround time in the processing of plant variety protection requests.

List of Subjects in 7 CFR Part 97

Plants, seeds.

For reasons set forth in the preamble, 7 CFR part 97 is amended as follows.

PART 97—PLANT VARIETY AND PROTECTION

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

Authority: 7 U.S.C. 2321 *et seq.*

2. Section 97.175 is revised to read as follows:

§ 97.175 Fees and charges.

The following fees and charges apply to the services and actions specified in this section:

(a) Filing the application and notifying the public of filing—$432.00.

(b) Search or examination—$3,220.00.

(c) Allowance and issuance of certificate and notifying public of issuance—$432.00.

(d) Revive an abandoned application—$432.00.

(e) Reproduction of records, drawings, certificates, exhibits, or pointed material (copy per page of material)—$1.50.

(f) Authentication (each page)—$1.50.

(g) Correcting or re-issuance of a certificate—$432.00.

(h) Recording assignments (per certificate/application)—$38.00.

(i) Copies of 8 x 10 photographs in color—$38.00

(J) Additional fee for reconsideration—$432.00.

(k) Additional fee for late payment—$38.00.

(l) Additional fee for late replenishment of seed—$38.00.

(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision)—$4,118.00.

(n) Granting of extensions for responding to a request—$74.00.

(o) Field inspections by a representative of the Plant Variety Protection Office, made at the request of the applicant, shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulation.

(p) Any other service not covered in this section will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $89.00 per employee-hour.

Dated: January 6, 2003.

A.J. Yates,

Administrator.

[FR Doc. 03–452 Filed 1–9–03; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–130–1]

Oriental Fruit Fly; Designation of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by quarantining a portion of Los Angeles and Orange Counties, CA, and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of Oriental fruit fly into noninfested areas of the United States.

DATES: This interim rule was effective January 6, 2003. We will consider all comments that we receive on or before March 11, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–130–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–130–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–130–1'' on the subject line.

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

help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, vegetables, and berries. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. Section 301.93–3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.93–3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles and (2) the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service reveal that a portion of Los Angeles and Orange Counties, CA, is infested with the Oriental fruit fly.

State agencies in California have begun an intensive Oriental fruit fly eradication program in the quarantined area in Los Angeles and Orange Counties. Also, California has taken action to restrict the intrastate movement of regulated articles from the quarantined area.

Accordingly, to prevent the spread of the Oriental fruit fly into noninfested areas of the United States, we are amending the regulations in § 301.93–3 by designating a portion of Los Angeles and Orange Counties, CA, as a quarantined area for the Oriental fruit fly. The quarantined area is described in the rule portion of this document.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Oriental fruit fly from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

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

Executive Order 12866 and Regulatory Flexibility Act

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

This rule amends the Oriental fruit fly regulations by adding a portion of Los Angeles and Orange Counties, CA, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from a quarantined area.

Within the quarantined area there are approximately 389 small entities that may be affected by this rule. These include 351 fruit sellers, 3 growers, 33 nurseries, 1 certified farmers' market, and 1 swapmeet. These 389 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, these small entities sell regulated articles primarily for local intrastate, not interstate movement, so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

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

Executive Order 12372

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

Executive Order 12988

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

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The site-specific environmental assessment provides a basis for the conclusion that the implementation of integrated pest management to eradicate the Oriental fruit fly will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

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

Copies of the environmental assessment and finding of no significant impact are available for review in our reading room (information on the

location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice). In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**. The environmental assessment and finding of no significant impact may also be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/ppq/lamiroff.pdf.*

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, 7754, and 7760; 7 CFR 2.22, 2.80, and 371.3.

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

2. In § 301.93–3, paragraph (c) is amended by adding, under the heading ''CALIFORNIA'', an entry for Los Angeles and Orange Counties to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles and Orange Counties. That portion of Los Angeles and Orange Counties in the La Mirada area bounded by a line as follows: Beginning at the intersection of Whittier Boulevard and Euclid Street; then south on Euclid Street to its intersection with La Palma Avenue; then west on La Palma Avenue to its intersection with Brookhurst Street; then south on Brookhurst Street to its intersection with Lincoln Avenue; then west on Lincoln Avenue to its intersection with Moody Street; then north on Moody Street to its intersection with Crescent Avenue; then west on Crescent Avenue to its intersection with Centralia Street; then west on Centralia Street to its intersection with Pioneer Boulevard; then north on Pioneer Boulevard to its intersection with 166th Street; then west on 166th Street to its intersection with Maidstone Avenue; then north on Maidstone Avenue to its intersection with Excelsior Drive; then east on Excelsior Drive to its intersection with Pioneer Boulevard; then north on Pioneer Boulevard to its intersection with Florence Avenue; then northeast on Florence Avenue to its intersection with Whittier Boulevard; then south and east on Whittier Boulevard to the point of beginning.

* * * * *

Done in Washington, DC, this 6th day of January 2003 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–491 Filed 1–9–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV02–906–1 FIR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; 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 Texas Valley Citrus Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.12 to $0.11 per 7/10-bushel carton of oranges and grapefruit handled. The Committee locally administers the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Authorization to assess orange and grapefruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; 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. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, 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. Under the marketing order now in effect, orange and grapefruit handlers in the Lower Rio Grande Valley in Texas 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 oranges and grapefruit beginning on August 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 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 to decrease the assessment rate established for the Committee for the 2002–03 and subsequent fiscal periods from $0.12 to $0.11 per 7/10-bushel carton of oranges and grapefruit.

The Texas orange and grapefruit 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 and handlers of Texas oranges and grapefruit. 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 1999–2000 and subsequent fiscal periods, 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 30, 2002, and unanimously recommended 2002–03 expenditures of $1,226,022 and an assessment rate of $0.12 per 7/10-bushel carton of oranges and grapefruit. The Committee met again on August 28, 2002, and recommended a decreased assessment rate of $0.11, with no change to the previously approved budget of $1,226,022. Thirteen of the 14 Committee members and alternates acting as members voted in support of the decrease. One Committee member voted against the decrease. In comparison, last year's budgeted expenditures were $1,236,777. The assessment rate of $0.11 is $0.01 lower than the rate previously in effect. The Committee voted to reduce the assessment rate after determining that its reserve fund was higher than necessary, and to lower handler assessment costs for 2002–03 by $100,000.

The major expenditures recommended by the Committee for the 2002–03 fiscal period include $810,500 for advertising, $179,000 for the Mexican Fruit Fly program, $107,845 for management and administration of the program, and $74,777 for compliance. Budgeted expenses for these items in 2001–02 were $810,500, $197,000, $104,500, and $74,777, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Texas oranges and grapefruit. Texas orange and grapefruit shipments for the year are estimated at 10 million 7/10-bushel cartons, which should provide $1,100,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently $274,041) will be kept within the maximum of one fiscal period's expenses permitted by the order (§ 906.35).

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 prior to or during each fiscal period to recommend a budget of expenses and 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.

Initial 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 410 producers of oranges and grapefruit in the production area and approximately 15 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated Texas citrus industry profile shows that 6 of the 15 handlers (40 percent) shipped over 651,042 7/10-bushel cartons of oranges and grapefruit. Using an average f.o.b. price of $7.68 per 7/10-bushel carton, these handlers could be considered large businesses under SBA's definition, and the remaining 9 handlers (60 percent) could be considered small businesses. Of the approximately 410 producers within the production area, few have sufficient acreage to generate sales in excess of $750,000. Thus, the majority of handlers and producers of Texas oranges and grapefruit may be classified as small entities.

This action continues to decrease the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.12 to $0.11 per 7/10-bushel carton of oranges and grapefruit. The Committee recommended 2002–03 expenditures of $1,226,022 and an assessment rate of $0.11 per 7/10-bushel carton of oranges and grapefruit. The assessment rate of $0.11 is $0.01 lower than the previous rate. The quantity of assessable oranges and grapefruit for the 2002–03 fiscal year is estimated at 10 million cartons. Income derived from handler assessments, along with interest 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 fiscal period include $810,500 for advertising, $179,000 for the Mexican Fruit Fly program, $107,845 for management and administration of the program, and $74,777 for compliance. Budgeted expenses for these items in 2001–02 were $810,500, $197,000, $104,500, and $74,777, respectively.

The Committee recommended the $0.11 assessment rate to lower its operating reserve to $171,249. With a $0.12 assessment rate, the Committee projected its reserve on July 31, 2003, to be $271,249, and it thought that was higher than needed to administer the

program. It also recommended the reduced rate to lower handler assessments by $100,000 during 2002–03.

The Committee reviewed and unanimously recommended 2002–03 expenditures of $1,226,022, which included a decrease in the Mexican Fruit Fly program and an increase in the management and administration of the program. Budgeted expenses for the advertising program and the compliance program remained the same as last year. In arriving at the budget, the Committee considered information from various sources, including the Executive Committee. The Committee considered leaving the established higher assessment rate unchanged. However, it concluded that the reserves currently held by the Committee are higher than the Committee needs to administer the program.

The assessment rate of $0.11 per 7/10-bushel carton of assessable oranges and grapefruit was determined by dividing the total budget by the 10 million 7/10-bushel cartons of oranges and grapefruit estimated to be handled during the 2002–03 fiscal period. The $0.11 rate will provide $1,100,000 in assessment income. The additional $126,022 to fund the Committees estimated expenses will come from the Committee's reserve, a refund of an overpayment from the Mexican Fruit Fly program, and interest income.

A review of historical information (October 1998 through May 2002) and preliminary information pertaining to the upcoming fiscal period indicates that the packinghouse door price for the 2002–03 fiscal period could range, monthly, from $1.65 to $10.36 per 7/10-bushel carton of Texas oranges and grapefruit, depending upon the fruit variety, size, and quality. Therefore, the estimated assessment revenue for the 2002–03 fiscal period as a percentage of total grower (packinghouse door) revenue could range between 6.67 percent and 1.06 percent.

This action continues to decrease the 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 Texas orange and grapefruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 28, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit 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 October 7, 2002 (67 FR 62318). Copies of that rule were also mailed or sent via facsimile to all orange and grapefruit handlers. 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 December 6, 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 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 906 which was published at 67 FR 62318 on October 7, 2002, is adopted as a final rule without change.

Dated: January 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–454 Filed 1–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1208

[FV–02–710]

Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order; Termination

AGENCY: Agricultural Marketing Service, (USDA).

ACTION: Final rule; termination order.

SUMMARY: This final rule terminates the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order (Order) and its rules and regulations in their entirety. This action is necessary because the Order has not been in operation since 1997, and collection efforts under the Order have been exhausted. Therefore, there is no need to continue the program.

EFFECTIVE DATE: February 10, 2002.

FOR FURTHER INFORMATION CONTACT: Margaret B. Irby, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Room 2535–S, Washington, DC 20250–0244, telephone (202) 720–9915, fax (202) 205–2800, e-mail *margaret.irby@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993 [7 U.S.C. 6801–6814] (Act).

The U.S. Department of Agriculture (USDA or the Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this termination order. The Act provides that administrative proceedings must be exhausted before parties may file suit in court.

This final rule terminates the Order and its rules and regulations.

The Act authorizes the creation of a generic program of promotion and information for fresh cut flowers and greens and became effective on December 14, 1993. The Order was issued on December 29, 1994, and the National PromoFlor Council (Council) was appointed to administer the Order under USDA supervision. The Order covered approximately 650 wholesale handlers (qualified first handlers) of

fresh cut flowers and greens with sales of $750,000 or more annually. In accordance with paragraph (h)(4) of § 6804 of the Act and paragraph (e) of § 1208.41 of the Order, the Council retained 10 percent of the assessment funds collected in an interest-bearing escrow account.

Paragraph (a)(1) of § 6806 of the Act requires USDA to conduct a referendum not later than three years after the issuance of the Order to ascertain whether the Order should be continued. Paragraph (a)(2) of that section requires that the Order be approved by a simple majority of all votes cast in the referendum in order to continue. The referendum was conducted from June 2 through 20, 1997.

In the referendum, only 42 percent of the voters voted to continue the program. Paragraph (d) of § 6806 of the Act and § 1208.60 of the Order, provide that, if the Department determines that termination of the Order is favored by a majority of all votes cast in the referendum, the Department shall terminate the collection of assessments under the Order not later than 180 days after the referendum results are announced. Therefore, the Department published a termination order in the **Federal Register** on July 28, 1997 [62 FR 40255], stating that termination of the Order was favored by a majority of the qualified handlers voting in the referendum and that the Order should therefore be terminated. The termination order eliminated the requirement for handlers to pay assessments as of July 29, 1997. The Act requires the Department to terminate activities under the Order as soon as practicable and in an orderly manner. The other provisions of the Order remained in effect in order to facilitate the collection of past-due assessments from 14 handlers.

In addition, in accordance with § 1208.61 of the Order, the Department appointed five members of the Council to serve as trustees for the purpose of liquidating the assets of the Council.

Paragraph (h)(4) of § 6804 of the Act provides that refunds of assessments shall be made out of the escrow account to those qualified handlers who apply for refunds prior to the conduct of the referendum and submitted satisfactory proof that they paid the assessment for which a refund is requested. If the amount in the escrow account is not sufficient to refund the total amount of assessments demanded, the amount of all such refunds shall be prorated among all eligible qualified handlers that demand the refunds. Section 1208.61 of the Order provides that refunds are to be made within 30 days of the date the results of the referendum are released by the Department. Due to the number of refund requests, handlers received refunds of about 12 cents for each dollar in assessments paid to the Council. After the refunds were made and the Council's assets were liquidated, a final audit of the Council's books was conducted.

As of July 29, 1997, 14 handlers owed a total of $433,483.50 in past-due assessments. To date, USDA has collected $283,130.00 in past-due assessments, $38,932.98 in late fees, and $4,500.00 in civil penalties from these handlers pursuant to final decisions by the Secretary of Agriculture in 14 administrative proceedings brought by the Agricultural Marketing Service (AMS). In accordance with instructions from the trustees, the past-due assessments and late fees were distributed to three floral industry groups. In accordance with the Act, the civil penalties were forwarded to the U.S. Department of the Treasury.

Collection efforts have been exhausted. Therefore, this action terminates all provisions of the Order and its rules and regulations.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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. The Order is unique in that it was brought about through group action of essentially small entities acting on their own behalf. Thus, both the Act and the RFA have small entity orientation and compatibility.

The Order covered approximately 650 wholesale handlers (qualified handlers). Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $5 million dollars. A majority of the qualified handlers may be classified as small entities.

This final rule terminates the Order covering fresh cut flowers and greens. Assessment obligations were terminated on July 29, 1997. The program has been inoperative since that time.

The floral industry has been operating without a promotion program since assessments were terminated. Reestablishing the Order would mean additional cost to the industry stemming from assessments to operate the Order (the last assessment was 0.5 percent of the gross sales price of the cut flowers and greens sold), reports to the Council, and recordkeeping. By not reinstating the Order, the industry benefits from avoiding these costs. Because the industry has been operating without the Order for five years, termination of the Order will have no noticeable effect on either small or large operations.

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection requirements under the Order were approved by the Office of Management and Budget (OMB) and assigned OMB Nos. 0581–0096 and 0505–0001. When assessment collections were terminated on July 29, 1997, these information collection requirements were also suspended. Now that the Order is being terminated, these requirements are eliminated.

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

Termination Order

Termination of the Order was favored by a majority of the qualified handlers voting in a referendum conducted in 1997. The Act requires that, upon such a determination by referendum, the Department shall terminate the Order. The Order has been inoperative for five years, and assessment collection efforts have been exhausted. In addition, the assets of the Council have been liquidated, and a final audit of the Council's books has been conducted.

It is therefore ordered, that pursuant to section 6806 of the Act, the Order, and its rules and regulations [7 CFR Part 1208] are hereby terminated.

It is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to putting this action into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because (1) termination of the Order was favored by a majority of qualified handlers voting in a referendum in 1997; (2) the Order has been inoperative for five years and assessment collection efforts have been exhausted; and (3) the assets of the Council have been liquidated and a final audit of the Council's books has been conducted.

List of Subjects in 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Cut flowers, Cut greens, Promotion,

Reporting and recordkeeping requirements.

PART 1208—[REMOVED]

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 6802 *et seq.*, 7 CFR part 1208 is removed.

Dated: January 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–453 Filed 1–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–144]

Drawbridge Operation Regulations. Cape Cod Canal, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations that govern the Conrail Railroad Bridge across Cape Cod Canal, mile 0.7, at Bourne, Massachusetts. This temporary deviation will allow the bridge to remain closed at 60 feet above mean high water from 8 a.m. through 5 p.m., on 14 days in January, 2003. From 8 a.m. through 5 p.m. on February 3 and 6, 2003, the bridge may remain fully closed. This temporary deviation is necessary to facilitate vital unscheduled mechanical repairs at the bridge.

DATES: This deviation is effective from January 2, 2003, through February 6, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District Bridge Branch, (617) 223–8364.

SUPPLEMENTARY INFORMATION: The vertical clearance under the Conrail Railroad Bridge in the open position is 135 feet at mean high water and 139 feet at mean low water. The draw is normally in the fully open position except for the passage of rail traffic. The existing regulations are listed at 33 CFR 117.589.

The owner of the bridge, the Army Corps of Engineers (ACOE), requested a temporary deviation from the Drawbridge Operation Regulations to facilitate vital unscheduled maintenance, the replacement of the counterweight guide rails, at the bridge. This work must be performed without delay to ensure continued safe reliable operation of the bridge.

The bridge owner advised the mariners who normally use this waterway about the necessary emergency repairs at the bridge and the temporary closures that will be required in order to facilitate the necessary repairs. No objections were received.

Under this temporary deviation the Conrail Railroad Bridge, mile 0.7, across the Cape Cod Canal, may remain closed at 60 feet above mean high water from 8 a.m. through 5 p.m. on January 2, 3, 8, 9, 10, 15, 16, 17, 22, 23, 24, 28, 29, and 30, 2003. From 8 a.m. through 5 p.m. on February 3 and 6, 2003, the bridge may remain fully closed.

Under the deviation schedule listed above, the bridge will be closed three days each week; however, the third day each week and the last week of the closure schedule were added as extra days in case the repair work is delayed by inclement weather.

Mariners may contact the U.S. Army Corps of Engineers Marine Traffic Controller 24-hour telephone line at (508) 759–4431 for the operational status of the bridge.

Thirty days notice to the Coast Guard for approval of this bridge maintenance was not given by the bridge owner and was not required because this work involves vital, unscheduled maintenance that must be performed without undue delay.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: December 27, 2002.

J.L. Grenier,

Captain, Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 03–484 Filed 1–9–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH118–3; FRL–7436–1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) approves Ohio's State Implementation Plan (SIP) revisions for New Source Review (NSR) in nonattainment areas. Previously, EPA issued both a direct final approval and a proposed approval of Ohio's revisions. EPA withdrew the direct final action upon receiving adverse comments. In this action, EPA responds to the public comments received and announces EPA's final rulemaking action. In consideration of the comments and the requirements of the Clean Air Act (CAA), EPA now fully approves Ohio's nonattainment NSR program as an addition to the SIP.

Recently, EPA announced new regulations regarding changes to the NSR Program through efforts under ''NSR Reform.'' Today's approval of Ohio's NSR SIP submission does not address EPA's new rules but is limited to portions of Ohio's program under prior existing rules. EPA is taking no position today on whether Ohio will need to make changes to its SIP to meet any new requirements that EPA may promulgate as part of ''NSR Reform.''

DATES: This rule is effective on January 10, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location:

Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Kaushal Gupta at (312) 886–6803 or Jorge Acevedo at (312) 886–2263 before visiting the Region 5 office.

Written comments should be sent to: Pamela Blakley, Chief, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Kaushal Gupta, Environmental Engineer, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–

18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886–6803. For further information regarding OEPA's rules for public notice procedure, please contact Jorge Acevedo, Environmental Engineer, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886–2263.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

A. What Is the Purpose of This Document?
B. What Is the History of OEPA's Nonattainment NSR Program?
C. Are OEPA's Nonattainment NSR Rules Now Approvable?
D. What Were the Adverse Comments, and How Does EPA Respond to Them?
E. What Is Today's Action?

A. What Is the Purpose of This Document?

This document is our approval of Ohio's nonattainment NSR SIP revision requests dated from July 23, 1980, to August 19, 1999. On April 22, 1996, we proposed to conditionally approve the revision requests dated up to March 1, 1996 (61 FR 17669). Subsequently, OEPA submitted several rule changes which met our condition for full approval. On February 21, 2002, we issued a proposed approval (67 FR 7996) and a direct final approval (61 FR 7954) of the revision requests dated up to August 19, 1999. On April 16, 2002, we withdrew the direct final rule because we received adverse comments on it (67 FR 18497). The proposed approval remained in effect. Today, we follow up the proposed approval with full, final approval of the revision requests dated up to August 19, 1999.

B. What Is the History of Ohio's Nonattainment NSR Program?

OEPA submitted its first NSR SIP revision request on January 31, 1972, and submitted replacement regulations on June 6, 1973. The regulations submitted by the State provided requirements, such as best available technology, that were meant to be uniformly applied throughout the State.

The Clean Air Act Amendments (CAAA) of 1977 required States to go further than uniformly applied regulations. The CAAA of 1977 provided for the designation of areas within a State as ''attainment'' or ''nonattainment.'' An ''attainment'' area meets NAAQS for one of six criteria pollutants: total suspended particulates, sulfur dioxide, ozone, carbon monoxide, nitrogen dioxide and lead. A ''nonattainment'' area does not meet the NAAQS for one or more of these pollutants. The CAAA of 1977 also required states to adopt more stringent regulations, such as offsets and lowest achievable emission rate (LAER), for new pollution sources in nonattainment areas.

On July 23, 1980, and September 25, 1980, OEPA submitted its NSR plan designed to meet the nonattainment area requirements of title I, part D of the CAA. We conditionally approved this plan on October 31, 1980, 45 FR 72119 (codification corrected on December 17, 1980, at 45 FR 82927). The conditional approval required OEPA to submit a part D NSR plan which refined the criteria for permit issuance and assured that the requirements of CAA sections 172 and 173 were met.

To satisfy the conditional approval, OEPA submitted a request to incorporate revised regulations in the SIP on October 4, 1982, and January 24, 1993. These revised regulations sought to incorporate title 40, part 51, Appendix S of the Code of Federal Regulations (CFR) as the Ohio NSR plan. We granted only limited approval of the revised regulations on September 8, 1993 (58 FR 47214), stating that the regulations did not satisfy the nonattainment area planning requirements of part D.

The CAAA of 1990 imposed further NSR requirements for nonattainment areas. Pursuant to these latter amendments, OEPA submitted a request to revise the entire SIP package on August 20, 1993. We proposed to disapprove the SIP revision request on March 4, 1994, because it did not satisfy the part D requirements of the CAA (59 FR 10349). The final disapproval of the State request was published on September 21, 1994 (59 FR 48392).

OEPA submitted another SIP revision request on March 1, 1996. On April 22, 1996 (61 FR 17669), we proposed to conditionally approve the general and nonattainment provisions for the SIP. We stated that the proposed provisions were deficient for not providing a definition for ''pollution control project,'' and that this deficiency had to be corrected for the nonattainment provisions to be fully approved. OEPA subsequently submitted a number of revisions to its request dated March 1, 1996, April 16, 1997, September 5, 1997, December 4, 1997, and April 21, 1998. These revisions provide general provisions (OAC 3745–31–01 to 3745–31–10) and nonattainment area provisions (OAC 3745–31–21 to 3745–31–27).

The CAA further requires that the public be given sufficient time to comment on a permit before the permit is issued. To meet this requirement, OEPA submitted an August 19, 1999, request for approval of the incorporation of Ohio Administrative Code (OAC) 3745–47–01, 3745–47–02, 3745–47–03, 3745–05, 3745–47–07, and 3745–47–08 (D) into the SIP. These rules provide public notice procedures for both attainment and nonattainment construction permits.

On February 21, 2002, EPA simultaneously published a proposed approval (61 FR 7996) and a direct final approval (61 FR 7954) of Ohio's submitted NSR SIP revisions. In the direct final rulemaking, we stated that if we received adverse comments by March 25, 2002, the direct final approval would be withdrawn. We did receive adverse comments, and therefore withdrew the rule on April 16, 2002 (67 FR 18497). The proposed approval remained in effect. Today we are following up on our proposed approval by addressing the adverse comments that we received and setting forth our final approval of Ohio's NSR rules under the Clean Air Act.

C. Are OEPA's Nonattainment NSR Rules Now Approvable?

OEPA's nonattainment NSR rules are now approvable because they fulfill the requirement set by the April 22, 1996, conditional approval: they provide a definition for ''pollution control project'' as required by 40 CFR 51.165(a)(1)(xxv). The submitted rules also satisfy the minimum Federal requirements for a nonattainment NSR program.

D. What Were the Adverse Comments, and How Does EPA Respond to Them?

Below we summarize the substantive comments pertaining to the submitted rules, and our responses to them:

(1) Before granting final approval of any Ohio rules, EPA should complete its review of Ohio's programs in response to the petitions for withdrawal or revocation of OEPA's authority. That EPA's August 30, 2001, draft report of its review cited problems with OEPA's implementation of PSD rules indicates that problems could develop in an NSR program that takes a larger role at OEPA.

Response: USEPA is currently reviewing OEPA's implementation of the delegated PSD program in response to a petition submitted by D. David Altman on behalf of Ohio Citizen Action, the Ohio Environmental Council, Rivers Unlimited, and the Ohio Sierra Club. EPA intends to address any potential need on OEPA's part to

improve implementation of its PSD rules through EPA's ongoing review of OEPA's program. *See* Draft Report on U.S. EPA Review of Ohio Environmental Programs, August 30, 2001, United States Environmental Protection Agency. Any concerns that USEPA finds as a result of this review will be addressed through the process of the aforementioned review.

Today's approval only addresses whether or not specific provisions of Ohio's administrative code meet the Federal CAA criteria for an NSR program, and does not address any issues regarding how the code is, or will be, applied or enforced by Ohio. We believe that the submitted rules meet the criteria for approval under the CAA and no particular findings or conclusions pertaining to the EPA petition review should be inferred from today's approval.

(2) The public participation process in Ohio is flawed, and should be corrected before approval of Ohio's rules.

Response: The submitted rules comply with Federal NSR requirements for public participation under the CAA. Any concerns, if any, that U.S. EPA may have with Ohio's public participation process under Ohio's PSD program will be addressed through the ongoing review of Ohio's program. *See* response to comment #1.

(3) The approval should be withheld because OEPA does not have a training program that ensures a minimum level of training and consistency across the state, and because it currently has a very high level of vacancies with no system in place to expeditiously fill those vacancies.

Response: The submitted rules comply with Federal NSR requirements under the CAA. Any concerns, if any, that U.S. EPA may have with the level of vacancies under Ohio's PSD program will be addressed through the ongoing review of Ohio's program. *See* response to comment #1.

(4) The approval would take OEPA's NSR permitting activities from Federal scrutiny and move appeal jurisdiction from EPA to OEPA. Such transitions remove Federal safety measures.

Response: Under the Clean Air Act, this approval will not change our level of scrutiny of OEPA's permitting activities. We will retain oversight over OEPA's NSR program, and will continue to require public involvement in the program. The approval will also have no effect on appeal jurisdiction because nonattainment-area permits can only be appealed through the State.

(5) The approval should incorporate by reference all currently outstanding SIP changes, rather than merely on the March 1, 1996, revision request and several subsequent revisions.

Response: This final approval does not address SIP changes dated after August 19, 1999, because those changes have not been subjected to public notice. This approval only addresses the following: (1) All nonattainment NSR SIP changes dated on or before April 21, 1998, which were made available for public comment in the April 22, 1996, proposal for conditional approval and the February 21, 2002, proposed approval; (2) The August 19, 1999, SIP changes for public notice procedures pertaining to both attainment and nonattainment-area permits, which were made available for public comment in the February 21, 2002, proposed approval. For SIP changes dated after August 19, 1999, we will take a separate action to ensure that the public is given proper opportunity to comment on those changes.

(6) In the definition for ''major stationary source,'' the submitted rules exclude pollutants regulated under CAA section 112 for attainment-area sources subject to 100-ton-per-year thresholds, while Federal regulations do not provide for such an exclusion.

Response: CAA section 112 is a separate program and is not regulated through NSR. NSR does not require the application of 100-ton-per-year thresholds to section 112 pollutants. In fact, CAA section 112(b)(6) prohibits the application of Prevention of Significant Deterioration (PSD) rules to the section 112 pollutants. Therefore, the rule that is the subject of this comment, OAC 3745–31–01 (SS), is consistent with the Federal definition.

(7) OEPA's definition for ''major stationary source'' is provided for attainment and nonattainment areas, but not for unclassified areas.

Response: As is inferred from the equal treatment of attainment and unclassified areas in 40 CFR 52.21(b)(14)(iii)(a), 52.21(b)(15)(i), and 52.21(i)(3), the Federal definition for ''major stationary source'' applies to unclassified areas and attainment areas equally. We interpret the submitted OEPA rule, OAC 3745–31–01 (SS), to carry the same inference. Therefore, ''major stationary source'' need not be defined separately for unclassified areas.

(8) In determining whether there has been a net emissions increase, the submitted rules limit the consideration of fugitive emissions to those source categories having 100-ton-per-year thresholds. The Federal regulations have no such limitation.

Response: We disagree that the Federal regulations have no such limitation. Under 40 CFR 51.165(a)(1)(iv)(C) and 51.165(a)(4), State rules may exempt fugitive emissions from consideration for a major source or major modification unless the source belongs to one of the source categories having 100-ton-per-year thresholds or the source is subject to section 111 (New Source Performance Standards) and section 112 (National Emissions Standards for Hazardous Air Pollutants) of the Clean Air Act. The Ohio rule, OAC 3745–31–01 (RR) is consistent with the Federal rules.

(9) In the submitted rules, the use of alternative fuel or raw material is exempted from the definition of ''major modification'' if the source was capable of accommodating it before December 21, 1976. It also exempts emission increases caused by increases in hours of operation or production rate if those increases were not prohibited by a Federally enforceable permit condition established after December 21, 1976. However, the Federal regulations set the critical date for both of these exemptions at January 6, 1975, not December 21, 1976.

Response: This comment refers to the Federal PSD rules at 40 CFR 51.166(a)(2)(iii)(e)–(f), which apply the January 6, 1975 date. The PSD rules are not relevant to today's approval, which addresses general and nonattainment NSR provisions. The submitted rule, OAC 3745–31–01(RR)(5)(a), applies the December 21, 1976, date required by the nonattainment NSR rules at 51.165(a)(1)(v)(C)(5)–(6). Therefore, the Ohio rule is consistent with the Federal rule.

(10) In the definition for ''major modification,'' the submitted rules state that alternative fuel or raw material can be used as long as ''the stationary source is approved to use under any permit issued under this ruling.'' The ''ruling'' to which this sentence refers to is unclear.

Response: We disagree that the word ''ruling'' is unclear in OAC 3745–31–01(RR)(5)(b). In the context of the definition, ''ruling'' refers to a permit issued under Ohio's SIP.

(11) The Federal definition for ''net emissions increase'' provides that an increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. OEPA's version of this definition, however, restricts only the consideration of sulfur dioxide and particulate matter (leaving out nitrogen oxides).

Response: This comment relates to maximum allowable increases and baseline dates, which do not apply to the nonattainment rules we are approving. They apply, instead, to the Ohio attainment rules which were conditionally approved on October 10, 2001 (66 FR 51570). Offsets, not maximum allowable increases, govern nonattainment areas.

(12) OEPA's definition for ''net emissions increase'' fails to specify that only PM–10 emissions can be used to evaluate the net increases for PM–10.

Response: We believe that it is inherent in this rule, OAC 3745–31–01(YY), that only PM–10 emissions can be used to evaluate net PM–10 increases. Ohio's rules distinctly set out the definitions and measuring procedures of particulate matter and PM–10 at OAC 3745–17. (The rules use the term ''total suspended particulates'' for PM–10.) The distinctions drawn in those rules apply to the definition of ''net emissions increase.'' Therefore, we do not believe that the definition needs further clarification.

(13) OEPA's definition for ''emissions unit'' is made unclear by the sentence ''This term does not include operations or activities that emit air pollutants regulated under State law but are not regulated under the Clean Air Act.''

Response: We disagree that the definition for ''emissions unit'' is unclear at OAC 3745–31–01(AA). Under the submitted rule, any operation or activity that emits air pollutants regulated under the CAA is an ''emissions unit.'' The clarifying sentence serves to distinguish CAA-regulated emissions units from those regulated only under State laws.

(14) The Federal definition of Best Available Control Technology specifically includes ''fuel cleaning or treatment or innovative fuel combustion techniques,'' but OEPA's definition lists only ''fuel combustion techniques.''

Response: We interpret Best Available Control Technology (BACT) requirements to apply to any aspect of fuel combustion, cleaning, or treatment that affects emissions, and do not feel that the clause ''including fuel combustion techniques'' at OAC 3745–31–01(M) excludes any aspect of BACT. The clause does not preclude technologies beyond fuel combustion techniques because it is not all-inclusive. Therefore, the submitted rule is not limiting.

(15) The Federal definition of ''clean coal technology'' restricts it to the generation of electricity or process steam. Ohio's definition includes, in addition, ''industrial products,'' which is an expansion beyond the Federal standard.

Response: We do not anticipate that Ohio's definition at OAC 3745–31–01(O) will be applied to any product or process that the Federal definition was not intended to cover. Nevertheless, we will advise OEPA to change its definition to match the Federal definition. We do not feel that the minor difference between the definitions warrants disapproval.

E. What Is Today's Action?

In this rule, EPA approves OEPA's requests for additions and revisions to OAC 3745–31–21 to 3745–31–27 submitted on March 1, 1996, April 16, 1997, September 5, 1997, December 4, 1997, and April 21, 1998. EPA also approves OEPA's August 19, 1999, request for additions to OAC 3745–47–01, 3745–47–02, 3745–47–03, 3745–05, 3745–47–07, and 3745–47–08 (D). EPA will take action on any subsequently submitted revision requests at a later time.

Today's action will take effect immediately upon publication as provided for by the good cause exemption of section 553 (d)(1) of the Administrative Procedure Act. This approval is a substantive rule that relieves a restriction on Ohio: sanctions would be imposed on Ohio if the SIP continued to lack nonattainment NSR provisions.

Recently, EPA announced new regulations regarding changes to the New Source Review Program through efforts under ''New Source Review Reform''. *See http://www.epa.gov/nsr/.* Today's approval of Ohio's NSR SIP submission does not address EPA's new rules but is limited to portions of Ohio's program under prior existing rules. EPA is taking no position today on whether Ohio will need to make changes to its SIP to meet any new requirements that EPA may promulgate as part of New Source Review Reform.

F. Regulatory Assessment Requirements

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 23, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52,chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401—*et seq.*

Subpart KK—Ohio

2. Section 52.1870 is amended by adding (c)(126) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(126) On March 1, 1996, and several subsequent dates, Ohio submitted revisions to its Permit to Install rules as a revision to the State implementation plan.

(i) Incorporation by reference.

(A) Ohio Administrative Code (OAC) Rule 3745–31–21, effective April 27, 1998; OAC Rules 3745–31–22 through 3745–31–27, effective April 12, 1996; OAC Rules 3745–47–01, 3745–47–2, and 3745–47–03, effective June 30, 1981; OAC Rule 3745–47–05, effective June 30, 1981; OAC Rule 3745–47–07, effective June 30, 1981; and OAC Rule 3745–47–08(D), effective August 10, 1999.

[FR Doc. 03–336 Filed 1–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IN148–1a; FRL–7436–2]

Redesignation and Approval and Promulgation of Indiana Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is redesignating Lake County, Indiana, to attainment for particulate matter with a nominal aerodynamic diameter of 10 microns or less (PM_{10}). EPA also approves Indiana's plan for continuing to attain the PM_{10} standards. Indiana requested these actions on September 25, 2002. In taking this action, EPA concludes that this area is meeting the national standards for PM_{10} and has acceptable plans for assuring continued attainment.

DATES: This rule is effective on March 11, 2003, unless the EPA receives relevant adverse written comments by February 10, 2003. If EPA receives adverse comment, we will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal are available for inspection at the following address: (We recommend that you telephone John Summerhays at (312) 886–6067 before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. Review of Redesignation Request
A. Background
B. Review Under Statutory Criteria
1. Has the Area Attained the Standards?
2. Has EPA Fully Approved the Applicable Implementation Plan?
3. Is Attainment Due to Permanent and Enforceable Emission Reductions?
4. Does the Maintenance Plan Assure Continued Attainment?
5. Has the State Met the Requirements of Section 110 and Part D?
II. Rulemaking Action
III. Administrative Requirements

I. Review of Redesignation Request

A. Background

On November 6, 1991, EPA published a nonattainment designation for northern Lake County for the PM_{10} standards as given in Title 40 of the Code of Federal Regulations § 50.6 (40 CFR 50.6).[1] (See designations in 40 CFR 81.315.) These standards include a standard for annual average concentrations and a standard for 24-hour average concentrations. The area designated nonattainment included the cities of Gary, East Chicago, Hammond, and Whiting. On September 25, 2002, Indiana requested that the PM_{10} designation in 40 CFR 81.315 for this area in Lake County be changed from nonattainment to attainment. Included with this request were a summary of relevant air quality data, evidence of the opportunity for public review of this request (including a public hearing held July 18, 2002), and a discussion of how the various criteria for redesignation have been met.

Statutory criteria for redesignations from nonattainment to attainment are given in section 107(d)(3)(E) of the Clean Air Act. EPA may not promulgate such a redesignation unless: (i) The area has attained the applicable air quality standards, (ii) the area has a fully approved State Implementation Plan (SIP) under section 110(k) of the Act,

[1] EPA also set revised standards for PM_{10} as well as new standards for particles nominally 2.5 microns and smaller ($PM_{2.5}$), promulgated on July 18, 1997, and codified at 40 CFR 50.7. However, the Circuit Court of Appeals for the District of Columbia vacated the revised PM_{10} standards (*American Trucking Assoc.* v. *EPA,* 175 F.3d 1027). EPA has not promulgated designations for the revised PM_{10} standards. Today's action addresses the 1987 PM_{10} standards in 40 CFR 50.6, for which designations remain in effect in 40 CFR part 81.

(iii) EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions, (iv) EPA has determined that the maintenance plan for the area has met all of the requirements of section 175A of the Act, and (v) the state has met all requirements applicable to the area under section 110 and part D of the Act.

EPA has issued a variety of relevant guidance memoranda interpreting the statutory criteria for redesignations and maintenance plans, most notably including a memorandum dated September 4, 1992, signed by the Director of EPA's Office of Air Quality Planning and Standards. In addition, regulations governing the evaluation of PM_{10} monitoring data are in appendix K to 40 CFR part 50.

B. Review Under Statutory Criteria

1. Has the Area Attained the Standards?

Title 40 CFR part 50, appendix K provides for evaluating three years of representative monitoring data. Indiana monitors PM_{10} concentrations at numerous locations in Lake County. Detailed results of this monitoring are available in EPA's Air Quality System (AQS) and on the Internet at *http://www.epa.gov/air/data/*. Indiana's submittal summarizes these air quality data.

For the most recent three calendar years, *i.e.*, 1999 to 2001, Indiana collected PM_{10} air quality data at five monitoring locations, including locations in Gary, Hammond, and East Chicago, where emissions are highest and the highest concentrations are expected. All sites recorded annual average concentrations below the annual average standard in all three years. Four of the five sites also recorded no exceedances of the 24-hour standard and thus clearly meet this standard. However, the fifth site, located in Gary at 201 Mississippi Street near the USX steel mill, recorded three exceedances in the 1999 to 2001 period. Thus, further analysis is necessary to determine whether this site meets the 24-hour standard.

The procedures in appendix K to 40 CFR part 50 for assessing compliance with the 24-hour standard estimate the number of days per year that the site is expected to exceed the level of the standard (150 micrograms per cubic meter). If a monitoring site collects complete information, the number of expected exceedances is simply equal to the number of measured exceedances. However, if data from a monitor are missing or inadequate for one or more days, these procedures provide for the assessment of the additional number (potentially fractional) of additional exceedances estimated to have occurred on unmonitored or inadequately monitored days. The number of expected exceedances is then the sum of the number of measured exceedances plus the additional inferred number of exceedances expected for unmonitored or inadequately monitored days. The number of expected exceedances is thus the likely total number of exceedances that a monitor would have recorded had it obtained complete data.

Since PM_{10} concentrations often vary by season, appendix K provides for estimation of expected exceedances separately for each quarter year. A location is attaining the standard if the monitor has a three-year average number of expected exceedances (rounded to the nearest tenth) of 1.0 or less.

The above Gary monitor recorded two exceedances in 1999, no exceedances in 2000, and one exceedance in 2001. The exceedances in 1999 both occurred in the last quarter. The monitor at this site is a continuous instrument that records hourly average values. The data obtained were adequate (at least 18 hours per day) to be considered complete for every day during the quarter. Therefore, the number of expected exceedances for 1999 at this site is equal to the 2.0 measured exceedances. The year 2000 had 0.0 expected exceedances. For 2001, the monitor recorded one exceedance in the first quarter out of 87 days with adequate data; three days in the first quarter had either no data or insufficient data. This leads to an estimated exceedances of 1.03, which rounds to a 2001 expected exceedances value of 1.0. Average expected exceedances for 1999 to 2001 then is 1.0. Consequently, this site is attaining the standard. More generally, since the monitoring includes representation of the worst-case locations in Lake County, EPA concludes that all of Lake County is attaining the PM_{10} standards.

2. Has EPA Fully Approved the Applicable Implementation Plan?

The principal relevant element of the SIP required under Part D of Title I of the Clean Air Act for Lake County is a plan for attaining the particulate matter standards. Indiana submitted this attainment plan on June 16, 1993, with subsequent supplemental submittals. EPA approved this attainment plan on June 15, 1995, at 60 FR 31412. Indiana submitted separate rules addressing requirements for nonattainment area new source review; EPA approved these rules as satisfying applicable requirements on October 7, 1994, at 59 FR 51108. While Clean Air Act section 172(c)(9) identifies a requirement for contingency plans, EPA has concluded that areas that are attaining the standards need not submit such contingency plans. (See 57 FR 13564, published April 16, 1992.) This reflects EPA's view that contingency plans under section 172(c)(9) are designed to address the possibility of an area failing to achieve the expected air quality improvement, that the need for such plans no longer exists after an area attains the standard, and that an area that has attained the standard and has a maintenance plan can rely on the contingency plans in the maintenance plan to address any recurrence of violations. Thus, EPA concludes that it has approved all required SIP elements for the Lake County particulate matter nonattainment area.

3. Is Attainment Due to Permanent and Enforceable Emission Reductions?

Indiana's SIP requires permanent emission reductions at a wide range of facilities including those facilities that Indiana's modeling has demonstrated to be the key contributors to prior air quality problems. The emission reductions result from installation of air pollution control equipment to capture and control particulate matter that was previously emitted. The reductions also result from ongoing measures to reduce emissions from plant roadways and storage piles. Enforceable emission limits adopted in Title 326 Indiana Administrative Code Article 6 and approved by EPA (as compiled at *http://www.epa.gov/region5/air/sips/sips.htm*) assure the permanence of these emission reductions. EPA thus concludes that permanent and enforceable emission reductions have enabled this county to attain the standards.

4. Does the Maintenance Plan Assure Continued Attainment?

Under section 175A of the Clean Air Act, maintenance plans must demonstrate continued attainment of the standards for 10 years after the redesignation. Thus, Indiana demonstrated maintenance through 2012. This demonstration focused on industrial sources, especially steel mills, which were the predominant cause of prior nonattainment in Lake County. Indiana compiled estimates of industrial source emissions for 1999 and anticipated emissions for 2012, projecting a 21 percent decline in emissions during that period. This indicates, in turn, that the area can be

expected to continue to attain the standards over the next 10 years.

In addition, the attainment plan that EPA approved in 1995 constitutes further evidence that Lake County can be expected to maintain the standards. This plan reflected maximum allowable emissions. By relying on an inventory of maximum allowable emissions from the most significant sources of particulate matter emissions in the area, the attainment plan demonstrated that the area would achieve and maintain attainment even if the sources operated at maximum capacity. This suggests that Lake County can be expected to maintain the standards permanently unless background impacts, particularly from area sources such as home heating and motor vehicles, increase significantly. Trends in home heating emissions can be deduced from trends in population, which in Lake County has essentially remained unchanged in the last five years and can be expected to remain essentially unchanged in the next 10 years as well. Motor vehicle emissions can be expected to decline, particularly as a result of new regulations reducing sulfur content of motor fuels and requiring lower emissions from both gasoline and diesel vehicles. Background concentrations of PM_{10} transported into the area can also be expected to decline as a result of sulfur dioxide emission reductions from the acid rain program. These factors suggest that Lake County can be expected to maintain the standards through 2012 and beyond.

Maintenance plans must include contingency measures in case violations of the air quality standards unexpectedly arise. Indiana has adopted a rule for contingency planning in 326 Indiana Administrative Code 6–1–11.2, which EPA approved on October 11, 2002, at 67 FR 63268. This rule provides two levels of response, depending on the severity of the air quality problem. A ''Level II'' response occurs when a year's second high concentration in the area exceeds 140 micrograms per cubic meter. In this case, the State would assess what controls need to be implemented to avoid violations of the standard. A ''Level I'' response occurs when a violation occurs (excluding circumstances where the violation is attributable to an exceptional event, malfunction, or noncompliance). In this case, the State assesses the origins of the violation and adopts any necessary control measures within 18 months. EPA believes that these provisions satisfy the requirements for contingency measures as part of Indiana's maintenance plan for particulate matter for Lake County.

Maintenance plans must also include commitments to continued air quality monitoring and to submittal of a reassessment of maintenance in 8 years. Indiana commits in its submittal to continue monitoring PM_{10} concentrations in accordance with its current monitoring plan. The core elements of Indiana's maintenance plan are permanent and will likely assure permanent maintenance, but the State nevertheless explicitly committed to submit the necessary additional maintenance plan in 8 years.

EPA's guidance memorandum of September 4, 1992, identifies various additional recommended features of maintenance plans. Many of these recommended features are not germane to pollutants like PM_{10} in areas like Lake County that have plans showing attainment even with key sources emitting their maximum allowable emissions. Indiana nevertheless included these features in its maintenance plan.

EPA's guidance states that ''The State should develop an attainment emission inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS.'' (Section 5a) Attainment for PM_{10} in Lake County is assured not by limiting total emissions for the area to one specific level, but rather by defining allowable emissions for each location in the area and assuring that emissions for each location are at or below the allowable levels. Thus, the best ''attainment emission inventory'' for Lake County is the inventory of allowable emissions that Indiana used in its modeled attainment demonstration. Nevertheless, Indiana also provided estimates of more recent actual emissions.

Indiana has complied with the ''Maintenance Demonstration and Monitoring Network'' requirements of EPA's guidance of September 4, 1992 (sections 5b and c), as addressed above. Indiana satisfied the ''Verification of Continued Attainment'' requirement (section 5d) by periodically examining the air quality data that it will continue to collect. Finally, Indiana has satisfied the ''Contingency Plan'' requirements (section 5e), as addressed above. Thus, Indiana has satisfied all requirements for this maintenance plan.

5. Has the State Met the Requirements of Section 110 and Part D?

As noted in the rulemaking on Indiana's particulate matter plan cited above, published on June 15, 1995, at 60 FR 31412, Indiana has met the requirements of section 110 and Part D with respect to particulate matter planning in Lake County. That rulemaking focused on Indiana's plan for attaining the particulate matter standards in Lake County, which is the most significant relevant requirement under section 110 and Part D. That rulemaking also addressed related requirements for reasonably available control measures and for reasonable further progress. Indiana was not required to address transportation conformity for particulate matter because transportation sources are not significant contributors to PM_{10} concentrations in Lake County.

II. Rulemaking Action

EPA is redesignating Lake County, Indiana, to attainment for PM_{10}. In addition, EPA is approving Indiana's maintenance plan for this area.

Clean Air Act section 107(d)(3)(E) identifies five prerequisites for redesignation of areas from nonattainment to attainment. EPA concludes that these criteria are met with respect to PM_{10} in Lake County.

EPA is publishing these actions without a prior proposal because we view these as noncontroversial actions and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the redesignation and maintenance plan if adverse comments are filed. This rule will be effective on March 11, 2003 without further notice unless we receive relevant adverse written comment by February 10, 2003. If the EPA receives adverse comment, we will publish a final rule informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on these actions must do so at this time.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely changes the attainment status of a portion of a county and imposes no additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state request to change the attainment status of an area, 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.

Indiana's request for redesignation did not include any additional limitations on sources, and thus provided no opportunity to use voluntary consensus standards (VCS). Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovermental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: December 23, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

Chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart P—Indiana

2. Section 52.776 is amended by removing and reserving paragraph (j) and adding paragraph (r) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(j) [Reserved]

* * * * *

(r) Approval—EPA is approving the PM_{10} maintenance plan for Lake County that Indiana submitted on September 25, 2002.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

2. Section 81.315 is amended by revising the particulate matter table entry to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Lake County: Cities of East Chicago, Hammond, Whiting, and Gary	03/11/03	Attainment.		
Vermillion County: Part of Clinton Township, Unclassifiable including sections 15, 16, 21, 22, 27, 28, 33, and 34.	10/27/97	Attainment.		
Rest of State	11/15/90	Unclassifiable.		

[FR Doc. 03–282 Filed 1–9–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 403, 416, 418, 460, 482, 483, and 485

[CMS–3047–F]

RIN 0938–AK35

Medicare and Medicaid Programs; Fire Safety Requirements for Certain Health Care Facilities

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule amends the fire safety standards for hospitals, long-term care facilities, intermediate care facilities for the mentally retarded, ambulatory surgery centers, hospices that provide inpatient services, religious nonmedical health care institutions, critical access hospitals, and Programs of All-Inclusive Care for the Elderly facilities. Further, this final rule adopts the 2000 edition of the Life Safety Code and eliminates references in our regulations to all earlier editions.

DATES: *Effective Date:* These regulations are effective on March 11, 2003. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of March 11, 2003.

Compliance Dates: All health care facilities referenced in this rule must comply with the requirements of this final rule on September 11, 2003, except that compliance with § 403.744(c), § 416.44(b)(4), § 418.100(d)(4), § 460.72(b)(3), § 482.41(b)(1)(iv), § 483.70(a)(4), § 483.470(j)(2)(iii), and § 485.623(d)(5) is not required until March 13, 2006.

FOR FURTHER INFORMATION CONTACT: Mayer Zimmerman, (410) 786–6839, James Merrill, (410) 786–6998, or Tamara Syrek Jensen, (410) 786–3529.

SUPPLEMENTARY INFORMATION:

I. Background

A. Life Safety Code

The Life Safety Code (LSC) is a compilation of fire safety requirements for new and existing buildings and is updated and published every 3 years by the National Fire Protection Association (NFPA), a private, nonprofit organization dedicated to reducing loss of life due to fire. The Medicare and Medicaid regulations have historically incorporated by reference these requirements along with Secretarial waiver authority. The statutory basis for incorporating NFPA's LSC for our providers is under the Secretary's general rulemaking authority at sections 1102 and 1871 of the Social Security Act.

We have not updated the LSC regulations for several years. We published a proposed rule in the **Federal Register** on August 1, 1990 (55 FR 31196) proposing to eliminate the use of the 1967 and 1973 editions of the LSC. In the August 1990 proposed rule, hospitals, nursing homes, and intermediate care facilities for the mentally retarded (ICFs/MR) would be required to comply with either the 1981 or 1985 editions of the LSC, depending on the date the provider entered the program. The proposed rule did not include ambulatory surgery centers (ASCs), hospices, or end-stage renal disease (ESRD) facilities. The August 1990 proposed rule also made no reference to the Program of the All-Inclusive Care for the Elderly (PACE) facilities, Critical Access Hospitals, and religious nonmedical health care institutions (RNHCIs) because these provider and supplier types did not exist when we published the August 1990 proposed rule.

On October 26, 2001, we published a proposed rule proposing to withdraw the August 1, 1990 proposed rule because the NFPA published four new editions of the LSC since the publication of our August 1990 proposed rule. Some accrediting organizations had adopted the 1997 edition of the LSC. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) which accredits over 4,000 hospitals, as well as ASCs, long-term care (LTC) facilities, and hospices that provide inpatient services has adopted the 1997 edition of the LSC. We had to update our requirements to a more recent edition of the LSC because the 1985 edition of the LSC had been superseded by later editions which incorporated the latest technology in fire protection.

B. The Proposed Rule of October 26, 2001 (66 FR 54179)

The 2000 edition of the LSC includes new provisions that we believe are vital to the health and safety of all patients and staff. The term ''patient'' represents the population in each of the provider-types discussed in this rule. We proposed not to grandfather any facility under these new provisions because the provisions would not impose an undue burden. Our intention is to ensure that patients and staff continue to experience the highest degree of fire safety possible.

In the past, our authority to grant waivers was critical to our ability to continuously improve fire safety in the Medicare and Medicaid programs and not impose an undue burden on providers. The Secretary has broad authority to grant waivers to hospitals under section 1861(e)(9)(C) of the Act, and to LTC facilities under sections 1819(d)(2)(B) and 1919(d)(2)(B) of the Act. For all other providers we have authority under the Secretary's general rulemaking authority to establish specific health and safety standards as well as under section 1871 of the Act. The proposed rule allows the Secretary to grant waivers on a case-by-case basis if specific provisions of the LSC would result in unreasonable hardship on the provider, and if the safety of patients would not be compromised. The Secretary may also accept a State's fire and safety code instead of the LSC if the State's fire and safety code adequately protects patients. Further, the NFPA's Fire Safety Evaluation System (FSES), an equivalency system, provides alternatives to meeting various provisions of the LSC, thereby achieving the same level of fire protection as the LSC.

In addition to the development of a proposed rule to adopt the 2000 edition of the LSC, we planned to propose a more efficient process that allows us to adopt future editions of the LSC in a more timely manner. We explored incorporating, by reference, the NFPA LSC without specific dates in the regulations text and publishing a **Federal Register** notice, instead of a proposed rule. We worked closely with the Office of the **Federal Register** (OFR) staff on our draft proposed approach; however, it has become clear that adoption of multiple successive editions of the LSC via reference is not possible. Changes in future editions of the LSC may be substantial, necessitating that we go through a proposed rule and public comment period. Moreover, we cannot automatically incorporate successive versions of the LSC because of the statutory restrictions of 5 U.S.C. section 552(a) and accompanying regulations at 1 CFR part 51. All LSC editions we adopt must include a specific edition and a copy of the edition cited must be on file at the OFR.

II. Provisions of the Proposed Regulations

A. General Description

In the October 26, 2001 proposed rule, we proposed to (1) require that all

providers and suppliers meet the provisions of the 2000 edition of the LSC with certain exceptions; and (2) remove references to all previous editions of the LSC.

B. The 2000 Edition of the Life Safety Code

Some requirements in the 2000 edition of the LSC are substantially different than earlier LSC editions. We solicited public comments regarding whether to adopt Chapter 5, ''Performance Based Option,'' of the LSC. Specifically, we wanted to know (1) whether health care facilities are using performance based design; and (2) what benefits the facility receives by using performance based design.

The LSC fire safety goals establish outcomes to be achieved with regard to fire safety. These overall outcomes are communicated through specific requirements in the LSC. The performance based design option translates fire safety goals into performance objectives and performance criteria. Performance based design establishes broad goals and objectives with a team effort. The performance based design is applied to make the building safe as well as functional. The design is specific to the building. Computer fire models and other calculation methods are used in combination with the building design specifications, specified fire scenarios and assumptions to calculate the overall performance criteria and whether it meets the fire life safety goals and is in compliance with the intent of the LSC.

In the October 2001 proposed rule, we proposed not to adopt the roller latch provision in chapter 19, ''Existing Health Care Occupancies,'' section 19.3.6.3.2 (exception No. 2), of the LSC for any facility. A roller latch is a type of door latching mechanism to keep a door closed. The 2000 edition of the LSC prohibits the use of roller latches on corridor doors in buildings not fully protected by an approved sprinkler system. Exception No. 2, however, allows for the use of roller latches under this prohibition, if the latch can withstand a specific level of force applied to it. We proposed not to adopt exception No. 2 regarding existing roller latches.

Through fire investigations, roller latches have proven to be an unreliable door latching mechanism requiring extensive on-going maintenance to operate properly. Many roller latches in fire situations failed to provide adequate protection to residents in their rooms during an emergency. Roller latches that are not properly maintained may be a danger to the health and safety of patients and staff. In addition, we have found through our online survey, certification, and reporting (OSCAR) system data report that doors that include roller latches are consistently one of our most cited deficiencies. In fact, in skilled nursing facilities roller latches in corridor doors are consistently the number one cited deficiency under the life safety requirements.

The estimated cost to remove roller latches on existing doors is $30,754,540 ($190 per door for 161,866 doors). We derived the cost estimate from information the American Health Care Association (AHCA) gave to us.

C. Analysis of Selected New Provisions in the 2000 Edition of the Life Safety Code

In the October 2001 proposed rule, we provided the LSC citation, a description of the requirement, an explanation of why we believe the requirement is critical to the safety of beneficiaries and a brief discussion of our analysis of the burden imposed by the requirement. We derived the cost estimates from information the AHCA gave to us. The following are new provisions in the 2000 edition of the LSC from chapter 19, ''Existing Health Care Occupancies.''

(1) 19.1.1.4.5—Renovations, Alterations, and Modernization—This provision requires that renovations, alterations, and modernizations comply with standards applicable to new construction when possible. Existing facilities that are extensively renovated must meet the requirements of a newly constructed facility, including the installation of sprinkler systems in nonsprinklered buildings. The Fire Analysis & Research Division of the NFPA has shown that sprinklers have been the most important life safety system installed in health care facilities. The LSC generally requires sprinkler systems in renovations, regardless of construction. The estimated cost of installing sprinkler systems in buildings that presently do not have them is $2.50 per square foot, or approximately $125,000 for a 50,000 square foot building. This requirement is not imposed on facilities not undergoing renovations. Approximately 2,550 facilities currently do not have sprinkler systems. Because a facility does not have to comply with this provision unless the facility chooses to renovate an existing building, we estimate approximately 128 facilities may be renovated in a year. The total amount to implement this provision would be $16,000,000 annually.

(2) 19.2.9—Emergency Lighting—This provision requires emergency lighting for a period of 1½ hours in health care facilities, enabling those inside to move about safely in an emergency. We proposed to phase in this requirement over a 3-year period, to allow for the normal replacement cycle of batteries used in emergency lighting systems. We believe this phase-in period would not adversely impact the health and safety of the beneficiaries. We estimate the cost to install this equipment will be $600 per light. Approximately 790 existing facilities do not have emergency lighting for 1½ hours. To be in compliance, we estimated that each building would need 12 emergency light units for a total of 9,482 units. The total amount to implement this provision over a 3-year period would be $5,452,150 or $1,817,383 annually.

(3) 19.3.1—Protection of Vertical Openings—Unprotected vertical openings (for example, open stairwells) permit fire and toxic gases to spread from one level to another in a building, making evacuation difficult, if not impossible. The estimated cost of compliance with this requirement is $2,938 per vertical opening. Approximately 9,877 vertical openings in 1,976 facilities would need to be upgraded for compliance. Total cost of compliance with this provision is $29,018,626.

(4) 19.3.4.3.2—Emergency Forces Notification—This provision requires the fire alarm system to provide automatic notification of a fire to emergency forces. This is of great importance to the protection of all patients. Any delay in the notification of fire or rescue personnel could adversely impact the health and safety of patients and expose them to a fire, smoke or toxic gases created by the fire. Approximately 2,750 buildings at $900 per facility would need to be connected to a fire alarm retransmission system. The cost is estimated to be a total of $2,475,000.

(5) 19.3.6.1—Corridors—This provision requires that all areas in nonsprinklered buildings be separated from the corridor by corridor walls that are fire-rated. This requirement, which provides a protected passageway for movement during an emergency, is necessary to increase the safety of the patients. The cost to upgrade a facility to meet this requirement is estimated to be approximately $7,124 for 1,976 buildings that currently meet the 1967 LSC and approximately $5,735 for 46 buildings meeting the 1973 LSC. The total estimated cost for compliance is $14,341,000.

(6) 19.7.5.2 & 19.7.5.3—Upholstered Furniture—These provisions allow patient-owned furniture to be brought

into the facility without meeting the requirements of 10.3.2(2) and 10.3.3 (regarding fire resistant furniture) if a single station smoke detector is placed in the sleeping room where the furniture is located. The cost to the facility is estimated at $100 per sleeping room where patient-owned furniture is located. We estimate approximately 18,498 smoke detectors would need to be installed at a total cost of $1,849,800.

In the October 2001 proposed rule, we proposed to retain our existing authority to waive provisions of the 2000 edition of the LSC, on a case-by-case basis, and thereby reduce the exposure to additional cost and burden for those facilities with unique situations that may justify the application of waivers. We may grant a waiver for a specific LSC requirement if (1) We determine that the waiver would not adversely affect patient and staff health and safety; and (2) we determine that it would impose an unreasonable hardship on the facility to meet a specific LSC requirement. Generally, a provider may request a waiver from its State agency. The State agency will review the request and make a recommendation to our appropriate regional office. Our regional office will review the waiver request and the State agency's recommendation and make a final decision. We cannot grant a waiver if patient safety is compromised in any way. A State may also request that the State fire and safety code be applied to all its facilities rather than the 2000 edition of the LSC we proposed in the October 2001 proposed rule. State law must impose the State fire and safety code. The State must submit the request to our appropriate regional office. The regional office will forward the request to our central office for a final determination.

We proposed to retain our authority to apply the Fire Safety Evaluation System (FSES) as an alternative approach to meeting the requirements of the LSC, as well as accept alternative State fire and safety codes as we discussed in section I.B in the October 2001 proposed rule.

D. Discussion of Fire Safety Requirements for Individual Providers and Suppliers

In the October 2001 proposed rule, we proposed changes to the requirements that affect all provider types, as described in sections II.A and II.B of this preamble. We proposed changes for distinct types of providers that include the following:

1. *Religious Nonmedical Health Care Institutions—Benefits, Conditions of Participation, and Payment:* 42 CFR 403.744 Condition of participation: Life safety from fire.

We proposed to retain the provisions of the existing interim final regulation for RNHCIs published in the **Federal Register** on November 30, 1999 (64 FR 67028), except as they conflict with the 2000 edition of the LSC and are not within the exceptions detailed in section II.B of this preamble (regarding our exceptions to the LSC).

2. *Ambulatory Surgery Centers:* 42 CFR 416.44 Condition for coverage: Environment.

We proposed to change the terminology in § 416.44 (b)(1) to reflect that the LSC refers to ASCs as Ambulatory Health Care Centers. We proposed that all ASCs meet the provisions applicable to Ambulatory Health Care Centers in the 2000 edition of the LSC, except as detailed in section II.B of this preamble, regardless of the number of patients the facility serves.

We believe the protection provided in the Ambulatory Health Care Centers chapter is necessary to protect the health and safety of patients who are incapable of taking action of self-preservation. We do not believe that the Business Occupancy chapter of the LSC (applied by some authorities having jurisdiction to ASCs treating fewer than four patients at a time) affords an adequate level of protection to patients in an ASC.

We also proposed to retain the discretion to accept compliance with fire and safety codes imposed by a State, if we determine that the State's fire and safety code will adequately protect patients in ASCs. We have included this provision in § 416.44 (b)(3).

3. *Hospice Care:* 42 CFR 418.100(d) Condition of participation: Hospices that provide inpatient care directly.

In the October 2001 proposed rule, we proposed that all inpatient hospices meet the provisions applicable to nursing homes in the 2000 edition of the LSC, with the exceptions discussed in section II.B of this preamble, regardless of the number of patients they serve. This is not a change in requirements, but merely a clarification that, for LSC purposes, an inpatient hospice is considered a nursing home, and not another type of occupancy.

We also proposed not to adopt for hospices chapter 18—section 3.4.5.3 of the 2000 edition of the LSC. This section requires new nursing homes to be equipped with corridor smoke detection systems. We believe there is no technical justification for this requirement because the 2000 edition of the LSC requires that newly constructed patient sleeping zones be provided with quick-response sprinklers. Quick-response sprinklers activate quickly enough to serve a detection function, thus making corridor smoke detection unnecessary. The 1991 and 1994 editions of the LSC required quick-response sprinklers in new nursing homes but did not require smoke detection. Therefore, we see no technical reason to require corridor smoke detection in new facilities and thus increase the cost of new construction without a parallel increase in safety.

We also proposed, in § 418.100(d)(3), to permit a hospice to meet a fire and safety code imposed by the State in lieu of the 2000 edition of the LSC if we determine that the State code adequately protects patients. We proposed to do this for two reasons: (1) To afford hospices the benefit of meeting a State code in lieu of the Federal requirements where the State code offers adequate protection; and (2) because we recognize that hospices are often located within buildings containing other providers already subject to this provision. For example, a hospice may be located entirely within a skilled nursing facility (SNF). If the SNF is exempt from the LSC by virtue of meeting a State code, other participating providers within the same building should also be afforded this exception.

We also proposed to remove § 418.100(d)(4), the requirement that blind and nonambulatory patients may not be housed above the street level floor unless the building is fully sprinklered or has achieved a passing score on the FSES comparison, which is less stringent than the LSC. The provision is redundant since any facility that meets the requirements of the 2000 edition of the LSC would, by definition, achieve a passing score on the FSES comparison. In addition, this requirement was removed from the SNF regulations in 1989; however, we did not remove it from the parallel hospice regulations.

4. *Programs of All-Inclusive Care for the Elderly (PACE):* 42 CFR 460.72 Physical environment.

In the October 2001 proposed rule, we proposed to retain most of the provisions of the existing interim final regulation for PACE that we published in the **Federal Register** on November 24, 1999 (64 FR 66234). PACE centers will continue to be required to meet the LSC specifications for the type of facilities in which the programs are located (that is, hospitals, office buildings, etc.).

We also proposed to require that a PACE center meet the requirements for use of fire alarm systems in accordance with the occupancy section of the LSC that applies to its building. Each occupancy section of the LSC also

requires evacuation plans, fire exit drills, and fire procedures, and these will be applicable to the PACE program.

We also proposed to retain § 460.72(b)(2)(i), which permits a PACE center to meet fire and safety requirements imposed by the State in lieu of the 2000 edition of the LSC if we determine that the State code adequately protects patients. We have done this for two reasons: (1) To afford a PACE center the benefit of meeting a State code in lieu of the Federal requirements where the State code offers adequate protection; and (2) because we recognize that PACE centers are often located within buildings containing other providers already subject to this provision. For example, a PACE center may be located within a hospital. If the hospital is exempt from the LSC by virtue of meeting a State code, other participating providers within the same building should also be afforded this exemption.

Further, in some buildings it may be impractical or impossible to provide a specific feature due to the construction of the building. Therefore, we proposed to retain § 460.72(b)(2)(ii), which allows for the waiver of specific provisions of the 2000 edition of the LSC that, if rigidly applied, would result in unreasonable hardship on the organization. We may waive specific provisions only if the waiver does not adversely affect the health and safety of the patients and staff.

5. *Conditions of Participation For Hospitals:* 42 CFR 482.41 Condition of participation: Physical environment.

In the October 2001 proposed rule, we proposed only the changes to this section described in sections II.A and II.B of this preamble, for the reasons described therein.

6. *Long-Term Care Facilities:* 42 CFR 483.70 Condition of participation: Physical environment.

As with hospices, we proposed not to adopt chapter 18-section 3.4.5.3 of the 2000 edition of the LSC for LTC facilities such as SNFs. This section requires new nursing homes to have corridor smoke detection systems. We believe there is no technical justification for this new requirement because the 2000 edition of the LSC requires that new construction patient sleeping zones be provided with quick-response sprinklers. We believe that quick-response sprinklers activate quickly enough to serve a detection function, thus making corridor smoke detection unnecessary. The 1991, 1994, and 1997 editions of the LSC required quick-response sprinklers in new nursing homes, but did not require smoke detection. Therefore, we do not see any technical reason to require smoke detection in new facilities and thus increase the cost of new construction without a parallel increase in safety.

7. *Intermediate Care Facilities for the Mentally Retarded:* 42 CFR 483.470 *Condition of participation:* Physical environment.

In the October 2001 proposed rule, we proposed to retain most of the provisions of the existing regulation for ICFs/MR. ICFs/MR will continue to be permitted to meet either the Residential Board and Care Occupancies chapter or the Health Care Occupancy chapter of the 2000 edition of the LSC, as appropriate.

We also proposed to retain the provision in § 483.470(j)(1)(ii) that allows the State survey agency to apply different chapters of the LSC to different buildings or parts of buildings so as not to place an undue burden on providers to have an entire building comply with the more stringent provisions of the Health Care chapter when they could instead meet the Board and Care for part of their facility, when appropriate.

We also proposed that, for ICFs/MR under Board and Care, the Evacuation Difficulty Index (EDI) must be determined by use of the Fire Safety Evaluation System for Board and Care Facilities (FSES/BC). In referring to the EDI, we proposed to remove the reference to Appendix F in § 483.470(j)(1)(iii). The FSES/BC is no longer an appendix of the LSC, but appears as its own NFPA document in the NFPA 101A Guide on Alternative Approaches to Life Safety. Additionally, we proposed to remove the reference to facilities of 16 beds or less from § 483.470(j)(1)(iii) to clarify that a larger facility could be subject to the Board and Care Chapter, and that its EDI would have to be calculated based on the FSES/BC. Again, this provision would allow certain ICFs/MR to meet the less restrictive Board and Care Chapter rather than the health care chapter.

In § 483.470(j)(2)(ii), we proposed to change ''the Secretary'' to ''CMS'' to more accurately reflect the statutory authority (this provision currently appears in § 483.470(j)(2)(i)(B)).

We also proposed in § 483.470(j)(3) that waivers of specific provisions of the 2000 edition of the LSC apply only to facilities that meet the LSC definition of a Health Care occupancy. There are no waivers for facilities under Board and Care, since the FSES/BC affords the flexibility of alternative arrangements for compliance.

III. Analysis of and Responses to Public Comments

We received approximately 160 timely public comments in response to the October 26, 2001 proposed rule. We received letters from State government officials, county government organizations, health care providers and provider organizations, and private citizens. We reviewed each comment and grouped like or related comments. The comments and our responses are summarized below.

A. General Comments

Comment: The majority of commenters expressed support of our adoption of the 2000 edition of the National Fire Protection Association (NFPA) Life Safety Code (LSC).

Response: We appreciate the support. Our current regulations allow health care providers to meet different editions of the LSC (that is, providers may meet the 1967, 1973 and 1985 editions of the LSC). These earlier editions are outdated and create confusion in the industry. The updated LSC includes new provisions vital to the health and safety of all our beneficiaries. This rule is intended to ensure that beneficiaries continue to experience the highest degree of fire safety possible.

B. Exceptions

Comment: Several commenters, while supporting the adoption of the LSC, urged us to adopt the LSC as written, with no exceptions. The commenters argued that by allowing exceptions to the NFPA LSC, we are violating the National Technology Transfer and Advancement Act (Pub. L. 104–113).

Response: Section 12 of the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) codified an existing Office of Management and Budget (OMB) circular (OMB Circular A–119). Section 12 directs Federal agencies to use, to the extent not inconsistent with applicable law or otherwise impractical, technical standards that are developed or adopted by voluntary consensus standards organizations.

The National Technology Transfer and Advancement Act does not mandate that we use an entire code without exceptions if we determine it is impractical. We did not adopt the entire LSC as written because through our surveys, comments, and experience, we have determined that for the health and safety of patients and staff we could not adopt the LSC in its entirety.

We have ''carved-out'' two provisions from the LSC. These provisions are: (1) Roller latches; and (2) ambulatory facilities serving under four patients.

We are not allowing any exceptions for roller latches because roller latches are one of our top three deficiencies for life safety. Roller latches that are not properly maintained may be a danger to the health and safety of patients and staff. We have found through our OSCAR data report that doors that include roller latches are consistently one of our most cited deficiencies. In fact, in skilled nursing facilities, roller latches in corridor doors are consistently the number one cited deficiency under our life safety requirements.

We also define all ambulatory facilities as surgery centers regardless of the number of patients they serve. Under § 416.44, ASCs are required to maintain a fully equipped operating room for the types of surgery the ASC conducts for the surgery to be performed in a manner that protects the lives and ensures the physical safety of all individuals in the area. It is imperative that these facilities provide the protection of the Ambulatory Health Care chapter (chapters 20 and 21) rather than the Business Occupancy chapter of the 2000 edition of the LSC that pertains to physician offices or clinics because surgery is being performed in these facilities.

Comment: Several commenters opposed the October 2001 proposed rule's carve-out of the roller latch exception provision in the LSC (chapter 19–3.6.3.2 (exception No. 2)). The commenters claimed there is no evidence supporting our carve-out of the roller latch exception.

Response: As described above, roller latches that are not properly maintained may be a danger to the health and safety of patients and staff and are consistently one of our most cited deficiencies.

One of the most tragic examples of roller latch failure occurred in the fall of 1989 where a fire claimed 12 lives in a nursing home. In all the rooms where the door was closed and remained closed through out the fire, the patients lived. In the rooms where the door was open or originally closed but bounced open, the patients died. During our investigation, we tested the doors on the floor above the fire origin. We discovered the majority of the doors tested failed to stay closed because of the roller latches. In fact, as a result of the failure of the roller latches in this facility, the 1991 edition of the NFPA LSC prohibited the use of roller latches in new buildings.

Therefore, in this final rule, we are prohibiting the use of roller latches in existing and new buildings except for ASCs under Chapter 20 and Chapter 21. We understand the burden that may be caused to replace all existing roller latches and will phase-in this requirement over a 3-year period beginning March 11, 2003.

Comment: Many commenters supported the proposed rule's carve-out of the roller latch exception in the LSC (chapter 19–3.6.3.2).

Response: We appreciate the support. We believe, as discussed in our response to the previous comment, that prohibiting use of roller latches will allow patients and staff to experience the highest degree of fire safety possible.

Comment: Several commenters opposed the proposed exception to delete the smoke detector requirement for hospices and nursing facilities. Many believed smoke detectors are an inexpensive requirement for new facilities that provides an extra layer of protection.

Response: We agree with these comments and have changed the regulations text to no longer exempt new nursing homes or inpatient hospices from Chapter 18–3.4.5.3 of the LSC. Please note that this requirement does not apply to existing facilities, but only to new nursing homes or inpatient hospices.

C. Chapter 5—Performance Based Option

Comment: In the October 2001 proposed rule, we solicited comments on whether to adopt chapter 5, the performance based option of the LSC. Most of the comments we received specifically on chapter 5, the performance based option, stated that they had little experience with this option.

The performance based design option in chapter 5 of the LSC translates fire safety goals into performance objectives and performance criteria. Performance based design establishes broad goals and objectives with a team effort. The performance based design is applied to make the building safe as well as functional. The design is specific to the building. Computer fire models and other calculation methods are used in combination with the building design specifications, specified fire scenarios and assumptions to calculate the overall performance criteria and whether it meets the fire life safety goals and is in compliance with the intent of the code.

Response: We have decided to include chapter 5, the performance based option provision. We do not expect many providers to choose this option. However, we would like all providers to have the alternative to use the performance based option if the provider believes it would be beneficial for it to comply with the LSC.

Please note that the final rule will also continue to allow two other options besides the prescriptive requirements of the LSC. Health care facilities may choose the FSES, and a facility may apply for a waiver of specific provision of the LSC if it is unable to meet a specific requirement. We may grant a waiver for a specific LSC requirement if (1) we determine that the waiver would not adversely affect patient and staff health and safety; and (2) we determine that it would impose an unreasonable hardship on the facility to meet a specific LSC requirement. A provider may request a waiver from its State agency. The State agency will review the request and make a recommendation to our appropriate regional office. Our regional office will review the waiver request and the State agency's recommendation and make a final decision on the waiver request. We cannot grant a waiver if patient safety is compromised in any way.

D. State Codes

Comment: One commenter opposes the LSC because it would preempt State or local decision-making authority and create an unfunded mandate.

Response: If a State or local authority would rather use its State fire and safety code, this is an allowable option as long as the State fire and safety code is imposed by State law and adequately protects the life and safety of the patients. To request this option, the State must forward the request to its CMS regional office. The CMS regional office will forward the request to the CMS central office where a final determination will be made as to whether the State fire and safety code may be used in place of the NFPA LSC.

We also have retained our authority to waive provisions of the LSC, on a case-by-case basis. We may grant a waiver for a specific LSC requirement if we determine that the waiver would not adversely affect the patient or staff health and safety and it would impose an unreasonable hardship on the facility to meet a specific LSC requirement. If a health care facility would like a waiver for a specific provision in the LSC, the facility must forward the request to their State survey agency. The State agency will review the request, make a recommendation and forward the request to the appropriate CMS regional office. The CMS regional office will review the State agency's recommendation and make a final decision.

Comment: Several commenters requested that the October 2001 proposed rule be revised to allow health care facilities to choose other codes that

are nationally recognized, such as the International Building Code and International Fire Code. Referencing only the NFPA's LSC in the final rule creates conflict for many jurisdictions that enforce other equivalent or more stringent fire and life safety requirements. By not referencing other applicable codes, CMS favors one code to the detriment of other codes.

Response: We continue to specifically cite the LSC because under sections 1819(d)(2)(B) and 1919(d)(2)(B) of the Act, nursing homes must meet the provisions of ''such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association * * *.'' To avoid confusion and to be consistent for all provider types we require the LSC for all inpatient facilities. This is especially applicable for facilities with mixed occupancies. For example, a health care facility's west wing could be a nursing home while the rest of the facility is a hospital. It would be impractical as well as burdensome for the facility to follow the LSC for the nursing home and another health and safety code for the hospital. The regulation reflects this by requiring a single code for all inpatient health care facilities.

However, if a State's own fire and safety code would ''adequately protect patients'' and the State code is imposed by State law, the State may submit a request in writing to its CMS regional office. The CMS regional office will forward the request to the CMS central office. The CMS central office will make a final decision on whether the State code may be used in place of the NFPA LSC.

Comment: Several commenters support CMS's authority to ''accept a State's fire and safety code instead of the LSC if the State's fire and safety code adequately protects patients.'' However, these same commenters stated that the CMS must have a system in place to evaluate any State code to determine that the requirement provides adequate protection for patients and staff.

Response: We appreciate the support for accepting State fire and safety codes in addition to the LSC. If a State chooses to use its fire and safety code rather than the LSC, it must be imposed by State law and adequately protect patients and staff. Any State that chooses this option should send the request to its CMS regional office. The regional office will forward the request to the CMS central office. The central office will make the final determination and respond in writing as to whether the State fire and safety code adequately protects patients and staff.

E. Ambulatory Surgical Centers (ASCs)

Comment: Some commenters believe that we should allow grandfathering for Ambulatory Surgical Centers (ASCs) that meet previous editions of the LSC. Some commenters stated that, at the very least, we should permit ASCs to postpone compliance with the 2000 edition of the LSC until the ASC undertakes a major renovation. The commenters stated that compliance with the 2000 edition of the LSC, especially for smaller ASCs would impose a financial burden. One commenter asked us to phase-in the requirements because it would be a financial hardship for most ASCs to comply with the 2000 edition of the LSC. The commenter suggested that we consider a couple of approaches for phasing in the 2000 edition of the LSC. For ASCs already Medicare-certified, the 2000 edition of the LSC would only need to be met if the ASC underwent a major renovation, or we could implement a timeline for full compliance to the 2000 edition of the LSC (for example, 5 years).

Response: It is not our intent to impose a retroactive requirement for ASCs. For existing ASCs, most provisions in the 2000 edition of the LSC are similar to past editions. Furthermore, existing facilities in compliance with early editions of the LSC are not required to upgrade to a later edition of the LSC for certain provisions. For example, an existing ASC is not required to upgrade its Type I Essential Electrical System (EES). Chapter 21–2.9.2 references NFPA 99, Standard for Health Care Facilities. This provision states that ASCs ''shall be provided with an EES in accordance with NFPA 99, Standard for Health Care Facilities.'' Under NFPA 99 existing ASCs are able to continue to use existing electrical and medical gas systems that are in compliance with the earlier editions of the LSC provided the ASC continues to meet the edition of the LSC requirements when it was constructed. The referencing to the NFPA 99 for certain provisions (that is, EES, and medical gas) should relieve some burden for ASCs.

In addition, an ASC may also request a waiver for a specific provision of the LSC further reducing the exposure to additional cost and burden for ASCs with unique situations that can justify the application of waivers and will not endanger the health and safety of patients. A waiver may be granted for a specific LSC requirement if (1) we determine that the waiver would not adversely affect patient and staff health and safety; and (2) we determine that it would impose an unreasonable hardship on the facility to meet a specific LSC requirement. All waivers are determined on a case-by-case basis. An ASC may request a waiver from its State Agency. The State Agency will review the request and make a recommendation to the appropriate CMS regional office. The CMS regional office will review the waiver request and the State agency's recommendation and make a final decision on the waiver request. A waiver cannot be granted if patient safety is compromised in any way.

Comment: A few commenters objected to the requirements in the 2000 edition of the LSC that ASCs must have a Type I Essential System (EES) and upgrade their medical gas capabilities. Most of the ASCs, especially smaller ASCs, do not have a Type I EES or meet the medical gas requirement in the 2000 edition of the LSC. The commenters stated that the change to a Type I EES and to upgrade their medical gas capabilities will be a financial hardship on the ASCs.

Response: Only new facilities will be required to have a Type I EES or upgrade its medical gas capabilities. Existing ASC facilities in compliance with early editions of the LSC for EES and medical gas requirements are not required to upgrade to the 2000 edition of the LSC. Per chapter 21–2.9.2 and chapter 21–3.2.2, an ASC facility shall be in compliance with ''NFPA 99, Standard for Health Care Facilities.'' Under NFPA 99 existing ASCs may continue to use existing electrical and medical gas systems that are in compliance with earlier editions of the LSC provided the ASC continues to meet the earlier edition of the LSC requirements when it was constructed. If the ASC fails to meet the earlier LSC requirements, the ASC must upgrade to the 2000 edition of the LSC. An ASC must also meet the 2000 edition of the LSC if its EES or medical gas system undergo alteration, modernization, or renovation.

Comment: Three commenters requested that ASCs be exempt from the fire-rated wall standards in Chapter 19–3.6.1 and the vertical opening standard in Chapter 19–3.1 of the 2000 edition of the LSC. The commenters explained that ASCs would be unable to comply with these requirements because most ASCs do not control spaces outside of their leased area.

Response: The commenters may have misunderstood which chapters apply to ASCs. Chapters 20 and 21 apply to ASCs, not chapter 19. This confusion may have been caused because we improperly cited chapter 19 in the ASC regulatory text. We deleted all chapter

19 provisions in the ASC regulatory text. Chapter 19 only applies to existing Health Care Facilities (for example, hospitals, nursing homes, etc.). Chapter 21 applies to existing ASCs. The related sections of chapter 21 are not significantly different than what existing ASCs are required to meet currently. For example, building construction type, vertical opening requirements and, fire alarm requirements have not changed from earlier editions of the life safety code.

Comment: Several commenters believed that ASCs should only be classified as Ambulatory Health Care Centers if they serve four or more patients who are rendered incapable of self-preservation. If there are less than four patients, we should not subject the ASC to more stringent requirements when the risk is not severe enough to warrant those restrictions and should be classified under the less stringent Business Occupancy chapter of the 2000 edition of the LSC.

Response: Ambulatory facilities are surgery centers regardless of the number of patients they serve. Under § 416.44, ASCs are required to maintain a fully equipped operating room for the types of surgery the ASC conducts in order for the surgery to be performed in a manner that protects the lives and ensures the physical safety of all individuals in the area. It is imperative that these facilities provide the protection of the Ambulatory Health Care Chapters (chapters 20 and 21) rather than the Business Occupancy chapter of the 2000 edition of the LSC that generally pertains to physician offices or clinics because surgery is being performed.

F. Critical Access Hospitals

Comment: Several commenters asked why Critical Access Hospitals (CAHs) were not included in the October 2001 proposed rule.

Response: We should have included CAHs in the October 2001 proposed rule. We corrected this mistake and added CAHs to the final rule at § 485.623(d). Similar to the other facilities, roller latches under chapter 19–3.6.3.2 (exception No. 2) will not be adopted. Thus, all existing CAHs will no longer be permitted to use roller latches. Through fire investigations, roller latches have proven to be an unreliable door latching mechanism requiring extensive maintenance to operate properly. We realize there is some burden with replacing existing roller latches and will phase in this requirement over a 3-year period beginning March 11, 2003. If a CAH believes that this rule (including the 3-year phase in period for the roller latches) imposes an unreasonable burden, the facility should contact its State Office to request a waiver. The State Agency will review the request for the waiver and make a recommendation to the appropriate CMS regional office. The CMS regional office will review the waiver and the State Agency's recommendation and make a final decision on the waiver request.

G. Miscellaneous

Comment: Two commenters asked us to define major and minor renovations to a facility.

Response: The difference between major and minor renovations has to do with the size and cost of the upgrade. Obviously, replacing a door would be a minor renovation, but adding a wing to a hospital would be a major renovation. We understand there may be times when it is difficult to determine if the renovation would qualify as a major renovation. These decisions are made on a case-by-case basis rather than a ''one size fits all'' requirement. If a facility is unsure if the renovation would be considered major or minor, the facility may call the State survey agency for an evaluation and final decision.

Comment: Some commenters requested that we adopt updated versions of the LSC more quickly in the future. One commenter requested that we adopt any updated version of the LSC within 90 days of the LSC publication.

Response: We agree and would like to revise our regulations to update the LSC in a more timely manner. However, we cannot adopt the LSC within 90 days of the LSC publication because under the Administrative Procedure Act (APA), we must give notice to the public that we are proposing to revise a regulation. Once we notify the public of the proposal, the public must have the opportunity to comment on the revisions, and we must answer the comments before the update becomes final and binding.

Comment: Some commenters asked when all health care facilities must be in compliance with this final rule.

Response: The final rule is effective 60 days after publication. However, to relieve some burden for providers, we are delaying enforcement of the 2000 edition of the LSC for six months until September 11, 2003. In addition, as stated earlier, because of the burden that may be imposed by the requirement to replace all existing roller latches we will phase in this requirement over a 3-year period beginning on March 11, 2003. We will also phase in the emergency lighting requirement (19.2.9) over a 3-year period beginning on March 11, 2003. We have revised the regulations text to reflect the phase-in period.

H. Burden Estimates

Comment: Several commenters stated that our ''carve-out'' of the roller latch exception would be a cost burden.

Response: Roller latches are one of our top three deficiencies and, based on prior incidents, we are concerned about the possible threats to patient safety. We believe that, in the interest of patient and staff safety, all roller latches must be removed. To help alleviate some of the burden to health care facilities, we will phase in this requirement over 3 years.

Comment: A couple of commenters questioned our cost estimates. The commenters stated that our reliance on the AHCA report only applied to nursing homes and the estimates were outdated.

Response: We agree and we reviewed our cost estimates and revised the cost impact for the final rule. All of the revised cost estimates were gathered using OSCAR data as well as figures sent as comments to the October 2001 proposed rule. The revision of our estimates reflects a significant decrease in the number of facilities using the 1985 edition of the LSC. Many of the older facilities that were originally included in our estimate have upgraded their facility using a more recent edition of the LSC rather than the 1985 edition. The total cost impact we originally estimated has changed because many of the items that need to be updated have already been done because older facilities have been phased out or upgraded. Therefore, the number of facilities we originally determined had to make upgrades has decreased.

We phased in two requirements of the LSC over a 3-year period. The requirements are: Emergency lighting (that is, 19.2.9) and replacing all roller latches (that is, 19.3.6.3.2). We phased in the emergency lighting requirement because it is standard practice to routinely replace emergency lighting system batteries every 3 years. Therefore, our decision to phase in the emergency lighting requirement over 3 years is to match providers' current cycle of replacing the batteries in their emergency lighting systems. We believe by phasing in this requirement, we will not adversely affect the health and safety of the patients or staff.

We also phased in over 3 years our requirement that all providers must replace roller latches. In the October 2001 proposed rule, we did not propose to phase in roller latches because we believed that it was an important issue

of ensuring fire safety for patients and staff. However, we received a large number of comments regarding the amount of time and the cost required to replace the roller latches. While we still believe that replacing roller latches is an important fire safety issue, we realize we have to balance the burden to providers with the impact this change will have. To alleviate some of the burden of the roller latch requirement, we are phasing in the requirement over 3 years. During this 3-year phase in period, we will continue to monitor, through our existing survey process, a facility's maintenance of its existing roller latches to ensure that they are maintained and operating properly. We believe that this will help ensure fire safety for patients and staff.

We did not phase in any other of the LSC requirements because we believe updating the other requirements is an important safeguard for ensuring fire safety to all patients and staff of each facility.

Below we outlined all the major changes a health care facility would have to undergo if the health care facility has not upgraded its facility since meeting earlier editions of the LSC. As in the October 26, 2001 proposed rule, below we have provided the LSC citation, a description of the requirement, an explanation of why we believe it is critical to the safety of patients to require it, and a brief discussion of our analysis of the burden imposed by the requirement. The following are new provisions in the 2000 edition of the LSC from chapter 19, ''Existing Health Care Occupancies.''

Please note that we did not include chapter 19, section 1.1.4.5 (Renovations, Alterations, and Modernization) in our total estimate. This provision is not a requirement of the final rule. This provision only applies if a health care facility chooses to extensively renovate its facility or build a new facility. Existing facilities that are extensively renovated must meet the requirements of a newly constructed facility, including the installation of sprinkler systems in nonsprinklered buildings. The Fire Analysis & Research Division of the NFPA has shown that sprinklers have been the most important life safety system installed in health care facilities. The LSC generally requires sprinkler systems in renovations, regardless of construction techniques or materials used in constructing the facility. The estimated cost of installing sprinkler systems in buildings that presently do not have them is $2.50 per square foot, or approximately $125,000 for a 50,000 square foot building. This requirement is not imposed on existing facilities. In the proposed rule we stated there were 255 facilities that do not have sprinkler systems. This was a typographical error. There are approximately 2,550 facilities that do not currently have sprinkler systems. Again, none of these facilities are required to install sprinkler systems under this final rule.

(1) 19.2.9—Emergency Lighting—This provision requires emergency lighting for a period of 1½ hours in health care facilities, enabling those inside to move about safely in an emergency. We proposed to phase-in this requirement over a 3-year period, to allow for the normal replacement cycle of batteries used in emergency lighting systems. We believe this phase in period would not adversely impact the health and safety of the patient. In the October 2001 proposed rule, we estimated that 790 existing facilities do not have emergency lighting for 1½ hours. Approximately 12 emergency light units would be needed for each facility. We estimated that the cost to be in compliance with this provision was $7,200 per facility. In the proposed rule we estimated that the total cost for all facilities to be upgraded under this provision would be $5,452,150.

Approximately 642 existing facilities do not have emergency lighting for 1½ hours. We estimate each facility would need approximately 12 emergency light units at a cost of $750 per light. We estimate it will cost each facility $9,000 to upgrade its emergency lighting. The total amount to implement this requirement for all facilities will be $1,926,000 for the first year. Because we are phasing in this requirement over 3 years, we estimate that it will be approximately $1,926,000 for each of the next 2 years.

(2) 19.3.1—Protection of Vertical Openings—Unprotected vertical openings (for example, open stairwells) permit fire, smoke, and toxic gases to spread from one level to another in a building, making evacuation difficult, if not impossible. In the October 2001 proposed rule, we estimated that to upgrade the vertical openings would be $2,938 per vertical opening. We estimated that 9,877 vertical openings in 1,976 facilities needed to be upgraded for a total cost of $29,018,626 or an average of $14,690 per facility.

We revised this figure estimating that 5,573 vertical openings in 1,115 facilities would be affected because many facilities have already upgraded their buildings to meet this requirement. Each vertical opening costs approximately $3,819. We estimate the facilities that need to be upgraded will need to install an average of five vertical openings. The total estimated cost is $21,283,687 for all facilities to be upgraded or an average of $19,095 per facility.

(3) 19.3.4.3.2—Emergency Forces Notification—This provision requires the fire alarm system to provide automatic notification of a fire to emergency forces. This is of great importance to the protection of all patients. Any delay in the notification of fire or rescue personnel could adversely impact the health and safety of patients and expose them to a fire, smoke, or toxic gases created by the fire. In the October 2001 proposed rule, we estimated that approximately 2,750 buildings at $900 per facility would need to be connected to a fire alarm retransmission system for a total estimated cost of $2,475,000.

We revised our cost estimates because the October 2001 proposed rule was incorrect. The proposed rule estimate did not account for installation. The one time cost to install a fire department or central monitoring station connection is $1,707 per facility. In addition, we estimate that there is a $97.50 monthly fee for the monitoring stations and telephone costs.

We determined that 2,358 buildings at $2,877 (installation fee + monthly fee for one year) per facility would need to be connected to a fire alarm retransmission system. We estimate that to be in compliance with this provision the total cost is approximately $6,783,966.

(4) 19.3.6.1—Corridors—This provision requires that all areas in nonsprinklered buildings must be separated from the corridor by corridor walls that are fire-rated. This requirement, which provides a protected passageway for movement during an emergency, is necessary to increase the safety of the patients. In the October 2001 proposed rule, we estimated that the cost to upgrade a facility to meet this requirement was $7,124 for 1,976 buildings that currently meet the 1967 LSC and approximately $5,735 for 46 buildings meeting the 1973 LSC.

We revised the proposed rule estimates and approximately 1,606 buildings currently meet the 1967 LSC and will need to be upgraded. We estimate that to upgrade facilities that currently meet the 1967 LSC is $14,871,560 or approximately $9,260 per facility.

We also calculated that 39 buildings currently meet the 1973 LSC. The estimated cost to upgrade the 39 buildings is $290,745, approximately $7,455 per facility.

The revised total cost estimate for all facilities to meet this requirement is $15,162,305.

(5) 19.7.5.2 & 19.7.5.3—Upholstered Furniture—These provisions allow patient-owned furniture to be brought into the facility without meeting the requirements of 10.3.2(2) and 10.3.3 (regarding fire resistant furniture) if a single station smoke detector is placed in the sleeping room where the furniture is located. This gives the facility a more home-like atmosphere. In the October 2001 proposed rule, we estimated that 18,498 smoke detectors would need to be installed at approximately $100 per smoke detector. We estimated in the proposed rule that the total cost to be in compliance with this provision was $1,849,800.

We revised this cost estimate because we believe 19,262 smoke detectors need to be installed rather than the 18,498 we estimated in the October 2001 proposed rule. We did not change our estimate of the cost of the smoke detector (that is, $100 per smoke detector). The total amount to be in compliance with this provision is $1,926,200.

(6) 19.3.6.3.2—Roller Latches—We ''carved out'' the exception the LSC allowed for roller latches in existing buildings. In the October 2001 proposed rule we estimated the total cost for all facilities to remove exiting roller latches was $30,754,540 ($190 per door for 161,866).

We revised the estimate and 190,303 roller latches must be replaced at a cost of $250 per roller latch, for a total cost estimate of $47,575,750. We are phasing in this requirement over 3 years. Thus, we estimate that it will cost $15,858,583 for the first year and $15,858,583 for each of the next 2 years.

In the October 2001 proposed rule, we proposed to retain our existing authority to waive provisions of the 2000 edition of the LSC, on a case-by-case basis, further reducing the exposure to additional cost and burden for facilities with unique situations that can justify the application of waivers, which we determine will not endanger the health and safety of patients.

We proposed to retain our authority to apply the FSES as an alternative approach to meeting the requirements of the LSC, as well as accept alternative State fire and safety codes discussed in section I.B in the October 2001 proposed rule.

IV. Provisions of the Final Regulations

For the most part, this final rule adopts the provisions of the October 26, 2001 proposed rule. Those provisions of this final rule that differ from the October 2001 proposed rule follow. In response to comments, we are revising § 485.623(d) to require all critical access hospitals (CAHs) to meet the applicable provisions of the 2000 edition of the LSC. The provision of the adopted 2000 edition of the LSC that does not apply to a CAH is chapter 19, ''Existing Health Care Occupancies,'' section 19.3.6.3.2 (exception No. 2), roller latches.

We deleted the reference to chapter 19 (that is, 19.3.6.3.2) under the ASC regulatory text because it was improperly cited for ASCs. We cited chapter 19.3.6.3.2 because all roller latches must be replaced in existing health care occupancies. However, Chapter 19 does not apply to ASCs. ASCs are under chapter 20 (that is, new ASCs) and chapter 21 (that is, existing ASCs).

We also decided to include chapter 5, the performance based option provision. We do not expect many providers to choose this option. However, we would like all providers to have the alternative to use the performance based option if the provider believes it would be useful for it to comply with the LSC. In addition, we have provided for a 3-year phase in period for the requirements regarding roller latches and emergency lighting.

The final rule will continue to allow other options besides the prescriptive requirements of the LSC. Health care facilities may choose the FSES, and a facility may apply for a waiver of a specific provision of the LSC if it is unable to meet a specific requirement. We may grant a waiver for a specific LSC requirement if (1) we determine that the waiver would not adversely affect patient and staff health and safety; and (2) we determine that it would impose an unreasonable hardship on the facility to meet a specific LSC requirement. A provider may request a waiver from its State agency. The State agency will review the request and make a recommendation to the appropriate CMS regional office. The CMS regional office will review the waiver request and the State agency's recommendation and make a final decision on the waiver request. We cannot grant a waiver if patient safety is compromised in any way.

A State may also choose to use its fire and safety code rather than the LSC if the State fire and safety code is imposed by State law and adequately protect patients. Any State that chooses this option must send the request to its CMS regional office. The regional office will forward the request to the CMS central office. The central office will make the final determination and respond in writing as to whether the State fire and safety code adequately protects patients and staff. Lastly, we no longer exempt new nursing homes or new hospices providing inpatient care from chapter 18.3.4.5.3 of the LSC. Several commenters opposed the proposed exception to remove the smoke detector requirement for hospices and nursing facilities. Many commenters believe smoke detectors are an inexpensive requirement for new facilities and they provide an extra layer of protection. We agree and removed the exception from the regulations text in hospices at § 418.100(d) and nursing facilities at § 483.70(a).

V. Collection of Information Requirements

This rule does not impose any information collection and record keeping requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Impact Statement

A. Introduction

This final rule adopts the 2000 edition of the LSC. The objective is to provide safety to life during fires and other emergencies. Adoption and use of the 2000 edition of the LSC will bring us up-to-date in requiring the latest and best technology in fire protection for our beneficiaries. These requirements are designed to protect all patients and staff. The 2000 edition of the LSC also protects property and can reduce the dollar loss associated with a fire. For example, the 2000 edition of the LSC requires that any new construction install quick-response sprinkler systems increasing the level of protection to our beneficiaries. Adopting the 2000 edition of the LSC and removing references to all older editions of the LSC will eliminate confusion as to which edition a health care facility must follow. This is particularly important when a facility has multiple buildings constructed at differing times or a single building with multiple wings or additions constructed at different times. Instead of each building complying with different editions of the LSC, this final rule requires all the buildings to comply with the same edition of the LSC. The use of a single edition of the code should also contribute to lowering the cost of complying with the requirements for testing and maintenance of fire protection systems.

B. Overall Impact

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and

the Regulatory Flexibility Act (RFA) (September 16, 1980 Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) and Executive Order 13132. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We have examined the impact of this final rule and we have determined that this rule is neither expected to meet the criteria to be considered economically significant, nor do we believe it will meet the criteria for a major rule. All entities affected by this rule are considered small entities. Therefore, a final regulatory impact analysis is not required for the same reasons explained in section VI.C of this rule.

We revised our estimate of the regulatory impact of this final rule from $96,356,599 to $63 million for the first year and $17.5 million for each of the next 2 years. The estimate appears lower than the estimate in the October 2001 proposed rule because unlike the October 2001 proposed rule, we are phasing in the requirement to replace all existing roller latches over 3 years. Thus, the cost estimate to replace the roller latches is reduced from approximately $48 million for the first year to approximately $16 million per year for 3 years. For a detailed description of our estimates for each provider, section II.C of this final rule outlines our cost estimates in the 2001 proposed rule, and section III.H of this final rule outlines our revised cost estimates for this rule as well as why we revised the estimates.

C. Impact on Small Entities and Rural Hospitals

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 to $29 million in any one year (for details, see the Small Business Administration's regulation that sets forth size standards for health care industries at 65 FR 69432). For purposes of the RFA, all health care facilities affected by this regulation are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 100 beds.

Based on the Small Business Administration (SBA) and CMS data (these data can be found in the April 2002 CMS Statistics Publication No. 03437 or *www.cms.hhs.gov*), approximately 4,593 out of 6,650 hospitals are considered to be small businesses or nonprofit hospitals. We do not consider this rule to significantly impact these hospitals because the cost of this rule is less than 1 percent of the total costs for hospitals. According to the CMS 2002 national expenditure data, the total national costs for hospitals in 2002 was $412.1 billion. We estimate this rule will cost hospitals, including CAHs, approximately $8,263,848 for the first year and $4,131,924 for each of the next 2 years due to the phase in of emergency lighting and the replacement of all roller latches.

Based on the SBA and CMS data, approximately 3,064 out of 3,474 ASCs are considered to be small businesses or nonprofit providers. However, we do not consider this rule to significantly impact the ASCs because the cost of this rule is less than 1 percent of the total costs for ASCs. According to the CMS 2002 national expenditure data, the total national cost for ASCs in 2002 was $286.4 billion. We estimate that it will cost ASCs approximately $2,511,667 for the first year and $1,255,833 for each of the next 2 years due to the phase in of emergency lighting and the replacement of all roller latches.

Based on the SBA and CMS data, approximately 17,901 out of 23,500 LTC providers, inpatient hospices, and ICF/MR facilities are considered to be small businesses or nonprofit providers. We do not consider this rule to significantly impact the LTC providers, inpatient hospices, or ICF/MR facilities because the cost of this rule is less than 1 percent of the total costs for these providers. According to the CMS 2002 national expenditure data, the total national costs for LTC providers, inpatient hospices, and ICF/MR facilities in 2002 were $89.3 billion. Our cost estimate for compliance with this rule for LTC providers, inpatient hospices, and ICF/MR facilities is approximately $59,195,736 for the first year and $5,788,375 for each of the next 2 years due to the phase in of emergency lighting and the replacement of all roller latches. We combined the estimates of LTC facilities, inpatient hospices, and ICF/MR facilities because of the similarities in how the provider types are surveyed for compliance with the LSC and the items that must be upgraded to meet the 2000 edition of the LSC. In addition, most ICF/MR facilities will not be impacted by this rule because the majority of these facilities are fairly new and are considered a residential occupancy rather than the more stringent health care occupancy type. However, there are ICF/MR facilities that care for the more severely impaired. These ICF/MR facilities are similar to an LTC facility and will be impacted by the 2000 edition of the LSC.

Lastly, we do not believe this rule will affect PACE centers or RNHCI facilities because PACE and RNHCI are new programs and they already meet the 1997 edition of the LSC. The changes from the 1997 edition of the LSC to the 2000 edition of the LSC are negligible. For example, PACE centers and RNHCI facilities have 1.5-hour emergency lighting, no vertical opening problems, and do not have any roller latches. Moreover, because both of these providers are new programs, the SBA does not have an estimate as to how many are considered small businesses. We consider all RNHCIs to be nonprofit entities.

Please note we also provided a cost estimate for each of the provisions with respect to which we believe that each facility will need to upgrade to be in compliance with this final rule in section III.H.

The cost estimate does not take into account any waivers that may be granted. We will retain the existing authority to waive specific provisions of the 2000 edition of the LSC, further reducing the exposure to additional cost and burden for facilities with unique situations that can justify the application of waivers, and that we determine will not endanger the health and safety of patients.

The cost estimate does not factor in any cost reduction if we accept a State's fire and safety code instead of the NFPA's 2000 edition of the LSC. We have the authority to accept a State fire and safety code in lieu of the NFPA LSC if the State code is imposed by State law, and adequately protects patients.

We also note that the 2000 LSC permits the use of the FSES as an alternative approach that may also reduce the cost of compliance significantly. The FSES is an equivalency system. The FSES may allow a facility to comply with the LSC without having to make changes to the facility due to other offsetting or compensating fire protection features that exist in the facility.

We do not know the amount that any of the above waivers or alternatives may save a health care facility because each facility must be reviewed on a case-by-case basis to determine whether the facility will be granted a waiver for a specific provision of the LSC or use its State fire and safety code or if the facility chooses to use the FSES.

While we expect a revised edition of the LSC to be published in 2003, we believe it is imperative to publish this final rule, which incorporates the 2000 edition of the LSC in response to the needs of the providers, States, accrediting organizations, and the public for clarity and consistency with the current regulatory and accreditation setting. The 2000 edition of the LSC includes new provisions that we believe are vital to the health and safety of all patients and staff. This final rule is intended to ensure that beneficiaries continue to experience the highest degree of fire safety possible. We believe by adopting the 2000 edition of the LSC now instead of waiting for the release of the 2003 edition will (1) minimize the burden on health care providers because the standards we currently require most of the providers to follow are at least 15-years old and (2) increase the level of safety for patients and staff. Once the NFPA adopts the 2003 edition of the LSC, we will quickly begin the process of reviewing the revised edition with the intent to publish a proposed rule to set forth requirements we think would be beneficial to the providers, States, accrediting organizations, and the public. Providers, States, accrediting organizations, and the public are requesting that we publish this rule now rather than wait because many of the providers can only comply with our regulations by using older fire safety techniques.

D. The Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule will not have an effect on the governments mentioned, and the private sector costs will not be greater than the $110 million threshold. We discuss specific private sector costs in section VI.C of this rule.

E. Federalism

Executive Order 13132 establishes requirements that an agency must meet when it publishes a final rule that imposes substantial direct requirement costs on State, local, or tribal governments, preempts State law, or otherwise has Federalism implications.

We have examined this final rule and have determined that this rule will not have a substantial effect on State, local, or tribal governments.

F. Anticipated Effects

While all health care facilities are affected by this regulation, most health care facilities will be affected minimally. Most changes that would occur would be minor and should not adversely impact patients. Each new edition of the LSC builds on prior editions; changes from one edition to the next have been relatively minor since 1985. Many health care providers have updated their facilities since 1985 and already meet most of the provisions in the 2000 edition of the LSC. In fact, most health care providers stated that they are exposed to additional work and expense without any gain in fire safety by continuing to abide by the 1985 edition of the Life Safety Code. For example, the JCAHO requires all its accredited facilities to meet the 1997 edition of the LSC, while Medicare requires all facilities to meet an earlier edition of the LSC. This has caused confusion, as well as additional burden to the health care facility in requesting waivers or changing some of the renovations to meet both editions of the LSC. Updating the LSC will not only relieve burden for health care providers but also assist in ensuring the health and safety of patients and staff.

By adopting the 2000 edition of the LSC, we will eliminate confusion as to which edition a health care facility must follow. The use of a single edition of the code should also contribute to lowering the cost of complying with the requirements for testing and maintenance of fire protection systems under multiple editions of the LSC.

1. Effects on Specific Entities

This rule will affect hospitals, LTC facilities, ICFs/MR, ASCs, hospices that provide inpatient services, RNHCIs, CAHs, and PACE Centers.

2. Effects on Other Providers

We do not expect this regulation to affect any other providers.

3. Effects on the Medicare and Medicaid Programs

If facilities decide to use the performance-based option to meet the requirements of the LSC, we estimate that it could cost approximately $3.5 million in the aggregate for States to survey facility plans using the performance-based option. We estimate that 25 states will be affected by the use of the performance-based option. Our estimate is based on the hiring of one fire protection engineer at an average of $60,000 annual salary and one engineer technician at an average $40,000 annual salary plus minimal travel and training expenses. We expect that we would have to additionally fund the States in order for them to be able to have the expertise to survey any facility using the performance-based option.

G. Alternatives Considered

The statutory basis for incorporating the NFPA's code for nursing homes is specific authority in the Act at sections 1819(d)(2) and 1919(d)(2). For hospitals, the statutory authority to adopt fire safety provisions is section 1861(e)(9) of the Act. To be consistent and to avoid confusion among health care providers, we incorporated the NFPA's 2000 edition of the LSC for all Medicare inpatient facilities under the Secretary's general rulemaking authority.

Alternatively, we could have chosen not to update the fire safety code. This is not an acceptable alternative because many health care facilities are exposed to additional work and expense without any gain in fire safety by continuing to abide by the 1985 edition of the Life Safety Code. For example, the JCAHO requires all its accredited facilities to meet the 1997 edition of the LSC, while Medicare requires all facilities to meet an earlier edition of the LSC. This has caused confusion, as well as additional burden to the health care facility in requesting waivers or changing some of the renovations to meet both editions of the LSC. Updating the LSC will not only relieve burden for health care providers but also assist in ensuring the health and safety of patients and staff.

Please note that while we incorporate the NFPA's 2000 edition of the LSC, all health care providers have other options besides the prescriptive requirements of the LSC. Health care facilities may choose the Fire Safety Evaluation System (FSES) and a facility may apply for a waiver of a specific provision of the LSC if it is unable to meet a specific

requirement. A waiver may be granted for a specific LSC requirement if (1) we determine that the waiver would not adversely affect patient and staff health and safety; and (2) we determine that it would impose an unreasonable hardship on the facility to meet a specific LSC requirement. A provider may request a waiver from its State Agency. The State Agency will review the request and make a recommendation to the appropriate CMS regional office. The CMS regional office will review the waiver request and the State agency's recommendation and make a final decision on the waiver request. A waiver cannot be granted if patient safety is compromised in any way.

H. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this final rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 403

Health insurance, Hospitals, Incorporation by reference, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 416

Health facilities, Incorporation by reference, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Incorporation by reference, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 460

Aged, Health, Incorporation by reference, Medicare, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 482

Grant programs—health, Hospitals, Incorporation by reference, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Incorporation by reference, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 485

Grant programs—health, Health facilities, Incorporation by reference, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare and Medicaid Services amends 42 CFR chapter IV as follows:

PART 403—SPECIAL PROGRAMS AND PROJECTS

1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart G—Religious Nonmedical Health Care Institutions—Benefits, Conditions of Participation, and Payment

2. Section 403.744 is amended as follows:

a. The introductory text to paragraph (a) is republished.

b. Paragraph (a)(1) is revised.

c. Paragraph (c) is added.

§ 403.744 Condition of participation: Life safety from fire.

(a) *General.* An RNHCI must meet the following conditions:

(1) Except as otherwise provided in this section, the RNHCI must meet the applicable provisions of the 2000 edition of the Life Safety Code of the National Fire Protection Association. The Director of the Office of the Federal Register has approved the NFPA 101® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the **Federal Register** to announce the changes. Chapter 19.3.6.3.2, exception number 2 of the adopted Life Safety Code does not apply to an RNHCI.

* * * * *

(c) *Phase-in period.* An RNHCI must be in compliance with the following provisions beginning on March 13, 2006:

(1) Chapter 19.3.6.3.2, exception number 2.

(2) Chapter 19.2.9, Emergency Lighting.

PART 416—AMBULATORY SURGICAL SERVICES

1. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Specific Conditions for Coverage

2. Section 416.44 is amended as follows:

a. Paragraph (b)(1) is revised.

b. Paragraph (b)(3) is revised.

c. Paragraph (b)(4) is added.

§ 416.44 Condition for coverage—Environment.

* * * * *

(b) *Standard: Safety from fire.* (1) Except as otherwise provided in this section, the ASC must meet the provisions applicable to Ambulatory Health Care Centers of the 2000 edition of the Life Safety Code of the National Fire Protection Association, regardless of the number of patients served. The Director of the Office of the Federal Register has approved the NFPA 101® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the **Federal Register** to announce the changes.

* * * * *

(3) The provisions of the Life Safety Code do not apply in a State if CMS finds that a fire and safety code imposed by State law adequately protects patients in an ASC.

(4) An ASC must be in compliance with Chapter 21.2.9.1, Emergency Lighting, beginning on March 13, 2006.

* * * * *

PART 418—HOSPICE CARE

1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart E—Conditions of Participation: Other Services

2. Section 418.100 is amended as follows:

a. Paragraph (d)(1) is revised.

b. Paragraph (d)(3) is revised.

c. Paragraph (d)(4) is revised.

§ 418.100 Condition of participation: Hospices that provide inpatient care directly.

* * * * *

(d) *Standard: Fire protection.* (1) Except as otherwise provided in this section, the hospice must meet the provisions applicable to nursing homes of the 2000 edition of the Life Safety Code of the National Fire Protection Association. The Director of the Office of the Federal Register has approved the NFPA 101® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the **Federal Register** to announce the changes. Chapter 19.3.6.3.2, exception number 2 of the adopted edition of the LSC does not apply to a hospice.

* * * * *

(3) The provisions of the adopted edition of the Life Safety Code do not apply in a State if CMS finds that a fire and safety code imposed by State law adequately protects patients in hospices.

(4) A hospice must be in compliance with the following provisions beginning on March 13, 2006:

(i) Chapter 19.3.6.3.2, exception number 2.

(ii) Chapter 19.2.9, Emergency Lighting.

* * * * *

PART 460—PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

1. The authority citation for part 460 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395).

Subpart E—PACE Administrative Requirements

2. Section 460.72 is amended as follows:

a. Paragraph (b)(1) is revised.

b. Paragraph (b)(3) is added.

§ 460.72 Physical environment.

* * * * *

(b) *Fire safety—(1) General rule.* (i) Except as otherwise provided in this section, a PACE center must meet the applicable provisions of the 2000 edition of the Life Safety Code (LSC) of the National Fire Protection Association that apply to the type of setting in which the center is located. The Director of the Office of the Federal Register has approved the NFPA 101® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the **Federal Register** to announce the changes.

(ii) Chapter 19.3.6.3.2, exception number 2 of the adopted edition of the LSC does not apply to PACE centers.

* * * * *

(3) *Phase-in period:* A PACE center must be in compliance with the following provisions beginning on March 13, 2006:

(i) Chapter 19.3.6.3.2, exception number 2.

(ii) Chapter 19.2.9, Emergency Lighting.

* * * * *

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Basic Hospital Functions

2. Section 482.41 is amended as follows:

a. Paragraph (b)(1) introductory text is revised.

b. Paragraph (b)(1)(i) is revised.

c. Paragraph (b)(1)(iv) is added.

§ 482.41 Condition of participation: Physical environment.

* * * * *

(b) *Standard: Life safety from fire.* (1) Except as otherwise provided in this section, the hospital must meet the applicable provisions of the 2000 edition of the Life Safety Code of the National Fire Protection Association. The Director of the Office of the Federal Register has approved the NFPA 101® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the **Federal Register** to announce the changes.

(i) Chapter 19.3.6.3.2, exception number 2 of the adopted edition of the LSC does not apply to hospitals.

* * * * *

(iv) A hospital must be in compliance with the following provisions beginning on March 13, 2006:

(A) Chapter 19.3.6.3.2, exception number 2.

(B) Chapter 19.2.9, Emergency Lighting.

* * * * *

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Requirements for Long Term Care Facilities

2. Section 483.70 is amended as follows:

a. Paragraph (a) introductory text is revised.

b. Paragraph (a)(4) is added.

§ 483.70 Physical environment.

* * * * *

(a) *Life safety from fire.* Except as otherwise provided in this section, the facility must meet the applicable provisions of the 2000 edition of the Life Safety Code of the National Fire Protection Association. The Director of the Office of the Federal Register has approved the NFPA 101® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the **Federal Register** to announce the changes. Chapter 19.3.6.3.2, exception number 2 of the adopted edition of the LSC does not apply to long-term care facilities.

* * * * *

(4) A long-term care facility must be in compliance with the following provisions beginning on March 13, 2006:

(i) Chapter 19.3.6.3.2, exception number 2.

(ii) Chapter 19.2.9, Emergency Lighting.

* * * * *

Subpart I—Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded

3. Section 483.470 is amended as follows:

a. Paragraph (j)(1)(i) is revised.

b. Paragraph (j)(1)(iii) is revised.

c. Paragraph (j)(2) is revised.

d. Paragraph (j)(3) is added.

§ 483.470 Condition of participation: Physical environment.

* * * * *

(j) *Standard: Fire protection*—(1) *General.* (i) Except as otherwise provided in this section, the facility must meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter of the 2000 edition of the Life Safety Code of the National Fire Protection Association. The Director of the Office of the Federal Register has approved the NFPA 101® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the **Federal Register** to announce the changes.

* * * * *

(iii) A facility that meets the LSC definition of a residential board and care occupancy must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the Fire Safety Evaluation System for Board and Care facilities (FSES/BC).

(2) *Exceptions for all facilities.* (i) Chapter 19.3.6.3.2, exception number 2 of the adopted LSC does not apply to a facility.

(ii) If CMS finds that the State has a fire and safety code imposed by State law that adequately protects a facility's clients, CMS may allow the State survey agency to apply the State's fire and safety code instead of the LSC.

(iii) The facility must be in compliance with the following provisions beginning on March 13, 2006:

(A) Chapter 19.3.6.3.2, exception number 2.

(B) Chapter 19.2.9, Emergency Lighting.

(3) *Facilities that meet the LSC definition of a health care occupancy.*

(i) After consideration of State survey agency recommendations, CMS may waive, for appropriate periods, specific provisions of the Life Safety Code if the following requirements are met:

(A) The waiver would not adversely affect the health and safety of the clients.

(B) Rigid application of specific provisions would result in an unreasonable hardship for the facility.

(ii) [Reserved]

* * * * *

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

1. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

Subpart F—Conditions of Participation: Critical Access Hospitals (CAHs)

2. Section 485.623 is amended as follows:

a. Paragraph (d)(1) is revised.

b. Paragraph (d)(2) is revised.

c. Paragraph (d)(5) is added.

§ 485.623 Condition of participation: Physical plant and environment.

* * * * *

(d) *Standard: Life safety from fire*—(1) Except as otherwise provided in this section, the CAH must meet the applicable provisions of the 2000 edition of the Life Safety Code of the National Fire Protection Association. The Director of the Office of the Federal Register has approved the NFPA 101® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in this edition of the Code are incorporated by reference, CMS will publish notice in the **Federal Register** to announce the changes. Chapter 19.3.6.3.2, exception number 2 of the adopted edition of the Life Safety Code does not apply to a CAH.

(2) If CMS finds that the State has a fire and safety code imposed by State law that adequately protects patients, CMS may allow the State survey agency to apply the State's fire and safety code instead of the LSC.

* * * * *

(5) A critical access hospital must be in compliance with the following provisions beginning on March 13, 2006:

(i) Chapter 19.3.6.3.2, exception number 2.

(ii) Chapter 19.2.9, Emergency Lighting.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: May 9, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 26, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–273 Filed 1–9–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI33

Migratory Bird Hunting; Approval of Tungsten-Iron-Nickel-Tin Shot as Nontoxic for Hunting Waterfowl and Coots

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We approve shot formulated of 65% tungsten, 10.4% iron, 2.8% nickel, and 21.8% tin as nontoxic for hunting waterfowl and coots. We assessed possible effects of the tungsten-iron-nickel-tin (TINT) shot, and we believe that it does not present a significant toxicity threat to wildlife or their habitats and that further testing of the shot is not necessary. Approval of this shot provides another nontoxic option for hunters.

DATES: This rule takes effect on January 10, 2003.

ADDRESSES: Copies of the Environmental Assessment are available from the Chief of the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203–1610.

FOR FURTHER INFORMATION CONTACT: Bob Blohm, Acting Chief, or John J. Kreilich, Jr., Division of Migratory Bird Management, 703–358–1714.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703B–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Act. The Act authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

Since the mid-1970s, we have sought to identify shot that is not significantly toxic to migratory birds or other wildlife. Compliance with the use of nontoxic shot has increased over the last few years (Anderson *et al.* 2000), and we believe that it will continue to increase with the approval and availability of other nontoxic shot types. Currently, steel, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, and tungsten-nickel-iron shot are approved as nontoxic.

The purpose of this rule is to approve the use of TINT shot in the tested formulation (65% tungsten, 10.4% iron, 2.8% nickel, and 21.8% tin by weight) for waterfowl and coot hunting. This rule amends 50 CFR 20.21(j), which describes prohibited types of shot for waterfowl and coot hunting, to allow the use of this shot.

Background

On October 12, 2001, we received an application (Tier 1) under 50 CFR 20.134 from ENVIRON-Metal, Inc. for approval of HEVI-SHOT™ brand of Soft Shot in a 65% tungsten, 10.4% iron, 2.8% nickel, and 21.8% tin formulation. The application included information on chemical characterization, production variability, use volume, toxicological effects, environmental fate and transport, and evaluation. In accordance with our regulation, on May 10, 2002, we published in the **Federal Register** a proposed rule indicating our intention to approve TINT shot. We have reviewed the Tier 1 application, the supporting data, and the public comment, and the Director, U.S. Fish and Wildlife Service, has concluded that this shot does not impose a significant danger to migratory birds and other wildlife or their habitats.

In addition, since the 2000–2001 hunting season is completed, tin (99.9 percent tin with 1 percent residual lead) shot is no longer authorized for use and therefore the reference to it in 50 CFR 20.21(j) is deleted.

Toxicity Information

Tungsten may be substituted for molybdenum in enzymes in mammals. Ingested tungsten salts reduce growth and can cause diarrhea, coma, and death in mammals (Bursian *et al.* 1996, Cohen *et al.* 1973, Karantassis 1924, Kinard and Van de Erve 1941, National Research Council 1980, Pham-Huu-Chanh 1965), but elemental tungsten is virtually insoluble and therefore essentially nontoxic. A dietary concentration of 94 parts-per-million (ppm) did not reduce weight gain in growing rats (Wei *et al.* 1987). Lifetime exposure to 5 ppm tungsten as sodium tungstate in drinking water produced no discernible adverse effects in rats (Schroeder and Mitchener 1975). At 100 ppm tungsten as sodium tungstate in drinking water, rats had decreased enzyme activity after 21 days (Cohen *et al.* 1973).

Chickens given a complete diet showed no adverse effects of 250 ppm sodium tungstate administered for 10 days in the diet. However, 500 ppm in the diet had detrimental effects on day-old chicks (Teekell and Watts 1959). Adult hens had reduced egg production and egg weight on a diet containing 1,000 ppm tungsten (Nell *et al.* 1981a). EPT (1999) concluded that 250 ppm in the diet would produce no observable adverse effects. Kelly *et al.* (1998) demonstrated no adverse effects on mallards dosed with tungsten-iron or tungsten-polymer shot according to nontoxic shot test protocols.

Most toxicity tests reviewed were based on soluble tungsten compounds rather than elemental tungsten. As we found in our reviews of other tungsten shot types, we have no basis for concern about the toxicity of the tungsten in TINT shot to fish, mammals, or birds.

Nickel is a dietary requirement of mammals, with necessary consumption set at 50 to 80 parts per billion for the rat and chick (Nielsen and Sandstead 1974). Though it is necessary for some enzymes, nickel can compete with calcium, magnesium, and zinc for binding sites on many enzymes. Water-soluble nickel salts are poorly absorbed if ingested by rats (Nieboer *et al.* 1988). Nickel carbonate caused no treatment effects in rats fed 1,000 ppm for 3 to 4 months (Phatak and Patwardhan 1950). Rats fed 1,000 ppm nickel sulfate for 2 years showed reduced body and liver weights, an increase in the number of stillborn pups, and decrease in weanling weights through three generations (Ambrose *et al.* 1976). Nickel chloride was even more toxic; 1,000 ppm fed to young rats caused weight loss in 13 days (Schnegg and Kirchgessner 1976).

Soluble nickel salts are toxic to mammals, with an oral LD_{50} (lethal dose) of 136 mg/kg in mice, and 350 mg/kg in rats (Fairchild *et al.* 1977). Nickel catalyst (finely divided nickel in vegetable oil) fed to young rats at 250 ppm for 16 months, however, produced no detrimental effects (Phatak and Patwardhan 1950).

In chicks from hatching to 4 weeks of age, 300 ppm nickel as nickel carbonate or nickel acetate in the diet produced no observed adverse effects. However, concentrations of 500 ppm or more

reduced growth (Weber and Reid 1968). A diet containing 200 ppm nickel as nickel sulfate had no observed effects on mallard ducklings from 1 to 90 days of age. Diets of 800 ppm or more caused significant changes in physical condition of the ducklings (Cain and Pafford 1981). Eastin and O'Shea (1981) observed no apparent significant changes in pairs of breeding mallards fed diets containing up to 800 ppm nickel as nickel sulfate for 90 days. We have no basis for concern about the toxicity of nickel in TINT shot to fish, mammals, or birds.

Iron is an essential nutrient, so reported iron toxicosis in mammals, such as livestock, is primarily a phenomenon of overdosing. Maximum recommended dietary levels of iron range from 500 ppm for sheep to 3,000 ppm for pigs (National Research Council [NRC] 1980). Chickens require at least 55 ppm iron in the diet (Morck and Austic 1981). Chickens fed 1,600 ppm iron in an adequate diet displayed no ill effects (McGhee *et al.* 1965), and turkey poults fed 440 ppm in the diet also suffered no ill effects. The tests in which eight No. 4 tungsten-iron shot were administered to each mallard in a toxicity study indicated that the 45% iron content of the shot had no adverse effects on the test animals (Kelly *et al.* 1998). We have no basis for concern about the toxicity of iron in TINT shot to fish, mammals, or birds.

Elemental and inorganic tins have low toxicity, due largely to low absorption rate, low tissue accumulation, and rapid excretion rates. Inorganic tin is only slightly to moderately toxic to mammals. The oral LD_{50} values for tin (II) chloride for mice and rats are 250 and 700 mg/kg of body weight, respectively (WHO 1980).

A 150-day chronic toxicity/reproductive study conducted for tin shot revealed no adverse effects in mallards dosed with eight No. 4 sized shot. There were no significant changes in egg production, fertility, or hatchability of birds dosed with tin when compared to steel-dosed birds (Gallagher *et al.* 2000).

Environmental Fate

Elemental tungsten and iron are virtually insoluble in water and do not weather or degrade in the environment. Tungsten is stable in acids and does not easily form compounds with other substances. Preferential uptake by plants in acidic soil suggests uptake of tungsten when it has formed compounds with other substances rather than when it is in its elemental form (Kabata-Pendias and Pendias 1984).

Nickel is common in fresh waters, though usually at concentrations of less than 1 part per billion in locations unaffected by human activities. Pure nickel is not soluble in water. Free nickel may be part of chemical reactions, such as sorption, precipitation, and complexation. Reactions of nickel with anions are unlikely. Complexation with organic agents is poorly understood (U.S. Environmental Protection Agency [EPA] 1980). Water hardness is the dominant factor governing nickel effects on living things (Stokes 1988).

Tin occurs naturally in soils at 2 to 200 mg/g with areas of enrichment at much higher concentrations (up to 1,000 mg/g) (WHO 1980). However, in the United States, soil concentrations are between 1 and 5 ppm (Kabata-Pendias and Pendias 2001).

Environmental Concentrations

Calculation of the estimated environmental concentration (EEC) of a candidate shot in a terrestrial ecosystem is based on 69,000 shot per hectare (2.47 acre) (Bellrose 1959, 50 CFR 20.134). Assuming complete dissolution of the shot, the EEC for tungsten in soil is 15.09 mg/kg. The EECs for nickel and iron would be 0.65 and 2.41 mg/kg, respectively. The EEC for nickel (the only one of the four elements with an application limit) is substantially below the U.S. Environmental Protection Agency (EPA) biosolid application limit. The 0.65 mg/kg EEC for nickel also is far below the 16 to 35 mg/kg concentrations suggested as minimum sediment concentrations at which effects of the metal are likely to occur (EPA 1997, Ingersoll *et al.* 1996, Long and Morgan 1991, MacDonald *et al.* 2000, Smith *et al.* 1996). The EEC for tungsten from TINT shot is below that for the already-approved TNI shot. The EEC for iron is less than 0.01% of the typical background concentration, and the iron is in an insoluble form. The EEC for tin in soil is 5.06 mg/kg, one order of magnitude smaller than the 50 mg/kg suggested maximum concentration in surface soil tolerated by plants (Kabata-Pendias and Pendias 2001).

Calculation of the EEC in an aquatic ecosystem assumes complete erosion of 69,000 shot in one hectare (2.47 acre) of water 1 foot deep. The EECs for the elements in TINT shot in water are 3,218 μg/L for tungsten, 515 μg/L for iron, 139 μg/L for nickel, and 1,079 μg/L for tin. We concluded that a tungsten concentration of 10,500 μg/L posed no threat to aquatic life (62 FR 4877). The EEC for nickel from TINT shot is below the EPA acute water quality criterion of 1,400 μg/L in fresh water, but would exceed the 75 μg/L criterion for salt water. However, tests showed that corrosion of TINT shot occurs at very low rates. The amount of nickel liberated into seawater by eight No. 4 TINT shot for a 30-day exposure was 23% of the amount liberated by TNI. TINT shot is predicted to release 1.8 μg/L of nickel into 1 ha-ft of seawater over 1 year. This value is 2.4% of the acute criterion and less than 23% of the chronic criterion.

The EEC for iron is below the chronic criterion for protection of aquatic life and for tin; it is four times less than the Minnesota Water Quality Standard. Previous assessments of tungsten demonstrated dissolution at a rate of 10.5 mg/L (equal to 10,500 μg/L) and concluded no risk to aquatic life (62 FR 4877). The EEC of tungsten from TINT shot is 3,218 μg/L. This level is three times less than the 10,500 μg/L level previously mentioned.

Effects on Birds

Kraabel *et al.* (1996) surgically embedded tungsten-bismuth-tin shot in the pectoralis muscles of ducks to simulate wounding by gunfire and to test for toxic effects of the shot. The shot neither produced toxic effects nor induced adverse systemic effects in the ducks during the 8-week period of their study.

Nell *et al.* (1981a) fed laying hens (*Gallus domesticus*) 0.4 or 1.0 g/kg tungsten in a commercial mash for 5 months to assess reproductive performance. Weekly egg production was normal, and hatchability of fertile eggs was not affected. Exposure of chickens to large doses of tungsten either through injection or by feeding resulted in an increased tissue concentration of tungsten and a decreased concentration of molybdenum (Nell *et al.* 1981b). The loss of tungsten from the liver occurred in an exponential manner, with a half-life of 27 hours. The alterations in molybdenum metabolism seemed to be associated with tungsten intake rather than molybdenum deficiency. Death due to tungsten occurred when tissue concentrations increased to 25 ppm in the liver.

A 150-day chronic toxicity/reproductive study conducted for tin shot revealed no adverse effects in mallards dosed with eight No. 4 sized shot. In this investigation, there were no significant changes in egg production, fertility, or hatchability of birds dosed with tin when compared to steel-dosed birds (Gallagher *et al.* 2000).

Toxicity Studies

Ringelman *et al.* (1993) conducted a 32-day acute toxicity study that involved dosing game-farm mallards with tungsten-bismuth-tin shot in a relative composition of 39%, 44.5%, and 16.5% by weight, respectively. No dosed birds died during the trial, and their behavior was normal. Post-euthanization examination of tissues revealed no toxicity or damage related to shot exposure. Blood calcium differences between dosed and undosed birds were judged as unrelated to shot exposure. That study indicated that tungsten presented little hazard to waterfowl.

The Tier 1 application of TINT shot included analyses comparing corrosion data of TNI shot to TINT shot. Samples of both shot types were exposed to seawater for 10.8 days. The two seawater samples were then analyzed for nickel, iron, tungsten, and tin. Samples were then returned to fresh seawater and exposed for an additional 44.5 days, whereupon the seawater solutions were again analyzed for nickel, iron, tungsten, and tin.

The total release of nickel from TINT shot over the 55.3-day exposure was only 13% that of TNI shot. The results indicate that TINT shot shows lower rates of nickel release due to the collection of corrosive materials on surfaces that inhibit additional corrosion.

Assuming that a duck eats 10 No. 4 TINT shot in 1 day and that the shot are completely eroded in the gizzard in 24 hours, the duck would be exposed to .061g of nickel. This amount is slightly more than half of the .102g/day that Eastin and O'Shea (1981) found produced no ill effects on mallards. We believe, therefore, that consumption of nickel from TINT shot is unlikely to have detrimental effects on waterfowl.

Ingestion by Fish, Amphibians, Reptiles, or Mammals

Based on the best available information and past reviews of tungsten-based and tin shot, we expect no detrimental effects due to tungsten, iron, or tin on animals that might ingest TINT shot. We know of no studies of ingestion of nickel by reptiles or amphibians. The exposure of nickel to any animal in these taxa that might consume a TINT shot pellet would be lower, because the pellet likely would not be retained in most animals that might consume one. Their exposure to nickel would therefore be much lower than the worst-case scenario for waterfowl.

Nontoxic Shot Approval

The first condition for nontoxic shot approval is toxicity testing, Tiers 1, 2, or 3 (50 CFR § 20.134). Based on the results of past toxicity tests, we conclude that TINT shot does not pose a significant danger to migratory birds, other wildlife, or their habitats.

The second condition for approval is testing for residual lead levels. We determined that the maximum environmentally acceptable level of lead in shot is 1% (50 CFR § 20.134(b)(5)). ENVIRON—Metal, Inc. has documented that TINT shot meets this requirement.

The third condition for approval involves enforcement. Approval of any nontoxic shot is contingent upon the development and availability of a noninvasive field testing device (50 CFR § 20.134(b)(6)). TINT shotshells can be drawn to a magnet as a simple field detection method.

Public Comments

We received two comments on the May 10, 2002 proposed rule (67 FR 31754) to approve TINT shot for hunting waterfowl and coots. Both comments supported granting approval for use of the shot.

References

Anderson, W. L., S. P. Havera, and B. W. Zercher. 2000. Ingestion of lead and nontoxic shotgun pellets by ducks in the Mississippi flyway. Journal of Wildlife Management 64:848–857.

Ambrose, P., P. S. Larson, J. F. Borzelleca, and G. R. Hennigar, Jr. 1976. Long term toxicologic assessment of nickel in rats and dogs. Journal of Food Science and Technology 13:181–187.

Bellrose, F. C. 1959. Lead poisoning as a mortality factor in waterfowl populations. Illinois Natural History Survey Bulletin 27(3): 235–288.

Bursian, S. J., M. E. Kelly, R. J. Aulerich, D. C. Powell, and S. Fitzgerald. 1996. Thirty-day dosing test to assess the toxicity of tungsten-polymer shot in game-farm mallards. Report to Federal Cartridge Company. 71 pages.

Cain, B. W. and E. A. Pafford. 1981. Effects of dietary nickel on survival and growth of mallard ducklings. Archives of Environmental Contamination and Toxicology 10:737–745.

Cohen, H. J., R. T. Drew, J. L. Johnson, and K. V. Rajagopalan. 1973. Molecular basis of the biological function of molybdenum: the relationship between sulfite oxidase and the acute toxicity of bisulfate and SO_2. Proceedings of the National Academy of Sciences 70:3655–3659.

Eastin, W. C., Jr. and T. J. O'Shea. 1981. Effects of dietary nickel on mallards. Journal of Toxicology and Environmental Health 7:883–892.

Ecological Planning and Toxicology, Inc. 1999. Application for approval of t-n-i metal™ nontoxic shot: Tier 1 report. Cherry Hill, New Jersey. 28 pages plus appendixes.

Fairchild, E. J., R. J. Lewis, and R. L. Tatken (editors). 1977. Registry of toxic effects of chemical substances, Volume II. Pages 590–592. U.S. Department of Health, Education, and Welfare Publication (NIOSH) 78–104B. 227 pages.

Gallagher, S.P., J.B. Beavers, R. Van Hoven, M. Jaber. 2000. Pure tin shot: A chronic exposure study with the mallard including reproductive parameters. Wildlife International, Ltd. Project No. 476–102. Easton, Maryland. 322pp.

Ingersoll, C. G., P. S. Haverland, E. L. Brunson, T.J. Canfield, F. J. Dwyer, C. E. Henke, N. E. Kemble, and D. R. Mount. 1996. Calculation and evaluation of sediment effect concentrations for the amphipod Hyalella azteca and the midge Chironomus riparius. EPA 905–R96–008, Great Lakes National Program Office, Region V, Chicago, Illinois. Mixed pagination.

Kabata-Pendias, A. and H. Pendias. 1984. Trace elements in soils and plants. CRC Press, Inc. Boca Raton, FL. 315 pages.

Kabata-Pendias, A. and H. Pendias. 2001. Trace elements in soils and plants. 3rd edition. CRC Press, Inc. Boca Raton, FL. 411 pages.

Karantassis, T. 1924. On the toxicity of compounds of tungsten and molybdenum. Annals of Medicine 28:1541–1543.

Kelly, M. E., S. D. Fitzgerald, R. J. Aulerich, R. J. Balander, D. C. Powell, R. L. Stickle. W. Stevens, C. Cray, R. J. Tempelman, and S. J. Bursian. 1998. Acute effects of lead, steel, tungsten-iron and tungsten-polymer shot administered to game-farm mallards. Journal of Wildlife Diseases 34:673–687.

Kinard, F. W. and J. Van de Erve. 1941. The toxicity of orally-ingested tungsten compounds in the rat. Journal of Pharmacology and Experimental Therapeutics 72:196–201.

Kraabel, F. W., M. W. Miller, D. M. Getzy, and J. K. Ringelman. 1996. Effects of embedded tungsten-bismuth-tin shot and steel shot on mallards. Journal of Wildlife Diseases 38:1–8.

Long, E. R. and L. G. Morgan. 1991. The potential for biological effects of sediment-sorbed contaminants tested in the National Status and Trends Program. NOAA Technical Memorandum NOS OMA 52, National Oceanic and Atmospheric Administration, Seattle, Washington. 175 pages + appendices.

MacDonald, D. D., C. G. Ingersoll, and T. A. Berger. 2000. Development and evaluation of consensus-based sediment quality guidelines for freshwater ecosystems. Archives of Environmental Contamination and Toxicology 39:20–31.

McGhee, F., C. R. Creger, and J. R. Couch. 1965. Copper and iron toxicity. Poultry Science 44:310–312.

Morck, T. A. and R. E. Austic. 1981. Iron requirements of white leghorn hens. Poultry Science 60:1497–1503.

National Research Council. 1980. Mineral tolerance of domestic animals. National Research Council, National Academy of Sciences, Washington, DC. 577 pages.

Nell, J. A., W. L. Bryden, G. S. Heard, and D. Balnave. 1981a. Reproductive

performance of laying hens fed tungsten. Poultry Science 60:257–258.
Nell, J. A., E. F. Annison, and D. Balnave. 1981b. The influence of tungsten on the molybdenum status of poultry. British Poultry Science 21:193–202.
Nieboer, E., R. T. Tom, and W. E. Sanford. 1988. Nickel metabolism in man and animals. Pages 91–122 *in* Metal ions in biological systems, volume 23: nickel and its role in biology. H. Sigel and A. Sigel, editors. Marcel Dekker, New York.
Nielsen, F. H. and H. H. Sandstead. 1974. Are nickel, vanadium, silicon, fluoride, and tin essential for man? American Journal of Clinical Nutrition 27:515–520.
Pham-Huu-Chanh. 1965. The comparative toxicity of sodium chromate, molybdate, tungstate, and metavanadate. Archives Internationales de Pharmacodynamie et de Therapie 154:243–249.
Phatak, S. S. and V. N. Patwardhan. 1950. Toxicity of nickel. Journal of Science and Industrial Research 9B:70–76.
Ringelman, J. K., M. W. Miller, and W. F. Andelt. 1993. Effects of ingested tungsten-bismuth-tin shot on captive mallards. Journal of Wildlife Management 57:725–732.
Schnegg, S. and M. Kirchgessner. 1976. [Toxicity of dietary nickel]. Landwirtsch. Forsch. 29:177. Cited in Chemical Abstracts 86:101655y (1977).
Schroeder, H. A. and M. Mitchener. 1975. Life-term studies in rats: effects of aluminum, barium, beryllium, and tungsten. Journal of Nutrition 105:421.
Smith, S. L., D. D. MacDonald, K. A. Keenleyside, C. G. Ingersoll, and J. Field. 1996. A preliminary evaluation of sediment quality assessment values for freshwater ecosystems. Journal of Great Lakes Research 22:624–638.
Stokes, P. 1988. Nickel in aquatic systems. Pages 31–46 *in* Metal ions in biological systems, volume 23: nickel and its role in biology. H. Sigel and A. Sigel, editors. Marcel Dekker, New York.
Teekel, R. A. and A. B. Watts. 1959. Tungsten supplementation of breeder hens. Poultry Science 38:791–794.
U.S. Environmental Protection Agency. 1980. Ambient water quality criteria for nickel. U.S. Environmental Protection Agency, Washington, DC. 207 pages.
U.S. Environmental Protection Agency. 1997. The incidence and severity of sediment contamination in surface waters of the United States: National sediment quality survey, Volume 1. EPA 823–R–97–006. Office of Science and Technology, Washington, DC. 182 pages plus appendices.
Weber, C. W. and B. L. Reid. 1968. Nickel toxicity in growing chicks. Journal of Nutrition 95:612–616.
Wei, H. J., X–M. Luo, and X–P. Yand. 1987. Effects of molybdenum and tungsten on mammary carcinogenesis in Sprague-Dawley (SD) rats. Chung Hua Chung Liu Tsa Chih 9:204–7. English abstract.
WHO [World Health Organization]. 1980. Tin and organotin compounds. A preliminary review. Environmental Health Criteria 15. World Health Organization. Geneva. 109pp.

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we have prepared an Environmental Assessment (EA) for approval of TINT shot. The EA is available to the public at the location indicated in the **ADDRESSES** section.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that Federal agencies shall Ainsure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *'' We have completed a Section 7 consultation under the ESA for this rule. The result of our consultation under Section 7 of the ESA is available to the public at the location indicated in the **ADDRESSES** section.

Executive Order 12866

This rule is not a significant regulatory action subject to OMB review under Executive Order 12866. OMB makes the final determination under E.O. 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required.

b. This rule will not create inconsistencies with other agencies' actions because the Service is the sole agency responsible for regulating activities under the Migratory Bird Treaty Act.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients because it has no mechanism to affect entitlements, grants, user fees, loan programs or the rights and obligations of their recipients.

d. This rule will not raise novel legal or policy issues because the Service has already approved six other nontoxic shot types.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant economic impact on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. This rule approves an additional type of nontoxic shot that may be sold and used to hunt migratory birds; this rule provides one shot type in addition to the existing six that are approved. We have determined, however, that this rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. We anticipate no dislocation or other local effects, with regard to hunters and others.

Small Business Regulatory Enforcement Fairness Act

Similarly, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

a. This rule does not have an annual effect on the economy of $100 million or more.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

c. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act

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. We have examined this regulation under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and found it to contain no information collection requirements.

Unfunded Mandates Reform Act

We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, *et seq.*, that this rule-making will not impose a cost of $100 million or more in any given year on local or State government or private entities. This rule does not impose an unfunded mandate of more than $100 million per year or have a significant or unique effect on State, local, or tribal governments or the private sector because it is the Service's responsibility to regulate the take of migratory birds in the United States.

Civil Justice Reform—Executive Order 12988

We have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise privileges that would be otherwise unavailable and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. This rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, this proposed regulation does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) Executive Order 13175, and 512 DM 2, we have determined that this rule has no effects on Federally recognized Indian tribes.

Energy Effects

In accordance with Executive Order 13211, this rule, authorized by the Migratory Bird Treaty Act, does not significantly affect energy supply, distribution, and use. This rule is not a significant energy action and no Statement of Energy Effects is required.

Effective Date

Under the Administrative Procedure Act (5 U.S.C. 551–553), our normal practice is to publish rules with a 30-day delay in effective date. In this case, however, we use the ''good cause'' exemption under 5 U.S.C. 553(d)(3) to make this rule effective upon publication. This rule relieves a restriction, and it is not in the public interest to delay its effective date.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons discussed in the preamble, we amend part 20, subchapter B, chapter 1 of Title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712; 16 U.S.C. 742 a–j, Pub. L. 106–108.

2. In § 20.21, revise paragraph (j) to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin (97 parts bismuth: 3 parts tin with <1 percent residual lead) shot, or tungsten-iron (40 parts tungsten: 60 parts iron with <1 percent residual lead) shot, or tungsten-polymer (95.5 parts tungsten: 4.5 parts Nylon 6 or 11 with <1 percent residual lead) shot, or tungsten-matrix (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) shot, or tungsten-nickel-iron (50% tungsten: 35% nickel: 15% iron with <1 percent residual lead) shot, or tungsten-iron-nickel-tin (65% tungsten: 10.4% iron: 2.8% nickel: 21.8% tin with < 1 percent residual lead) shot, or such shot approved as nontoxic by the Director pursuant to procedures set forth in § 20.134, provided that this restriction applies only to the taking of Anatidae (ducks, geese, (including brant) and swans), coots (Fulica americana) and any species that make up aggregate bag limits during concurrent seasons with the former in areas described in § 20.108 as nontoxic shot zones.

Dated: December 11, 2002.

Craig Mason,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–518 Filed 1–9–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 112702C]

Notification of U.S. Fish Quotas and an Effort Allocation in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area; Correction

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

ACTION: Notification of U.S. fish quotas and an effort allocation; correction.

SUMMARY: This document corrects the notification of U.S. fish quotas and an effort allocation published in the **Federal Register** on December 4, 2002.

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran, 301–713–2276.

SUPPLEMENTARY INFORMATION:

Need for Correction

An incorrect date was was published under the **DATES** heading of the notification of U.S. quota allocations and an effort allocation, FR Doc 02–30751, in the issue of December 4, 2002 (67 FR 72110). That document is corrected to read as follows:

On page 72110, column 2, line 8 ''January 3, 2004'' is corrected to read ''January 24, 2003''.

Dated: January 6, 2003.

John H. Dunnigan,

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

[FR Doc. 03–522 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020814193–2282–02; I.D. 070102C]

RIN 0648–AQ05

Fisheries of the Exclusive Economic Zone Off Alaska; Extend the Interim Groundfish Observer Program Through December 31, 2007, and Amend Regulations for the North Pacific Groundfish Observer Program; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule that was published in the **Federal Register** on December 6, 2002, which extended the applicability date of the existing regulations for the interim North Pacific Groundfish Observer Program.

DATES: Effective January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION:

Need for Correction

An incorrect paragraph designation was published under the **DATES** heading of the final rule, FR Doc. 02–30694, in the issue of December 6, 2002 (67 FR 72595). It is corrected as follows:

On page 72595, column 2, line 1 ''679.79(a)(3)'' is corrected to read ''679.7(a)(3)''.

Dated: January 6, 2003.

Rebecca Lent,

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

[FR Doc. 03–521 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 7
Friday, January 10, 2003

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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 24

[Docket No. 03–01]

RIN 1557–AC09

Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend 12 CFR part 24, the regulation governing national bank investments that are designed primarily to promote the public welfare. This proposal updates the definition section of the regulation to reflect the additional types of public welfare investment structures that have become more common in recent years and that are permissible under the governing statute. The proposal also clarifies the statutory standard that applies to the activities of those entities; simplifies the standards for making public welfare investments; clarifies how a national bank calculates the value of its public welfare investments for purposes of complying with the rule's investment limits; simplifies the regulation's investment self-certification and prior approval processes; and expands the list of examples of qualifying public welfare investments that satisfy the rule's requirements. These changes are intended to encourage additional public welfare investments by national banks by simplifying the regulation and further reducing unnecessary burden associated with part 24 investments.

DATES: Comments must be received March 11, 2003.

ADDRESSES: Please direct your comments to: Docket No. 03–01, Communications Division, Public Information Room, Mailstop 1–5, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit their comments by fax or by e-mail. You may send comments by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can make an appointment to inspect and photocopy comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: *OCC:* Michele Meyer, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; Stephen Van Meter, Assistant Director, Community and Consumer Law Division, (202) 874–5750; or Barry Wides, Director, or Karen Bellesi, Investments Manager, Community Development Division, (202) 874–4930.

SUPPLEMENTARY INFORMATION:

I. Background

The OCC is proposing to amend 12 CFR part 24, which contains the rules relating to national banks' investments in community development corporations (CDCs), community development (CD) projects, and other public welfare investments. Part 24 implements 12 U.S.C. 24 (Eleventh), which authorizes national banks to make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities and families, subject to certain percentage-of-capital limitations. (The investments authorized by 12 U.S.C. 24 (Eleventh) are collectively referred to in this proposal as ''public welfare investments.'') The purpose of this proposal is to make it easier for national banks to use the public welfare investment authority that the statute and regulation provide, and to eliminate unnecessary regulatory burdens currently associated with the investment review and approval process.

The OCC originally adopted part 24 in 1993 and substantially revised the regulation in 1996.[1] The 1996 revisions encouraged national banks to make public welfare investments by eliminating unnecessarily burdensome provisions and streamlining the part 24 procedures. Among other things, the 1996 revisions: Modified the test for determining whether an investment primarily promotes the public welfare; streamlined the procedures for investment self-certification (which permits an eligible bank[2] to make a public welfare investment and notify the OCC after-the-fact) and prior approval of investments; and expanded the list of activities eligible for self-certification.

In 1999, we revised part 24 further by simplifying the prior approval and self-certification requirements that apply to national banks' public welfare investments, expanding the types of investments for which self-certification may be used by removing geographic restrictions, and permitting an eligible bank to self-certify in connection with any eligible public welfare investment.[3]

We are committed to continually reevaluating our rules to reduce unnecessary regulatory burden and simplify compliance, consistent with the safe and sound operation of national banks. Our experience since the 1999 revisions to part 24 has demonstrated the benefits of these efforts. In the year 2001, national banks self-certified compliance in 90 percent of all part 24 investments, compared with 65 percent in 1998. In the same year, national banks and their community partners committed $995 million to part 24 investments, compared with $1.7 million in 1998.

We believe that additional improvements to this regulation could further stimulate part 24 investments fully consistent with safety and soundness considerations. Toward that end, this proposal streamlines the rule to eliminate additional unnecessary regulatory burdens currently associated with the investment review and approval process, as described in greater detail in the next section of this preamble discussion. These changes are designed to further encourage national bank participation in the part 24 investment program, without

[1] *See* 58 FR 68464 (December 27, 1993); and 61 FR 49654 (September 23, 1996).

[2] An ''eligible bank'' is well capitalized; has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System and at least a ''satisfactory'' Community Reinvestment Act rating; and is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive. 12 CFR 24.2(e).

[3] *See* 64 FR 31160 (June 10, 1999).

compromising bank safety and soundness.

II. Description of the Proposal

Definitions (§ 24.2)

The proposal adds a new definition of ''community and economic development entity.'' The new definition of ''community development entity'' replaces the current definition of ''community development corporation.'' A community development corporation is defined in the current regulation as a corporation established by one or more insured financial institutions (with or without other investors) ''to make one or more investments that meet the requirements of § 24.3.''[4] The proposal defines a community and economic development entity (CDE) as an entity—such as a national bank community development subsidiary, community development financial institution, limited liability company, or limited partnership—that makes investments or conducts activities that primarily benefit low- and moderate-income individuals or areas or other areas targeted for redevelopment.

The proposed definition of CDE better reflects the scope of 12 U.S.C. 24 (Eleventh), which permits a national bank to ''make [public welfare] investments directly or by purchasing interests in *an entity* primarily engaged in making such investments.'' 12 U.S.C. 24 (Eleventh) (emphasis added). The language of the statute does not restrict the entities in which a national bank may invest to a particular form of organization, provided the investing bank is not exposed to unlimited liability. Nor does the legislative history suggest that any such restriction was intended. Accordingly, the OCC has interpreted section 24 (Eleventh) broadly, permitting a national bank to invest in a variety of entities that make public welfare investments themselves or that use a national bank's investment to support other types of public welfare activities.[5] The proposed definition of CDE is consistent with this long-standing interpretation of the statute.

Public Welfare Investments (§ 24.3)

Section 24 (Eleventh) authorizes national banks to make investments ''designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as through the provision of housing, services, or jobs).'' Current § 24.3 implements this authority by providing that a national bank may make an investment under part 24 if two conditions are met. The first, set forth in current § 24.3(a), requires that the investment primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted for redevelopment[6] by providing or supporting one or more of four enumerated public welfare activities.[7] The second condition, set forth in current § 24.3(b), requires the bank to demonstrate non-bank community support for, or participation in, the investment.[8] The proposal simplifies the text of the first condition and deletes the second.

Under proposed § 24.3, a national bank may make a part 24 investment if the investment primarily benefits low- and moderate-income individuals or areas or other areas targeted for redevelopment by governmental entities.[9] The proposal deletes the four enumerated public welfare activities set forth in current § 24.3(a)(1)–(4). The list is merely illustrative of the types of investments a national bank may make under this part. It appears unnecessary in light of § 24.6, which sets forth examples of public welfare investments a national bank may make under this part (*see* the discussion that follows of proposed changes to § 24.6, including additional examples of permissible investments).

The OCC is also proposing to delete the community support demonstration requirement set forth in current § 24.3(b) because it is not required by statute or the comparable rules that apply to other financial institutions that have Federal statutory investment authority similar to section 24 (Eleventh)[10] and may limit a bank's flexibility in making public welfare investments by hinging the permissibility of the investment on factors other than the nature and purpose of the investment. Moreover, the OCC's experience in implementing part 24 suggests that investments that otherwise meet the requirements of part 24 will receive the support of the communities benefited.

Investment Limits (§ 24.4)

Section 24.4 of the current rule implements the investment limits imposed by 12 U.S.C. 24 (Eleventh). Under both the regulation and the statute, a national bank's aggregate public welfare investments may not exceed 5 percent of its capital and surplus, unless the bank is at least adequately capitalized and the OCC determines that a higher amount will pose no significant risk to the deposit insurance fund. In no case, however, may a bank's aggregate outstanding part 24 investments exceed 10 percent of its capital and surplus.

The proposal amends § 24.4 to clarify that a bank should follow generally accepted accounting principles (GAAP) when calculating the aggregate amount of its part 24 investments, unless otherwise directed or permitted in writing by the OCC for prudential or safety and soundness reasons. Those reasons could exist, for example, if GAAP accounting permits a financially weak bank to increase investments in an unprofitable CDE.

Public Welfare Self-Certification and Prior Approval Procedures (§ 24.5)

Currently, an eligible national bank may make qualifying public welfare investments without prior notification

[4] 12 CFR 24.2(c). Current § 24.3 sets forth the criteria for a public welfare investment, including that the investment primarily benefits low- and moderate-income individuals or areas or other areas targeted for redevelopment, and that the bank demonstrates non-bank community support for the investment.

[5] The annual OCC Directory of National Bank Community Development Investments lists numerous public welfare activities conducted by CDEs, such as the development of affordable housing, job creation, and commercial revitalization. For the most recent examples of such activities, *see* ''National Bank Community Development Investments, 2001 Directory.''

[6] Under the current regulation, redevelopment areas are those targeted for redevelopment by ''local, State, tribal or Federal government (including Federal enterprise communities and Federal empowerment zones) * * *'' 12 CFR 24.3(a).

[7] These include affordable housing, equity or debt financing for small businesses, area revitalization or stabilization, and ''other activities, services, or facilities that primarily promote the public welfare.'' 12 CFR 24.3(a).

[8] The current rule permits banks to demonstrate community support by, for example, having non-bank community representatives as members of the board of directors of a CDE or on a separate advisory board for the bank's community development activities; formation of formal business relationships between the bank and a community organization; contractual agreements with community partners to provide services in connection with the proposed investment; joint ventures with local small businesses; and financing for the proposed investment from the public sector or community development organizations or the receipt of Federal low-income housing tax credits by the project in which the investment is made. 12 CFR 24.3(b).

[9] Because the purposes and requirements of section 24 (Eleventh) and the Community Reinvestment Act are different, a part 24 investment does not necessarily qualify for consideration under the Community Reinvestment Act. For example, the Community Reinvestment Act limits the areas in which a bank may invest based on location and income levels, whereas part 24 places no geographic restrictions on a bank's public welfare investment and permits a bank to make an investment in an area that is not low-or moderate-income (provided the area has been targeted for redevelopment).

[10] We note that the Federal Reserve Board's community development regulation (12 CFR 208.22) implements nearly identical statutory authority (12 U.S.C. 338a) and does not require the demonstration of community support for an investment.

to, or approval by, the OCC by submitting a self-certification letter to the OCC within 10 working days after it makes the investment. For all other investments under part 24, a national bank must apply to the OCC for prior approval of an investment proposal. Unless otherwise notified in writing by the OCC, the proposed investment is deemed approved 30 calendar days from the date on which the OCC receives the proposal application.[11]

To emphasize that eligible national banks are not required to seek prior approval of public welfare investments that meet the requirements of §§ 24.3 and 24.4, the proposal changes the title of § 24.5 to ''Public welfare investment after-the-fact notice and prior approval procedures,'' and references in the section to ''self-certification'' are changed to ''after-the-fact notice.'' The OCC further proposes to simplify the part 24 investment notification processes and make them more consistent with the notification processes established under 12 CFR part 5 for certain equity investments.

Currently, § 24.5(a) requires that a bank's self-certification letter include: (i) The name of the CDC, CD Project, or other entity in which the bank has invested; (ii) the date the investment was made; (iii) the type of investment (equity or debt), the investment activity listed in § 24.3(a) that the investment primarily supports, and a brief description of the particular investment; (iv) the amount of the bank's total investment in the CDC, CD Project, or other entity, and the bank's aggregate outstanding part 24 investments, including the investment being self-certified; (v) the percentage of the bank's capital and surplus represented by the bank's aggregate outstanding part 24 investments, including the investment being self-certified; and (vi) a statement certifying compliance with the requirements of § 24.3 and § 24.4. In this respect, part 24 currently calls for significantly more detail than the procedures prescribed by part 5 that apply where a national bank makes other types of permissible equity investments. Under part 5, a national bank's written after-the-fact notice of certain equity investments must set forth simply ''a description, and the amount, of the bank's investment.''[12]

The proposal revises § 24.5 to make it more consistent with the part 5 equity investment notification procedures and to remove unnecessary administrative impediments to national bank public welfare investments. The proposal removes the first three elements currently required in a bank's self-certification letter (set forth at current § 24.5(a)(3)(i)–(iii)) to give a bank the flexibility to determine how best to describe a particular investment and to emphasize that such a description may be brief. The proposal also removes the requirement (set forth at current § 24.5(a)(3)(iv)) that a bank provide the amount of its aggregate outstanding part 24 investments because this element is redundant in light of the required certification of compliance with the investment limits set forth in § 24.4.

Thus, the proposal provides that a national bank may make an investment without prior notification to the OCC if the bank submits an after-the-fact notice to the OCC that includes: (i) A description of the bank's investment; (ii) the amount of the investment; (iii) the percentage of the bank's capital and surplus represented by the investment being self-certified and by the bank's aggregate outstanding public welfare investments; and (iv) a certification that the investment complies with the requirements of §§ 24.3 and 24.4. The proposal also applies these modified requirements to the investment prior approval process described in § 24.5(b).[13] The OCC expects the after-the-fact notices and the investment proposals submitted in accordance with these modified requirements will be significantly shorter than the materials submitted under the current rule.[14]

Examples of Qualifying Public Welfare Investments (§ 24.6)

The proposal revises § 24.6 to provide additional examples of the types of investments that meet the requirements of § 24.3. For ease of reference, this list is organized by type of activity (such as affordable housing, economic development and job creation, and investments in CDEs). This list is illustrative of the types of investments a bank may make under this part, and national banks are not limited to the listed investments in creating or expanding their public welfare investment programs.[15]

Conforming Amendments

As we have explained, the proposal changes the definition of ''community development corporation'' to ''community and economic development entity'' to better reflect the range of investment vehicles that may be used for making part 24 investments. The proposal revises the title of part 24 to reflect this change. Thus, the proposed title is ''Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments.''

The proposal also revises the authority statement of the rule (§ 24.1) to refer to ''community and economic development entities'' rather than ''community development corporations.''

III. Comments

The OCC requests comment on all aspects of this proposal, including the extent to which these proposed changes will encourage more national banks to make public welfare investments. Commenters are also invited to suggest other revisions that would simplify the standards or streamline the procedures currently contained in part 24.

IV. Community Bank Comment Request

In addition, we invite your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

V. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (November 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?

[11] *See* 12 CFR 24.5 and 24.6.

[12] *See* 12 CFR 5.36(d)(2).

[13] The proposal does not change the triggers for the prior approval process. Thus, a bank that is ineligible for the after-the-fact notice process must seek prior approval of its investments under 12 CFR 24.5(b)(1), unless the OCC has given it permission to use the after-the-fact notice process under 12 CFR 24.5(a)(4). An eligible bank must seek prior approval of: Investments that would exceed the five percent investment limit; investments in other real estate owned; or other investments determined by the OCC to be ineligible for the after-the-fact notice process. 12 CFR 24.4 and 24.5(a)(5).

[14] The OCC expects to revise the sample forms for investment notification and prior approval to reflect this expectation. These sample forms will be available through the OCC's Community Development Division, (202) 874–4930.

[15] For more examples of the types of investments a bank may make under part 24, *see* ''National Bank Community Development Investments, 2000 Directory.''

• Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?

• Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?

• What else could we do to make the regulation easier to understand?

VI. Regulatory Flexibility Act

An agency must prepare a Regulatory Flexibility Analysis if a rule it proposes will have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605. If, after an analysis of a rule, an agency determines that the rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) provides that the head of the agency may so certify.

The OCC has reviewed the impact this proposed rule will have on small national banks. For purposes of this Regulatory Flexibility Analysis and proposed regulation, the OCC defines ''small national banks'' to be those banks with less than $150 million in total assets. Based on that review, the OCC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposal would reduce regulatory burden on all national banks by simplifying the requirements and procedures applicable to part 24 investments. The economic impact of this proposal on national banks, regardless of size, is not expected to be significant, though some national banks may benefit from a modest reduction in compliance costs.

VII. Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

VIII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a 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. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this rulemaking requires no further analysis under the Unfunded Mandates Act.

IX. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements contained in this notice of proposed rulemaking have been submitted to OMB for review and approval under OMB Control Number 1557–0194.

The revisions of the information collections contained in the notice of proposed rulemaking are expected to reduce annual paperwork burden for respondents because it eliminates certain application and notification requirements. The information collection requirements in this notice of proposed rulemaking are contained in §§ 24.5(a) and 24.5(b). Section 24.5(a) requires a national bank to submit an after-the-fact notice of public welfare investments to the OCC. The time per response to complete an after-the-fact notice is estimated to be 1.5 hours and the number of respondents is estimated to be 195 national banks. Section 24.5(b) requires a national bank to submit an investment proposal to the OCC if the bank does not meet the requirements for after-the-fact notification. The time per response to complete an investment proposal is estimated to be 1.5 hours and the number of respondents is estimated to be 22.

Section 24.5(a)(4) contains an existing requirement for certain national banks to submit a letter requesting authority to submit after-the-fact notices of their investments. The time per response is approximately 30 minutes and the number of respondents is estimated to be four.

The likely respondents are national banks.

Estimated number of respondents: 221.

Estimated number of responses: 221 responses.

Estimated total burden hours: 327.5 hours.

The OCC invites comments on: (1) Whether the collection of information contained in the proposed rulemaking is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected:

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments should be sent to: Jessie Dunaway, Clearance Officer, Office of the Comptroller of the Currency, Legislative and Regulatory Activities Division, Attention: 1557–0194, 250 E Street, SW., Mailstop 8–4, Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit their comments by fax to 202–874–4889 or by e-mail to *jessie.dunaway@occ.treas.gov*.

Joseph F. Lackey, Jr., Desk Officer, Office of Information and Regulatory Affairs, Attention: 1557–0194, Office of Management and Budget, Room 10235, Washington, DC 20503. Comments may also be sent by e-mail to *jlackeyj@omb.eop.gov*.

List of Subjects in 12 CFR Part 24

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend part 24 of chapter I of title 12 of the Code of Federal Regulations as follows:

1–2. Revise the part heading of part 24 to read as follows:

PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

3. The authority citation for part 24 continues to read as follows:

Authority: 12 U.S.C. 24 (Eleventh), 93a, 481 and 1818.

4. In part 24, revise all references to ''community development corporation'' and ''CDC'' to read ''community and economic development entity'' and ''CDE.''

5. In § 24.2, revise paragraph (c) to read as follows:

§ 24.2 Definitions.

* * * * *

(c) *Community and economic development entity* (CDE) means an entity that makes investments or conducts activities that primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment. The following is a non-exclusive list of examples of the types of entities that may be CDEs:

(1) National bank community development corporation subsidiaries;

(2) Private or nonbank community development corporations;

(3) CDFI Fund-certified Community Development Financial Institutions or Community Development Entities;

(4) Limited liability companies or limited partnerships;

(5) Community development loan funds or lending consortia;

(6) Community development real estate investment trusts;

(7) Business development companies;

(8) Community development closed-end mutual funds;

(9) Non-diversified closed-end investment companies; and

(10) Community development venture or equity capital funds.

* * * * *

6. Revise § 24.3 to read as follows:

§ 24.3 Public welfare investments.

A national bank may make an investment under this part if the investment primarily benefits low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment.

7. In § 24.4, revise paragraph (a) to read as follows:

§ 24.4 Investment limits.

(a) *Limits on aggregate outstanding investments.* A national bank's aggregate outstanding investments under this part may not exceed 5 percent of its capital and surplus, unless the bank is at least adequately capitalized and the OCC determines, by written approval of the bank's proposed investment pursuant to § 24.5(b), that a higher amount will pose no significant risk to the deposit insurance fund. In no case may a bank's aggregate outstanding investments under this part exceed 10 percent of its capital and surplus. When calculating the aggregate amount of its aggregate outstanding investments under this part, a national bank should follow generally accepted accounting principles, unless otherwise directed or permitted in writing by the OCC for prudential or safety and soundness reasons.

* * * * *

8. In § 24.5:

a. Revise the section heading;

b. revise paragraphs (a) and

c. revise paragraphs (b)(1) and (b)(2) to read as follows:

§ 24.5 Public welfare investment after-the-fact notice and prior approval procedures.

(a) *After-the-fact notice of public welfare investments.* (1) Subject to § 24.4(a), an eligible bank may make an investment authorized by 12 U.S.C. 24 (Eleventh) and this part without prior notification to, or approval by, the OCC if the bank follows the after-the-fact notice procedures described in this section.

(2) An eligible bank shall provide an after-the-fact notification of an investment, within 10 working days after it makes the investment, to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219.

(3) The bank's after-the-fact-notice must include:

(i) A description of the bank's investment;

(ii) The amount of the investment;

(iii) The percentage of the bank's capital and surplus represented by the current investment being self-certified and by the bank's aggregate outstanding public welfare investments, including the investment that is the subject of the after-the-fact notice; and

(iv) A statement certifying that the investment complies with the requirements of §§ 24.3 and 24.4.

(4) A national bank that is not an eligible bank but that is at least adequately capitalized, and has a composite rating of at least 3 with improving trends under the Uniform Financial Institutions Rating System, may submit a letter to the Community Development Division requesting authority to submit after-the-fact notices of its investments. The Community Development Division considers these requests on a case-by-case basis.

(5) Notwithstanding the provisions of this section, a bank may not submit an after-the-fact notice of an investment if:

(i) The investment involves properties carried on the bank's books as ''other real estate owned''; or

(ii) The OCC determines, in published guidance, that the investment is inappropriate for after-the-fact notice.

(b) *Investments requiring prior approval.* (1) If a national bank does not meet the requirements for after-the-fact investment notification set forth in this part, the bank must submit an investment proposal to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219.

(2) The bank's investment proposal must include:

(i) A description of the bank's investment;

(ii) The amount of the investment;

(iii) The percentage of the bank's capital and surplus represented by the proposed investment and by the bank's aggregate outstanding public welfare investments, including the proposed investment; and

(iv) A statement certifying that the investment complies with the requirements of §§ 24.3 and 24.4.

* * * * *

9. Revise § 24.6 to read as follows:

§ 24.6 Examples of qualifying public welfare investments.

Investments that primarily support the following types of activities are examples of investments that meet the requirements of § 24.3:

(a) Affordable housing activities, including:

(1) Investments in an entity that finances, acquires, develops, rehabilitates, manages, sells, or rents housing primarily for low- and moderate-income individuals;

(2) Investments in a project that develops or operates transitional housing for the homeless;

(3) Investments in a project that develops or operates special needs housing for disabled or elderly low- and moderate-income persons; and

(4) Investments in a project that qualifies for the Federal low-income housing tax credit;

(b) Economic development and job creation investments, including:

(1) Investments that finance small businesses (including equity or debt financing and investments in an entity that provides loan guarantees) that are located in low- and moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(2) Investments in an entity that acquires, develops, rehabilitates, manages, sells, or rents commercial or industrial property that is located in a low- and moderate-income area and occupied primarily by small businesses, or that is occupied primarily by small businesses that produce or retain permanent jobs, the majority of which

are held by low- and moderate-income individuals; and

(3) Investments in low- and moderate-income areas that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(c) Investments in community development entities, including:

(1) Investments in a national bank that has been approved by the OCC as a national bank with a community development focus;

(2) Investments in a community development financial institution, as defined in 12 U.S.C. 4742(5);

(3) Investments in a community development entity that is eligible to receive New Markets tax credits under 26 U.S.C. 45D; and

(d) Other public welfare investments, including:

(1) Investments that provide credit counseling, job training, community development research, and similar technical assistance services for non-profit community development organizations, low- and moderate-income individuals or areas, or small businesses located in low- and moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(2) Investments of a type approved by the Federal Reserve Board under 12 CFR 208.22 for state member banks that are consistent with the requirements of § 24.3; and

(3) Investments of a type previously determined by the OCC to be permissible under this part.

Dated: December 23, 2002.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–362 Filed 1–9–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–550]

RIN 1218–AB97

Commercial Diving Operations

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; request for comments and scheduling of informal public hearings.

SUMMARY: OSHA is proposing to amend its Commercial Diving Operations standards to allow employers of recreational diving instructors and diving guides to use an alternative to the decompression-chamber requirements for post-dive procedures and mixed-gas diving. The proposed alternative would apply only when these employees are engaging in recreational diving instruction and diving guide duties using an open-circuit, a semi-closed-circuit, or a closed-circuit self-contained underwater breathing apparatus supplied with a breathing gas consisting of a high percentage of oxygen mixed with nitrogen.

DATES: Submit written hearing requests and comments regarding this proposal, including comments on the information-collection determination described in Section V of the preamble (''Paperwork Reduction Act),'' by the following dates:

Hard copy. Submitted (postmarked or sent) by April 10, 2003.

Facsimile and electronic transmission. Sent by April 10, 2003.

Please see the section entitled ''Supplementary Information'' below for additional information on submitting written comments and hearing requests.

ADDRESSES: *Comments and Attachments: Regular mail, express delivery, hand-delivery, and messenger service.* Submit three copies of written comments and attachments to the OSHA Docket Office, Docket No. S–550, Technical Data Center, Room N–2625, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 693–2350. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Please note that security-related problems may result in significant delays in receiving comments and other written materials by regular mail. Telephone the OSHA Docket Office at (202) 693–2350 for information regarding security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service.

Facsimile. Transmit written comments (including attachments) consisting of 10 or fewer pages by facsimile to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket No. S–550, in your comments.

Electronic. Submit comments electronically through the Internet at *http://ecomments.osha.gov.* Please note that you cannot attach materials such as studies or journal articles to electronic comments. If you have such materials, you must submit three copies of them to the OSHA Docket Office at the address above. These materials must clearly identify your electronic comments by name, date, subject, and docket number so we can attach them to your comments.

All comments and submissions will be available for inspection and copying in the OSHA Docket Office at the address above. Comments and submissions posted on OSHA's Web page will be available at *http://www.osha.gov.* Contact the OSHA Docket Office at (202) 693–2350 for information about materials not available on the OSHA Web page and for assistance in using this Web page to locate docket submissions. Because comments sent to the docket or to OSHA's Web page are available for public inspection, the Agency cautions interested parties against including in these comments personal information such as social security numbers and birth dates.

Hearing Requests: Send hearing requests in quadruplicate to Ms.Veneta E. Chatmon, Office of Public Affairs, Docket No. S–550, Room N–3649, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. Interested parties may transmit these requests by facsimile to Ms. Chatmon at (202) 693–1634.

FOR FURTHER INFORMATION: For general information and press inquiries, contact Ms. Bonnie Friedman, Office of Information and Consumer Affairs, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. For technical inquiries, contact Ms. Joanne Slattery, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2056 or fax (202) 693–1663. Copies of this **Federal Register** notice are available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210; telephone (202) 693–1888. For an electronic copy of this notice, go to OSHA's Web site (*http://www.osha.gov*), and select ''**Federal Register**,'' ''Date of Publication,'' and then ''2002.''

SUPPLEMENTARY INFORMATION:

Table of Contents

The following Table of Contents identifies the major sections under **SUPPLEMENTARY INFORMATION** including the summary and explanation and the regulatory text of the proposed application provisions and alternative.

I. Background
II. Summary and Explanation of the Proposal
A. Proposed §§ 1910.401(a)(3) and 1910.402 (''Definitions'')
B. Alternative Conditions of Proposed Appendix C
1. Equipment Requirements for Rebreathers
2. Special Requirements for Closed-Circuit Rebreathers
3. O_2 Concentration in the Breathing Gas
4. Limiting O_2 Partial Pressure and Diving Depth
5. Mixing and Analyzing the Breathing Gas
6. Use of No-Decompression Limits
7. Emergency Egress
8. Treating Diving-Related Medical Emergencies
9. Diving Logs and Decompression Tables
10. Diver Training
11. Testing Protocol for Determining the CO_2 Limits of Rebreather Canisters
III. References
IV. Legal Considerations
V. Preliminary Economic Analysis and Regulatory Flexibility Certification
VI. Paperwork Reduction Act
VII. Federalism
VIII. State Plans
IX. Unfunded Mandates
X. Applicability of Existing Consensus Standards
XI. Public Participation
List of Subjects in 29 CFR Part 1910
Authority and Signature
XII. Proposed Amendment to the Standard

I. Background

The Agency published a final rule in 1977 regulating the occupational safety and health employees engaged in commercial diving operations under 29 CFR part 1910, subpart T (42 FR 37668). In 1999, acting under Section 6(d) of the Occupational Safety and Health Act of 1970 (''OSH Act''; 29 U.S.C. 655), OSHA published an order granting a permanent variance to Dixie Divers, Inc. (''Dixie'') (Ex. 2–11). The permanent variance exempted Dixie from OSHA's decompression-chamber requirements specified at § 1910.423(b)(2) and (c)(3)(iii), and § 1910.426(b)(1) when its recreational diving instructors and diving guides engage in underwater instructional and guiding operations. The variance applies only to mixed-gas diving operations at a maximum depth of 130 feet of sea water (''fsw'') performed within the no-decompression limits; employees used a breathing-gas mixture consisting of a high percentage of O_2 mixed with nitrogen (*i.e.*, a nitrox breathing-gas mixture) supplied by an open-circuit, semi-closed-circuit or closed-circuit SCUBA. In issuing the permanent variance, the Agency noted that it met or exceeded the level of protection afforded by OSHA's decompression-chamber requirements.

In a letter dated February 4, 2000, Mr. Jeff Nadler, Vice President of the Professional Association of Diving Instructors Americas, requested guidance from OSHA regarding other employers of recreational diving instructors who complied with the conditions of the permanent variance granted to Dixie (Ex. 3–1). The Agency responded to Mr. Nadler on May 3, 2000, stating that it would consider such employers ''to be in de minimis violation of the decompression-chamber requirements specified at paragraphs (b)(2) and (c)(3)(iii) of § 1910.423(b)(2), and paragraph (b)(1) of § 1910.426(b)(1).'' OSHA noted that ''[d]e minimis violations carry no penalties, do not require abatement and no citations are issued.''

While the de minimis policy may provide regulatory relief to some employers, it has several disadvantages. For example, many employers prefer not to invoke the policy because they remain in violation of the applicable standard even though the violation is only ''technical'' and has no enforcement consequences (see OSHA's ''Field Inspection Reference Manual,'' chapter III, paragraph C.2.g. (September 26, 1994)). Additionally, some employers may not know of the policy and, therefore, are unable to benefit from it. Accordingly, the Agency is now proposing to amend its Commercial Diving Operations (''CDO'') standards to incorporate the terms and conditions of the Dixie Divers variance into the standard itself. OSHA believes that the proposed amendment would improve the effectiveness of recreational diving instructors and diving guides by enabling them to remain at the maximum diving depth without developing decompression sickness (''DCS'') or arterial gas embolism (''AGE'') when they return to the surface. By preventing DCS and AGE under these conditions, the proposed amendment would make a decompression chamber near the dive site unnecessary for these divers.

II. Summary and Explanation of the Proposal

OSHA has now had nearly three years of experience with the conditions of the permanent variance granted to Dixie (and with the subsequent application of these conditions by other employers under the de minimis policy). Based on this experience, the Agency believes that diving operations involving recreational instruction and guiding, when performed under the alternative conditions specified in this proposed rule, either meet or exceed the level of employee protection afforded by the diving standard's decompression-chamber requirements. The purpose of having a decompression chamber available and ready for use at the dive site is to treat DCS, which may occur from breathing air or mixed gases at diving depths and durations that require decompression, and AGE, which may result from over-pressurizing the lungs, usually while ascending rapidly to the surface during a dive.

As with the permanent variance granted to Dixie, this proposed rulemaking would impose a number of conditions on employers of recreational diving instructors and diving guides. The following sections describe these conditions, and provide the rationale for including them in this proposal.

A. Proposed §§ 1910.401(a)(3) and 1910.402 (''Definitions'')

Proposed § 1910.401(a)(3) specifies that this regulatory alternative would apply only to recreational diving instructors and diving guides who are engaging solely in recreational diving instruction and dive-guiding operations. In this regard, OSHA is proposing to add definitions of ''recreational diving instruction'' and ''dive-guiding operations'' to § 1910.402 of the CDO standards to clarify the application of the proposed alternative. Accordingly, ''recreational diving instruction'' would mean the training of diving students in the use of recreational diving procedures and the safe operation of diving equipment, including open-circuit, semi-closed-circuit, or closed-circuit SCUBA during dives; additionally, ''dive-guiding operations'' would mean the leading of groups of trained sports divers, who use open-circuit, semi-closed-circuit, or closed-circuit SCUBA, to local undersea diving locations for recreational purposes. In addition, proposed § 1910.401(a)(3) requires that employers ensure that the instructors and guides conduct these dives within the no-decompression limits, and use a nitrox breathing-gas mixture consisting of a high percentage of O_2 (more than 22% by volume) mixed with nitrogen and supplied by an open-circuit, semi-closed-circuit, or closed-circuit self-contained underwater breathing apparatus; employers also must comply with the requirements specified in Appendix C of subpart T.

As noted in the Dixie Diver variance (64 FR 71257), OSHA believes that by limiting application of the proposed alternative as discussed above, recreational diving instructors and diving guides who dive according to the proposed requirements would receive a level of safety and protection equivalent to recreational diving instructors who are exempted from the CDO standards altogether under § 1910.401(a)(2)(i); the recreational diving instructors covered

by § 1910.401(a)(2)(i) must use compressed air supplied to open-circuit SCUBAs under no-decompression diving limits. Therefore, under the proposed alternative, the Agency would not require employers to maintain a decompression chamber at the dive site when they comply with the specified requirements because it believes that compliance with these requirements will reduce the risk of AGE and DCS to the minimal levels already experienced by recreational diving instructors covered by § 1910.401(a)(2)(i).

B. Alternative Conditions of Proposed Appendix C

Proposed Appendix C would be mandatory for any employer who uses the alternative means of compliance for recreational diving instructors and diving guides. The following section sets out the requirements in proposed Appendix C, and provides the rationale for each requirement.

1. Equipment Requirements for Rebreathers

(a) *Manufacturer's instructions.* Proposed Condition 1(a) requires employers to ensure that their recreational diving instructors and diving guides (hereafter, ''divers'') use rebreathers (*i.e.*, semi-closed circuit and closed-circuit SCUBA) according to the rebreather manufacturer's instructions. The manufacturers of these rebreathers select and develop the characteristics and parameters of SCUBA equipment, design and integrate the equipment accordingly, procure or manufacture the equipment components, and then assemble and test the final products. Accordingly, a wide range of SCUBA designs and capabilities are available, and no uniform standards govern the design, function, and use of this equipment. Therefore, OSHA believes that the SCUBA manufacturer is in the best position to identify and specify the components, configuration, and operation of its product, a position that several SCUBA manufacturers endorse (see Ex. 3–4, p. 14–2).

(b) *Counterlungs.* Under the proposed condition, employers must ensure that each rebreather has a counterlung (also referred to as an ''inhalation bag'' or ''breathing bag'') that supplies a sufficient volume of breathing gas to the divers to sustain their respiration rate, and that contains a baffle system that prevents moisture from entering the scrubber or breathing hoses. Counterlungs are low-breathing-resistance reservoirs that supply the nitrox breathing-gas mixture to a diver during inhalation; accordingly, the National Oceanic and Atmospheric Administration (NOAA) considers counterlungs a necessity for rebreather diving (see Ex. 3–12, p. 14–3).

While the proposed condition does not specify a particular counterlung configuration, it would require that the counterlung have a minimum volumetric displacement sufficient to sustain a diver's respiration rate during diving operations. In this regard, OSHA believes that rebreather manufacturers currently provide this information as a usual and customary practice. Accordingly, the proposal would require the employer to ensure that its divers' rebreathers have adequate counterlung volume, and that their divers use the rebreathers according to the manufacturer's instructions. The employer of these divers is in the best position to determine the respiratory requirements associated with their diving operations, and to identify and select a rebreather based on these requirements.

The proposed condition also specifies that a rebreather must contain a baffle system that keeps moisture from entering the scrubber. Accordingly, the proposed baffle system would prevent rapid deterioration of the CO_2-sorbent material housed in the scrubber, thereby decreasing the risk of CO_2 toxicity (see Ex. 3–12, p. 14–8).

(c) *Moisture traps.* Proposed Condition 1(c) requires that the employer use a moisture trap in the breathing loop of each rebreather, and that both the moisture trap and its location in the breathing loop be approved by the rebreather manufacturer. Moisture traps are necessary to keep water out of the CO_2-absorbing canisters; when such water leakage occurs, it can substantially reduce the CO_2-absorbing properties of the sorbent material inside the canister. Evidence from the record of the Dixie Diver variance proceedings (Exs. 3–5, 3–6, and 3–7) indicates that moisture traps are available commercially and that existing rebreathers routinely use them.

(d) *Moisture sensors.* Under proposed Condition 1(d), employers must ensure that each rebreather has a continuously functioning moisture sensor that connects to a visual (*e.g.*, digital, graphic, or analog) or auditory (*e.g.*, voice, pure tone) alarm that warns divers of moisture in the breathing loop in sufficient time to terminate the dive and return safely to the surface. Moisture sensors detect excessive water leakage into the canister that can compromise the CO_2-sorbent material; therefore, they supplement the information provided by CO_2 sensors (see proposed Condition 1(e) below). Therefore, moisture sensors warn divers of hazardous water leakage into the canister, allowing them to return to the surface before CO_2 in the recycled breathing gas reaches dangerous levels. Information submitted in response to the Dixie's variance request (Ex. 3–7) indicates that moisture sensors are commercially available.

Rebreather manufacturers determine the appropriate design and location of moisture sensors and moisture traps for their products. The proposal requires employers to ensure that their divers use these components consistent with the rebreather manufacturer's instructions. The moisture sensor must alert the diver of moisture in the breathing loop in sufficient time to terminate the dive and return safely to the surface.

(e) *CO_2 sensors.* An important component in controlling excessive CO_2 is the CO_2 sensor. Proposed Condition 1(e) specifies that employers must ensure that each rebreather contains a continuously functioning CO_2 sensor in the breathing loop, and that the rebreather manufacturer has approved the CO_2 sensor and its location in the breathing loop. Additionally, employers must integrate this CO_2 sensor with an alarm that operates in a visual (*e.g.*, digital, graphic, or analog) or auditory (*e.g.*, voice, pure tone) mode, is readily detectable by divers under the diving conditions in which they operate, and remains continuously activated when the inhaled CO_2 level reaches and exceeds 0.005 atmospheres absolute (''ATA'').[1]

(f) *Calibrating CO_2 sensors.* To ensure that CO_2 sensors operate correctly, proposed Condition 1(f) states that employers must, before each day's diving operations (and more often when necessary) calibrate each CO_2 sensor according to the sensor manufacturer's instructions. In doing so, they are to maintain the accuracy of the equipment and procedures used to perform the calibration to within 10% of a CO_2 concentration of 0.005 atmospheres absolute or less according to the sensor manufacturer's instructions. Using this equipment, they must calibrate the CO_2 sensor to within 10% of a CO_2 concentration of 0.005 ATA or less.

(g) *Faulty CO_2 sensors.* When a sensor fails to meet this accuracy standard, proposed Condition 1(g) requires employers to replace the faulty sensor, and to ensure the accuracy of the

[1] ATA, as used in this notice, is the partial pressure of a constituent gas in the total pressure of a breathing gas. When the percentage of the constituent gas in the breathing gas remains constant throughout a dive, its partial pressure or ATA, increases in direct proportion to increases in diving depth.

replacement sensor before placing the rebreather in operation. Determining the accuracy of CO_2 sensors is necessary to enable employers to eliminate sensors that are unreliable or that cannot function under rugged diving conditions. Using a test or standard gas containing a CO_2 concentration of 0.005 ATA or less will ensure that the sensors can accurately detect CO_2 levels that can be harmful to the divers (see Ex. 3–12, p. 3–10). In view of the harmful effects that can result from high levels of CO_2, the sensors need to have a maximum error rate of no more than 10% of a CO_2 partial pressure of 0.005 ATA. This limit would provide an adequate safety margin to allow employees to detect CO_2 accumulation, make a preliminary effort to identify the cause and adjust breathing-system controls, and ascend to the surface if necessary.

(h) *CO_2-sorbent materials.* This proposed condition allows employers to implement the manufacturers' schedules for replacing the canister of CO_2-sorbent material in the rebreather as an alternative to using continuously functioning CO_2 sensors (see proposed Condition 1(e)). The proposed condition permits employers to use such a schedule only after the rebreather manufacturer develops the schedule according to the canister-testing protocol specified below in proposed Condition 11. This proposed requirement would ensure that the canister-replacement schedule meets quality-control criteria, including an assessment of the physical properties of the CO_2-sorbent material and an evaluation of the canister's effectiveness using a standard canister-testing protocol (*e.g.*, see proposed Condition 11 (''Testing Protocol for Determining the CO_2 Limits of Rebreather Canisters''). The protocol would permit the employer to make reliable estimates of canister duration, thereby allowing replacement of the canister before the CO_2-sorbent material fails and the diver breathes excessive levels of CO_2.

(i) *Commercially pre-packed cartridges.* When the employer uses a CO_2-sorbent replacement schedule, proposed Condition 1(i) requires the employer to ensure that each rebreather uses a manufactured (*i.e.*, commercially pre-packed), disposable scrubber cartridge. This cartridge must contain a CO_2-sorbent material that is approved by the rebreather manufacturer and is capable of removing CO_2 from the divers' exhaled gas. In this regard, the canister must maintain the CO_2 level in the breathable gas (*i.e.*, the gas a diver is inhaling directly from the regulator) below a partial pressure of 0.01 ATA.[2] The Agency believes that this proposed condition would ensure proper compression and uniform distribution of the sorbent material in the cartridge, thereby preventing ''channeling'' in the material.[3] By preventing channeling, the proposed condition would lower the diver's risk of rebreathing exhaled breathing gas that is high in CO_2.

(j) *Alternative to commercially pre-packed cartridges.* Under this proposed condition, employers may fill CO_2 scrubber cartridges manually instead of using commercially pre-packed cartridges. This practice would be acceptable if the employer meets all of the following conditions: The rebreather manufacturer permits employers to use this alternative method; the employer implements the alternative method according to the rebreather manufacturer's instructions; and the employer can demonstrate that the alternative method meets the performance requirements for commercially pre-packed cartridges specified by proposed Conditions 1(h) and 1(i). Therefore, the employer must be able to demonstrate to an OSHA compliance officer during an inspection that the manually filled cartridges are at least as effective as commercially pre-packed cartridges in removing CO_2 from the breathing loop. The Agency believes that employers can obtain information regarding the effectiveness of manually filled and pre-packed cartridges from the rebreather manufacturers.

(k) *Information module.* Condition 1(k) specifies that employers must ensure that their divers use an information module that provides them with critical dive information regarding electrical functions, gas pressures, and water temperature. For all rebreathers, the module must contain visual or auditory warning devices that would alert the diver to electrical weaknesses or failures (*e.g.*, solenoid failure, low battery levels). In addition, modules used in semi-closed circuit rebreathers must contain visual displays for the partial pressure of CO_2, or deviations above and below a preset CO_2 partial pressure of 0.005 ATA. For closed-circuit rebreathers, the module also must have visual displays for the partial pressures of O_2 and CO_2, or deviations above and below a preset CO_2 partial pressure of 0.005 ATA and a preset O_2 partial pressure of 1.40 ATA, plus a visual display for both gas temperature in the breathing loop and water temperature (see the discussion of water- and gas-temperature sensors under proposed Condition (2)(a) below). Warning divers of electrical weaknesses and failures would alert them that they should stop relying on their electrically operated equipment, especially sensors, and take protective actions. Providing information about O_2 and CO_2 partial pressures will alert divers to toxic levels of these gases in time for them to prevent extended exposure.

While employers could provide recreational diving instructors and diving guides with dive-decompression computers for these purposes, OSHA believes that such computers are unnecessary because the divers would be diving within no-decompression limits, and the technical capability of dive-decompression computers far exceeds what is needed for no-decompression dives.

(l) *Checking electrical power and circuits.* As noted above for proposed Condition 1(k), the information module must warn divers of low battery voltage when they are operating either semi-closed-circuit and closed-circuit rebreathers. In this regard, a partial or total electronic failure could interfere with sensor and control systems and have serious safety consequences for the diver. Therefore, OSHA believes that the diver's safety depends on properly operating electrical power supplies and electrical and electronic circuits. Accordingly, the proposed alternative would require employers to ensure that the electrical power supplies and electrical and electronic circuits in each rebreather are operating as required by the rebreather manufacturer's instructions. The employer must check for proper operation prior to beginning diving operations each day, and more often when necessary.

2. Special Requirements for Closed-Circuit Rebreathers

(a) *Supply-pressure and temperature sensors.* This proposed condition requires employers to ensure that closed-circuit rebreathers use supply-pressure sensors for the O_2 and diluent gases (*i.e.*, air or nitrogen), as well as continuously functioning sensors for detecting temperature in the inhalation side of the breathing loop and in the ambient water. Supply-pressure sensors

[2] NOAA finds that physiological ''strain'' responses begin to develop with exposure to CO_2 concentrations over 0.03 ATA (Ex. 3–12, p. 3–10). Therefore, OSHA believes that a threshold limit for CO_2 of 0.01 ATA will provide divers with an adequate margin of protection from these effects.

[3] ''Channeling'' describes open spaces (or channels) that form in the sorbent material, and that permit exhaled breathing gas to pass through that part of the material to the inhalation side of the breathing apparatus with little or no absorption of the CO_2 contained in the exhaled breathing gas. This condition typically results from failing to compress the sorbent material uniformly in the canister (*e.g.*, by shaking the canister vigorously).

would inform divers of the remaining supply of breathing-gas ingredients (*i.e.*, O_2 and air or nitrogen), thereby preventing an unexpected loss of breathing gas during a dive; Low gas supplies would alert the divers to an unusually high consumption of breathing gas, indicating a possible problem with the rebreather. A gas loss also could increase the need for a diver to make a rapid (*i.e.*, emergency) ascent to the surface during a dive, which could result in over-pressurization of the lungs associated with AGE.

OSHA believes that temperature sensors improve diver safety. Water-temperature sensors alert divers to the possibility of hypothermia. In addition, the efficiency of the CO_2-sorbent material deteriorates with decreasing temperatures (see Reference (4), Section III below). Breathing-loop temperature sensors and water-temperature sensors allow divers to estimate the duration of their CO_2-sorbent material. When divers are able to estimate the duration of their CO_2-sorbent material, they can judge how long they can continue diving even if their CO_2 sensors malfunction.

(b) *O_2 sensors.* Under this proposed condition, employers must ensure that at least two O_2 sensors are located in the inhalation side of the breathing loop, and that these O_2 sensors function continuously, are temperature compensated, and approved by the rebreather manufacturer. OSHA believes that this proposal would provide the divers with critical information regarding O_2 levels in the breathing gas, thereby preventing O_2 deficiency or O_2 toxicity resulting, respectively, from low or high O_2 levels in the breathing-gas mixture. By assuring appropriate levels of O_2, the proposed condition would minimize the need for emergency escape and, as a consequence, reduce the risk of developing AGE.

(c) *Calibrating O_2 sensors.* Proposed Condition 2(c) specifies that employers, before the start of each day's diving operations, and more often when necessary, must calibrate O_2 sensors as required by the sensor manufacturer's instructions. Therefore, before they place a rebreather in operation, employers must: (i) Ensure that the equipment and procedures used to perform the calibration are accurate to within 1% of the O_2 fraction by volume; (ii) maintain the accuracy of the calibration equipment as required by the manufacturer of the equipment; (iii) ensure that the sensors are accurate to within 1% of the O_2 fraction by volume; (iv) replace O_2 sensors when they fail to meet the accuracy requirements specified above in proposed Condition 2(c)(iii); and (v) ensure that the replacement O_2 sensors meet the accuracy requirements specified above in proposed Condition 2(c)(iii).

As noted under proposed Condition 3 below, maintaining accurate O_2 levels in the breathing loop is critical to a diver's safety and health. To assure effective operation of O_2 sensors for this purpose, the introduction to proposed Condition 2(c) would require the employer to assess the accuracy of O_2 sensors before the start of each day's diving operations, and more often when necessary. Such an approach is consistent with the usual and customary practices of the rebreather community (see Ex. 3–4, pp. 4–1 through 4–13, and 14–2). In addition, the introduction proposes that the calibration procedures conform to the sensor manufacturer's instructions; this proposal would ensure that the sensors measure accurately the partial pressure of O_2 in the breathing loop.

Proposed Condition 2(c) would provide assurance that divers always have accurate information regarding the level of O_2 in the breathing loop, thereby enabling them to take corrective action should the O_2 level exceed the parameters proposed below in Condition 3 (*e.g.*, decrease O_2 concentration, switch to the ''bail-out system'' and egress to the surface (see proposed Condition 7 below)).[4] Therefore, accurate information regarding the O_2 level is critical to preventing the central nervous system and pulmonary effects of O_2 toxicity (see proposed Condition 3 below for a detailed discussion of these effects).

In view of the harmful effects that can result from breathing high levels of O_2, OSHA believes that O_2 sensors and associated calibrating equipment and procedures need to be accurate to ''within 1% of the O_2 fraction by volume.'' Assuming that the O_2 sensor and calibrating equipment-procedure each underestimate O_2 at the maximum proposed rate of 1%, and that the diver is breathing a nitrox mix containing 40% O_2 by volume or an O_2 partial pressure of 1.40 ATA (the maximum O_2 concentrations permitted under proposed Condition 3 below), the error would be ±0.8% when the O_2 gauge shows the O_2 level in the breathing loop to be 40% by volume, or ±0.028 ATA when it shows the O_2 level to be 1.40 ATA. The Agency believes that this level of error is acceptable, and well within the O_2 toxicity limits demonstrated by the available evidence (see proposed Condition 3 below). Therefore, this level of accuracy would provide an adequate safety margin for the divers to detect anomalous O_2 concentrations, to attempt to identify the cause and adjust breathing-system controls, and to ascend to the surface when necessary.

(d) *Controlling O_2 delivery.* This proposed condition requires employers to ensure that closed-circuit rebreathers have: (i) A gas-controller package with electrically-operated solenoid O_2-supply valves; (ii) a pressure-activated regulator with a second-stage diluent-gas addition valve; (iii) a manually-operated gas-supply bypass valve to add O_2 and diluent gas to the breathing loop; and (iv) separate O_2 and diluent-gas cylinders to supply the breathing-gas mixture. Under this proposed condition, closed-circuit rebreathers must automatically inject O_2 into the breathing loop to maintain the pre-established O_2 partial pressure in the breathable gas, and automatically add diluent gas (*i.e.*, nitrogen or air) through the regulator to compensate for decreases in gas volume during descent. The diver must also be able to control these functions manually using gas-supply bypass valves provided on the equipment. This equipment would maintain O_2 levels in the breathable gas within the range of partial pressures specified by proposed Condition 3 below, thereby providing assurance that sufficient and reliable breathing-gas pressure are available to deliver breathable gas to the diver without adversely affecting the diver's breathing effort. By reducing the diver's breathing effort, these proposed conditions would reduce CO_2 accumulation caused by an increased rate of breathing and, in turn, would lower the risk of CO_2 toxicity. In addition, by maintaining O_2 in the breathing loop at pre-established levels, this proposal would ensure that divers conform to the pre-established 24-hour single-exposure O_2 limit selected under proposed Condition 4 below.

Paragraph (iv) of proposed Condition 2 requires that employers use separate cylinders to provide the O_2 and diluent gas in the breathing-gas mixture. This proposal would give the diver independent control of these breathing-gas components; such control could be automatic or manual, or some combination of these two modes.

3. O_2 Concentration in the Breathing Gas

Under this proposed condition, employers must ensure that the fraction of O_2 in the nitrox breathing-gas mixture exceeds the fraction of O_2 in compressed air (*i.e.*, more than 22% by volume). For rebreathers, the fraction of O_2 must never exceed an O_2 partial

[4] Although low O_2 levels are rare under nitrox breathing conditions, the sensors also would detect levels of O_2 less than 22% by volume (see proposed Condition 3 below).

pressure of 1.40 ATA; and for open-circuit SCUBA, the O_2 fraction must never exceed 40% by volume or an O_2 partial pressure of 1.40 ATA, whichever exposes divers to less O_2. The proposed requirement that the fraction of O_2 be more than 22% is consistent with the definition of nitrox breathing-gas mixtures, *i.e.*, that they contain more O_2 than air. Specifying upper limits for the O_2 component in the nitrox breathing-gas mixture would prevent divers from developing O_2 toxicity.

The available evidence supports the Agency's conclusion that exposure to a maximum O_2 level of 1.40 ATA (or 40% by volume for open-circuit SCUBA) would prevent O_2 toxicity.[5] Several previous studies found that no O_2 toxicity developed while breathing 1.40 ATA of O_2 for extended periods, but breathing 1.60 ATA of O_2 for the same periods resulted in a significant increase in O_2 toxicity (see Exs. 3–4 (pp. 3–5 through 3–16, P–15 and P–16, and P–37 through P–43), 3–9, and 3–10). OSHA could find no studies showing that O_2 toxicity developed when divers used O_2 at the partial pressures and for the durations proposed in this rulemaking, although in one study, two divers developed pulmonary toxicity when exposed to 1.40 ATA of O_2 for a total of 55 hours over a 3-day period (Ex. 3–4, p. 3–9). However, such an exposure is far in excess of the maximum time limit that recreational divers would experience, or that the O_2-exposure limits specified in the 2001 NOAA Diving Manual or 1995 DSAT[6] report would permit (see discussion regarding proposed Condition 4(a) below).

4. Limiting O_2 Partial Pressure and Diving Depth

(a) *Limiting O_2 partial pressure.* Proposed Condition 4(a) identifies the procedures employers would use to prevent O_2 toxicity. Accordingly, employers must: (i) Determine a diver's O_2 exposure duration using the maximum partial-pressure O_2 exposure during the dive and the total dive time (*i.e.*, from the time the diver leaves the surface until the diver returns to the surface); and (ii) using the diver's exposure duration, ensure that a diver exposed to partial pressures of O_2 between 0.60 and 1.40 ATA does not exceed the 24-hour single-exposure O_2 limits specified by the 2001 NOAA Diving Manual (see Section III below, Reference (1), p. 3–23) or by the 1995 DSAT report entitled ''Enriched Air Operations and Resources Guide'' (see Section III below, Reference (2), p. 34).

The risk of O_2 toxicity increases with O_2 partial pressure (*i.e.*, dive depth) and dive duration. Therefore, as required by proposed Condition 4(a)(i), employers must use both of these factors to determine O_2 exposure durations.

Proposed Condition 4(a)(ii) refers to 24-hour single-exposure O_2 limits specified in the 2001 NOAA Diving Manual and the 1995 DSAT report entitled ''Enriched Air Operations and Resources Guide.'' Both NOAA and DSAT developed their O_2-exposure limits using models and theories extensively tested in the field for safety and efficacy. The recreational diving industry recognizes and uses both procedures, and, as OSHA noted in granting a permanent variance to Dixie, both procedures would afford divers adequate protection against O_2 toxicity.

Under proposed Condition 4(a), when the employer determines exposure durations and limits divers' exposures accordingly, the Agency believes that they will reduce the divers' risk of O_2 toxicity to the rate found among divers who breathe compressed air from open-circuit SCUBA during no-decompression dives.

(b) *Limiting diving depth.* This proposed condition requires that employers limit the divers covered by this proposed alternative to a maximum depth of 130 fsw or to a maximum O_2 partial pressure of 1.40 ATA, whichever exposes them to less O_2; this proposed condition would apply regardless of the diving equipment they use. This proposed condition would impose an additional constraint on O_2 exposure, further reducing the risk of O_2 toxicity. Moreover, the proposed condition would aid in preventing DCS by limiting the divers' nitrogen exposure; this limitation occurs because O_2 displaces nitrogen in the volume of breathing gas available for use. Therefore, limiting nitrogen exposure and restricting diving depth to 130 fsw would reduce the risk of DCS and, consequently, the need for decompression chambers.

Lowering the partial pressure of nitrogen in a diver's body fluids and tissues, especially in the central nervous system, also would decrease the risk of nitrogen narcosis. Nitrogen narcosis is an anesthetic condition that results when high partial pressures of nitrogen are present in central nervous system tissues; the condition can impair a diver's performance and, in severe cases can result in injury or death (see Section III below, Reference (1), p. 3–20).

5. Mixing and Analyzing the Breathing Gas

(a) *Mixing of breathing gas by the employer.* Under this proposed condition, when employers prepare the breathing-gas mixture, they must: (i) Ensure that properly trained personnel mix nitrox breathing gases, and that nitrogen is the only inert gas used in the breathing-gas mixture; and (ii) ensure that they mix the appropriate breathing-gas mixture before delivering it to the breathing-gas cylinders, using the continuous-flow or partial-pressure mixing techniques specified in the 2001 NOAA Diving Manual, or using a filter-membrane system. This provision would provide quality control over the mixing process, so that the breathing-gas mixture contains the correct proportions of O_2 and diluent gas (*i.e.*, air or nitrogen). It also limits the diluent gas to air or nitrogen because OSHA believes that not enough information is available on other inert diluent gases (*e.g.*, helium, argon, neon, hydrogen) or on trimix (three gas) breathing-gas mixtures to ensure the health and safety of divers under the diving conditions specified by this proposal.

This proposed condition also states a general requirement that mixing processes produce the proper proportions of O_2 and diluent gas prior to filling the SCUBA cylinders; this requirement would provide assurance that the divers' breathing-gas mixtures are correct and safe for use. In addition, it specifies that employers must select from among several mixing techniques commonly used and accepted by the diving industry. These techniques include the use of a ''filter-membrane system,'' a recently developed mixing technique that de-nitrogenates air (*i.e.*, removes nitrogen from air using a filter membrane).[7] After reviewing the technical literature available for this mixing system, the Agency believes that filter-membrane systems, which are commercially available from several manufacturers, would reduce the hazards associated with producing high-O_2 breathing-gas mixtures (*e.g.*, fire, explosion) because the proportion of O_2

[5] Excessive O_2 can impair a diver's central nervous system, resulting in seizures (and, as a consequence, death by drowning); it also can damage to the lungs and compromised pulmonary function.

[6] ''DSAT'' is an acronym for ''Diving Science and Technology,'' the research component of the International Professional Association of Diving Instructors, Inc., a trade association representing recreational diving instructors.

[7] Filter-membrane systems produce nitrox breathing-gas mixtures in two steps: First, they route air through filters to remove hydrocarbons and other contaminants; then they pass the decontaminated air through membranes that transfer O_2 across the membrane fibers at higher rates than nitrogen (hence, ''de-nitrogenating'' the air). As the rate of air flow across the membrane fibers increases, the resulting ratio of O_2 to nitrogen also increases.

in these systems never exceeds 40% by volume.

(b) *Analyzing O_2.* This proposed condition requires employers, before the start of each day's diving operations, to determine the O_2 fraction of the breathing-gas mixture using an O_2 analyzer. In doing so, they must: (i) Ensure that the O_2 analyzer is accurate to within 1% of the O_2 fraction by volume; and (ii) maintain this accuracy as required by the manufacturer of the analyzer. These provisions would ensure that the proportions of O_2 and diluent gas in the breathing-gas mixtures conform to pre-established levels of these gases, thereby ensuring that divers remain within the 24-hour single-exposure O_2 limits under proposed Condition 4 above. The accuracy requirements specified by these provisions are consistent with the accuracy requirements for O_2 found in other requirements of this proposal, and serve the same purpose described for these requirements (see the detailed discussion of these requirements in proposed Condition 2(c) above).

(c) *Commercially supplied breathing gas.* When the breathing gas is a commercially supplied nitrox breathing-gas mixture, this proposed condition requires employers to ensure that the O_2 is Grade A (also known as ''aviator's oxygen'') or Grade B (referred to as ''medical-industrial oxygen''), and meets the specifications, including the purity requirements, found in the ANSI-Compressed Gas Association Commodity Specification for Air, G–7.1–1997. In addition, employers must ensure that the commercial supplier: (i) Determines the O_2 fraction in the breathing-gas mixture using an analytic method that is accurate to within 1% of the O_2 fraction by volume; (ii) makes this determination when the mixture is in the charged tank and after disconnecting the charged tank from the charging apparatus; (iii) documents the O_2 fraction in the mixture; and (iv) provides the employer with a written certification of the O_2 analysis.

OSHA believes that many employers covered by this proposal purchase breathing-gas mixtures commercially. Specifying grades A and B for the O_2 would ensure that divers use the purest O_2 with optimal moisture content in their nitrox breathing-gas mixtures, thereby preventing them from inhaling contaminants, including hydrocarbons, that are known safety hazards. In addition, the O_2 would be at comfortable moisture levels, which would help maintain normal pulmonary function.

The proposed condition also controls the O_2 levels in the mixture by requiring that the accuracy of the method used to analyze O_2 conforms to the tolerance limits specified above under proposed Condition 5(b). The commercial suppliers must analyze the breathing-gas mixture actually contained in the SCUBA cylinders to determine the fraction of O_2 that the divers will breathe, unaffected by O_2 in the storage banks used to fill the SCUBA cylinders. The employer must ensure that the supplier of the breathing-gas mixture documents the O_2 fraction contained in the cylinder mixture, and certifies these results in writing. The written certification serves as a measure of quality assurance, and provides employers with documentation that the breathing-gas mixture contains the required fraction of O_2.

(d) *Using a compressor.* When employers produce nitrox breathing-gas mixtures, before using a compressor in which the gas pressure in any system component exceeds 125 psi, this proposed condition requires them to do the following: (i) Have the compressor manufacturer certify in writing that the compressor is suitable for mixing high-pressure air with the highest O_2 fraction used in the nitrox breathing-gas mixture; (ii) ensure that the compressor is oil-less or oil-free and rated for O_2 service unless the employer complies with the requirements of proposed Condition 5(e) below; and (iii) ensure that the compressor meets the requirements specified in paragraph (i)(1) and (i)(2) of § 1910.430 whenever the highest O_2 fraction used in the mixing process exceeds 40% by volume. The purpose of these proposed conditions is to prevent O_2 explosions during the mixing process, the risk of which increases when gas pressure in a system component exceeds 125 psi.

The requirements of Condition 5(d) would provide quality assurance that the compressor is designed and built so that its components cannot serve as ignition sources that could cause an O_2 explosion. However, if the compressors are not rated as oil-less or oil-free (*i.e.*, oil is used to lubricate components), paragraph (ii) of this condition requires that the compressors comply with the provisions of Condition 5(e) below to prevent the lubricating oil from serving as an ignition source. Paragraph (iii) of this condition addresses cascading processes in which an employer takes O_2 from storage banks that contain O_2 concentrations higher than 40% by volume, and mixes it with diluent gas from separate cylinder banks. The mixed product is a final breathing-gas mixture that does not exceed 40% by volume as required above by proposed Condition 3. Equipment used for this purpose must comply with paragraphs (i)(1) and (i)(2) of § 1910.430 (''Oxygen safety''). These paragraphs require employers to use equipment designed for O_2 service and to clean the equipment of flammable materials before such use. Together with the other provisions of this proposed condition, these equipment requirements would reduce the risk of an O_2 explosion.

(e) *Oil-lubricated compressors.* Before an employer produces nitrox breathing-gas mixtures using an oil-lubricated compressor to mix high-pressure air with O_2, and regardless of the gas pressure in any system component, this proposed condition requires that the employer: (i) Have the compressor manufacturer certify in writing that the compressor is suitable for mixing the high-pressure air with the highest O_2 fraction used in the nitrox breathing-gas mixture; (ii) filter the high-pressure air to produce O_2-compatible air; (iii) have the filter-system manufacturer certify in writing that the filter system used for this purpose is suitable for producing O_2-compatible air; (iv) continuously monitor the air downstream from the filter for hydrocarbon contamination; and (v) use only uncontaminated air (*i.e.*, air containing no hydrocarbon particulates) for the nitrox breathing-gas mixture.

Oil-based lubricants contain hydrocarbons that can ignite in the presence of an enriched O_2 environment during the mixing process, causing an explosion that can injure or kill employees. OSHA believes that these proposed requirements would reduce this risk by ensuring that high-pressure O_2 being pumped through the compressor remains isolated from the oil-based lubricant. Under the proposed conditions, the employer's actions will assure that the air used for the nitrox breathing-gas mixture is not contaminated, while the manufacturer's certification will provide assurance that the equipment will produce and filter this mixture safely. As an additional safety precaution, the monitoring requirement proposed under paragraph (v) would warn the employer that high-pressure O_2 is mixing with the oil-based lubricant, and to take emergency action (*e.g.*, shut off O_2 flow to the compressor and then purge the compressor with an inert gas).

(f) *Compliance with other OSHA standards.* Under this proposed condition, employers must ensure that SCUBA equipment using nitrox breathing-gas mixtures or pure O_2 under high pressure (*i.e.*, exceeding 125 psi) complies with the requirements specified by paragraphs (i)(1) and (i)(2) of § 1910.430. This provision ensures

that this equipment is free of ignition sources that could cause an O_2 explosion. As noted above in the discussion of proposed Condition 3(d)(iii), paragraphs (i)(1) and (i)(2) of § 1910.430 would reduce this risk by requiring employers to use diving equipment designed for O_2 service and to clean the equipment of flammable materials before such use.[8]

6. Use of No-Decompression Limits

(a) *No-decompression procedures.* Under this proposed condition, employers must ensure that divers using nitrox breathing-gas mixtures remain within the no-decompression limits specified for single and repetitive air diving and published in the 2001 NOAA Diving Manual (see Section III below, Reference (1)) or the 1994 DSAT report entitled ''Development and Validation of No-Stop Decompression Procedures for Recreational Diving: The DSAT Recreational Dive Planner'' (see Section III below, Reference (3)). This proposed condition allows employers to use the no-decompression limits published in the 2001 NOAA Diving Manual or the 1994 DSAT no-decompression tables. OSHA intends to ensure that the divers using nitrox mixtures under the proposed alternative receive the same protection against DCS as is afforded to divers who use air. For this reason, the proposed condition requires that employers ensure that their divers never exceed the no-decompression limits published in either the 2001 NOAA Diving Manual or 1994 DSAT report; in determining these limits, employers must use the partial pressure of nitrogen in the nitrox breathing-gas mixture to derive the equivalent air depth for a specific dive duration (see Ex. 3–12, p. 15–7).

OSHA believes that by adopting these no-decompression limits, the proposed alternative would protect recreational diving instructors and diving guides at least as well as the use of compressed air supplied to open-circuit SCUBAs under no-decompression diving limits. The 1994 DSAT no-decompression limits have been determined to be reliable and valid, based on extensive laboratory and field testing, and have been widely accepted by both the diving and scientific communities (see Appendix E (''Comment and critique from the field'') of the 1994 DSAT report).

In determining its no-decompression limits for nitrox breathing-gas mixtures in its 2001 Diving Manual, NOAA applies the equivalent-air-depth (''EAD'') formula. Divers using nitrox breathing-gas mixtures can use the EAD formula to determine accurately the no-decompression limits for different nitrogen partial pressures. NOAA applies its EAD formula in determining what equivalent air decompression limits to use with nitrox breathing-gas mixtures. The formula assumes that equivalent nitrogen partial pressures and dive durations will result in similar DCS risk to dives performed with air. OSHA believes that the NOAA EAD formula can accurately estimate the DCS risk associated with nitrox breathing-gas mixtures based on equivalent nitrogen partial pressures and dive durations used in air diving. In the record granting a permanent variance to Dixie, OSHA received evidence addressing the safety and efficacy of the EAD formula from Dr. Edward D. Thalmann (Ex. 2–7). Dr. Thalmann is a world-renowned expert in treating diving-related medical emergencies among recreational divers; he is also the author of a number of scientific publications that address the causes and treatment of diving-related medical emergencies, especially DCS. Based on this research and his field experience, Dr. Thalmann stated that DCS associated with breathing a nitrox gas mixture ''should not be substantially different in incidence and severity compared to diving on air[,] provided the [n]itrox no-decompression times are computed from accepted air no-decompression limits using the [NOAA] EAD [formula].'' Dr. Thalmann concluded that, within these constraints, ''there is no rationale for having different requirements for * * * air and [n]itrox no-decompression diving.'' Based on Dr. Thalmann's comments, OSHA concludes that NOAA's EAD formula will translate accurately the partial pressure of nitrogen in a nitrox breathing-gas mixture to an equivalent air depth for a specific dive duration, and that employers can rely on this formula to determine safe no-decompression limits for their divers based on the equivalent air dives.

(b) *Dive-decompression computers.* This proposed condition permits employers to use dive-decompression computers designed to regulate decompression when the computers use the NOAA or DSAT no-decompression limits specified in proposed Condition 6(a) and provide output that reliably represents these limits. OSHA believes that dive-decompression computers are unnecessary because the divers would be diving within no-decompression limits, and the technical capability of most dive-decompression computers exceeds the requirements of no-decompression dives. Nevertheless, the proposal would allow employers the flexibility to use either manual calculations or dive-decompression computers to determine the no-decompression schedules, with the use of dive-decompression computers for this purpose being optional. However, when employers choose to use these computers, they also must provide their diver with specific decompression information, and have a hard-copy of the appropriate decompression tables at the dive site (see proposed Condition 9(c) below). Thus, the proposal specifies the conditions that employers must meet to ensure that their employees' diving activities conform to accepted no-decompression practices, whether or not they use dive-decompression computers.

The Agency finds that restricting the no-decompression limits programmed into the computers to those limits published by the 2001 NOAA Diving Manual and the 1994 DSAT report would prevent employers from using the computers to provide alternate no-decompression limits that could place divers at higher risk for DCS. Operating under this constraint, OSHA concludes that computers may provide an advantage over manual calculations because manual calculations are subject to human error, and computers may reduce such error.

7. Emergency Egress

(a) *Bail-out system for all SCUBAs.* For emergencies involving SCUBA malfunctions that could endanger diver health and safety (*e.g.*, high CO_2 levels), proposed Condition 7(a) requires employers to equip their divers with a reliable emergency-egress system (*i.e.*, a ''bail-out system''). The bail-out system would contain a separate supply of breathing gas, which can include air. In addition, the bail-out system would provide the breathing gas to the second stage of the SCUBA regulator. Accordingly, the proposed bail-out system would provide divers with the capability to shift to a known, safe, and immediately available breathing gas, and to terminate the dive safely whenever a CO_2-related problem or other emergency occurs.

(b) *Alternative bail-out system for open-circuit SCUBA.* The proposal would provide an alternative to the bail-out for divers using open-circuit SCUBA. Accordingly, when open-

[8] In addition, employers must comply with other OSHA standards that ensure accurate mixing and decontamination (especially hydrocarbon removal) of nitrox breathing gases, and that employees are protected properly during these activities. These standards include the appropriate provisions of §§ 1910.101 (''Compressed gas (general requirements)'') and 1910.169 (''Air receivers'').

circuit SCUBA provides the nitrox breathing-gas mixture, the proposal would permit employers to use the emergency-egress procedure (*i.e.*, a reserve breathing-gas supply) specified for open-circuit SCUBA by paragraph (c)(4)(i) of § 1910.424 instead of a separate bail-out breathing-gas system.

Paragraph (c)(4)(i) of § 1910.424 is an emergency-escape provision in OSHA's existing CDO standards that applies to divers who use air-supplied open-circuit SCUBA. Under this provision, employers can maintain a reserve supply of breathing-gas in the breathing-gas cylinders carried by the diver, and that the diver can access in an emergency by manually activating a J valve located on the supply manifold. Having already recognized the safety afforded to divers by this system in the context of air-supplied, open-circuit SCUBA diving, the Agency believes that it would provide a similar level of protection to divers who use open-circuit SCUBA supplied with nitrox breathing-gas mixtures.

(c) *Safety requirements.* This proposed condition requires employers to provide their divers with a system that performs reliably and supplies sufficient emergency breathing gas to enable the diver to terminate the dive and return safely to the surface. Accordingly, this proposed requirement would ensure that the bail-out system used by employees, whether it is an independent or integrated bail-out system, will function appropriately when needed by the diver for emergency egress. The bail-out system must enable the diver to terminate the dive and make a safe and orderly ascent to the surface under ''worst-case'' conditions, thereby preventing over-pressurization of the lungs associated with AGE. However, OSHA is not proposing a specific capacity for bail-out systems because it believes that the SCUBA manufacturers are in the best position to make this determination. In this regard, a rebreather manufacturer could determine the capacity that is needed for the bail-out system based on critical diving parameters (*e.g.*, depth of dive and breathing rate) provided by the employer.

8. Treating Diving-Related Medical Emergencies

(a) *Availability of medical resources.* This proposed condition requires that employers, prior to beginning diving operations each day, ensure that: (i) A hospital, qualified health-care professionals, and the nearest Coast Guard Coordination Center (or an equivalent rescue service operated by a State, county, or municipal agency) are available for diving-related medical emergencies; (ii) each dive site has a means to alert these treatment resources in a timely manner when a diving-related medical emergency occurs; and (iii) transportation to a suitable decompression chamber is readily available when no decompression chamber is at the dive site, and that this transportation can deliver the injured diver to the decompression chamber within two hours travel time from the dive site. Overall, the proposed provisions would avoid unnecessary delay in treating diving-related injuries by confirming that resources are on call and available to render appropriate treatment, by alerting them to the occurrence of a diving-related medical injury so they can initiate treatment action (*e.g.*, using a pre-programmed electronic system, list of telephone numbers), and by providing timely transportation for the injured diver to the treatment facility. OSHA believes that reducing treatment delay will improve the likelihood that an injured diver will recuperate fully from any diving-related injury.

Prior to granting the permanent variance to Dixie, OSHA requested Dr. Edward D. Thalmann to render an opinion on the likely incidence of AGE and DCS under the proposed variance conditions. In doing so, Dr. Thalmann reviewed available research studies, as well as data from the Diver Alert Network (''DAN'') (Ex. 2–7). With regard to AGE, Dr. Thalmann stated, ''[AGE] is a rare occurrence and can be avoided with proper training and experience,'' that it ''is essentially independent of the time at depth,'' and that ''there is no evidence * * * [to] suggest that the occurrence and outcome of [AGE] would be any different breathing a [n]itrox mixture [other] than air.'' In addressing DCS, Dr. Thalmann noted that DCS associated with breathing a nitrox gas mixture ''should not be substantially different in incidence and severity compared to diving on air[,] provided the [n]itrox no-decompression times are computed from accepted air no-decompression limits using the [NOAA] EAD [formula].''

Dr. Thalmann then discussed the two-hour transportation limit proposed for the Dixie variance by reviewing the available DAN data; he cautioned that these data ''apply to recreational diving only where the vast majority of diving is within no-decompression limits.'' Under these conditions, he found that for both pain-only DCS and DCS with severe neurological symptoms, a treatment delay of four hours can occur without diminishing treatment success (*i.e.*, complete relief of symptoms). In summary, Dr. Thalmann stated, ''There is no significant body of evidence to suggest that, so long as one is diving within accepted no-decompression limits breathing air or [n]itrox, having access to a recompression facility within 4 hours is inadequate.'' For the reasons set forth in Dr. Thalmann's expert opinion, OSHA believes that the proposed condition for availability of medical treatment would provide adequate employee safety.

(b) *O_2 treatment.* Oxygen treatment is the preferred means of initially treating AGE and DCS (see Section III below, Reference (1), pp. 3–19 and 3–28). This proposed condition would require the employer to ensure that portable O_2 equipment is available at the dive site to treat an injured diver. This equipment must deliver pure O_2 to a transparent mask that covers the injured diver's nose and mouth. To provide assurance that the O_2 is suitable for treatment purposes, this proposed condition also requires employers to use only O_2 that meets the criteria for Medical USP oxygen (Type I, Quality Verification Level A) of CGA G–4.3–2000 (''Commodity Specification for Oxygen''). Additionally, sufficient O_2 must be available to administer to the injured diver from the time the employer recognizes the symptoms of a diving-related medical emergency until the injured diver reaches a decompression chamber for treatment. This proposed condition would require that the O_2 supplied for this purpose be pure O_2, and that the injured diver receive the O_2 continuously from the time an employer detects the diving-related medical emergency until the diver begins treatment in a decompression chamber. These provisions would ensure that injured divers receive the maximum dose of O_2 possible to enhance treatment effectiveness. The transparent mask covering the diver's nose and mouth allows attendants to monitor the diver's breathing and provides an effective seal against O_2 loss.

(c) *Treatment personnel.* This proposed condition requires the employer to ensure that at least two attendants (either employees or non-employees) qualified in first-aid and administering O_2 treatment are available at the dive site to treat diving-related medical emergencies before starting each day's diving operations, and to verify their qualifications before using them for this purpose. Under these proposed requirements, only qualified personnel would administer initial treatment to injured divers. OSHA believes that personnel qualified in first aid and O_2 treatment would stabilize the

injured diver as rapidly as possible, thereby improving the effectiveness of subsequent treatment regimens. Regarding the use of non-employees, the Agency notes that the main purpose of the proposed condition is to ensure that properly qualified personnel are available for initial treatment, regardless of their employment status. However, recognizing that the employer may not be familiar with the qualifications of the non-employee involved in this procedure, OSHA is proposing that employers verify their qualifications prior to using them for this purpose.

9. Diving Logs and Decompression Tables

(a) *Diving log.* This proposed condition requires employers, before beginning diving operations, to (i) designate an employee or non-employee to make entries in a diving log, and (ii) verify that this designee understands the diving and medical terminology, as well as the proper procedures, for making such entries. Recognizing that many employers of recreational divers and diving guides are small businesses that may have difficulty finding an employee to make entries in the diving log, OSHA is proposing to allow non-employees to make entries in the log. The Agency believes that any properly qualified individual can make such entries, provided the employer verifies their qualifications before using them for this purpose; these qualifications include an understanding of the diving and medical terminology and established procedures needed to enter the required information accurately in a diving log.

(b) *Diving log requirements.* Proposed Condition 9(b) specifies that employers must: (i) Ensure that diving logs meet the information requirements specified by § 1910.423(d), including the requirement for DCS information when appropriate; and (ii) maintain diving logs in accordance with the provisions of § 1910.440, including the requirements for record availability, access to records by employees and OSHA, and retention of records. Employers covered by this proposal already are required to comply with these provisions because their employees breathe a mixed gas (*i.e.*, nitrox) during diving operations; this proposed paragraph merely emphasizes this important obligation. In addition, during inspections, OSHA intends to review these records to determine whether the procedures proposed in this rulemaking are providing adequate protection to recreational diving instructors and diving guides.

(c) *Availability of decompression tables.* This proposed condition requires employers to have a hard-copy of the no-decompression tables used for the dives (see proposed Condition 6(a) above) readily available at the dive site, whether or not the divers use dive-decompression computers. This condition would ensure that the parameters of the no-decompression limits are readily available and accessible as a reference source. In addition, a hard-copy of the decompression tables would serve both as a reference source should decompression become necessary, and as a back-up resource to divers with dive-decompression computers.

10. Diver Training

Under proposed Condition 10, employers must ensure that their divers receive training that enables them to perform their work safely and effectively while using open-circuit SCUBAs or rebreathers supplied with nitrox breathing-gas mixtures. Training would include the following areas: Recognizing the effects of breathing excessive CO_2 and O_2; taking appropriate action after detecting the effects of breathing excessive CO_2 and O_2; and properly evaluating, operating, and maintaining their diving equipment under the diving conditions they encounter. OSHA believes that such training would provide divers with the basic skills and knowledge necessary to ensure that diving is performed safely.

The proposed provision is performance-based, requiring employers to ensure that their employees are trained to perform safely and effectively while using open-circuit SCUBAs or rebreathers supplied with nitrox breathing-gas mixtures. In this regard, the Agency believes that employers are in the best position to determine when the training that their divers obtain is adequate to perform their jobs safely and effectively. However, the provision specifies several critical tasks that the recreational diving instructors and diving guides would have to perform safely and effectively, including detecting and managing excessive levels of CO_2 and O_2, and being able to evaluate, operate, and maintain their diving equipment. Such training would enable divers to take remedial action to prevent and escape the life-threatening effects of CO_2 and O_2 toxicity, including convulsions and loss of consciousness. In addition, OSHA believes that divers who know how to evaluate, operate, and maintain their open-circuit SCUBAs and rebreathers under the diving conditions they encounter will be less likely to require emergency egress because of equipment failure, thereby reducing the incidence of AGE from rapid ascents to the surface.

11. Testing Protocol for Determining the CO_2 Limits of Rebreather Canisters

This proposed condition specifies the requirements employers must follow when they use a schedule to replace depleted CO_2-sorbent material instead of using CO_2 sensors to detect when the material is no longer absorbing CO_2 effectively (see proposed Condition 1(h) above). Employers may use a CO_2-sorbent replacement schedule developed by a rebreather manufacturer only when the manufacturer has tested the canisters according to the proposed canister-testing protocol in Appendix C. The Agency adapted this protocol from the canister-testing parameters and statistical procedures developed by the U.S. Navy Experimental Diving Unit (''NEDU'') (see, respectively, Ex. 3–11 and Reference (4), Section III below); the NEDU is the only Federal agency involved in testing CO_2-sorbent replacement schedules. OSHA believes that the NEDU protocol provides valid and reliable data for determining CO_2-sorbent replacement schedules because they are carefully executed and control significant variables that deplete CO_2-sorbent materials, such as breathing rate (by using breathing machines) and ambient temperature.

(a) *Quality-control assessment of CO_2-sorbent material.* Under this proposed condition, employers must use CO_2-sorbent materials in rebreathers that have the necessary physical properties as determined by the following procedures: (i) The NATO CO_2 absorbent-activity test to assess the capacity of the material to absorb CO_2; (ii) the RoTap shaker and nested sieves to determine granule-size distribution; (iii) the NEDU-derived Schlegel test to assess the friability of the CO_2-sorbent material; and (iv) the NEDU's MeshFit software to evaluate mesh size conformance to specifications. These procedures would provide a quality-control assessment of CO_2-sorbent materials. By ensuring that these materials meet the physical criteria established by these procedures, employers would improve the reliability with which they estimate canister durations during diving operations; improved estimates would enable divers to replace CO_2-sorbent material before it fails (*i.e.*, before CO_2 increases to dangerous levels).

(b) *Testing canister function.* This proposed condition requires employers to provide divers with canisters for their rebreathers that have been tested using a protocol consisting of specified canister-testing methods, procedures,

and statistical analyses. This proposed canister-testing protocol measures the performance effects on canisters of the following three factors: Depth, exercise level (*i.e.*, ventilation rate), and water temperature. Depth is the maximum depth at which a diver would use the CO_2-sorbent material, which for this proposed amendment is 130 fsw. For the other variables, OSHA has selected three combinations of ventilation rates and CO_2-injection rates from the NEDU protocol to simulate three diverse levels of exercise (light, moderate, and heavy). The four water temperatures used in the proposed protocol are 40, 50, 70, and 90 degrees F (4.4, 10.0, 21.1, and 32.2 degrees C, respectively); these temperatures represent the wide range of water temperatures that recreational diving instructors and diving guides are likely to encounter.

For this application, the Agency has revised the NEDU protocol slightly by: Limiting the maximum depth to 130 fsw; requiring an O_2 fraction of 0.28 in the nitrox breathing-gas mixture (this fraction being the maximum O_2 concentration permitted at this depth by this proposal); providing tolerance limits for water temperatures; and defining canister duration as the time taken to reach 0.005 ATA of CO_2 (0.005 ATA of CO_2 is the level specified in this proposal as the maximum allowable amount of CO_2 in the breathing gas). In addition, the proposed protocol expressly prohibits the use of CO_2-sorbent replacement schedules based on extrapolation of the protocol results. NEDU's statistical procedures (see Section III below, Reference (4)) do not provide a method for extrapolating the duration of CO_2-sorbent materials beyond the results obtained during the canister-testing trials. Accordingly, the proposed canister-testing protocol provides improved validity and reliability of canister-replacement schedules, and will enable employers to replace CO_2-sorbent materials in a timely manner.

III. References

The preamble to this proposal cites the following references:

(1) National Oceanic and Atmospheric Administration (2001). NOAA Diving Manual: Diving for Science and Technology. Joiner, J. T. (ed.). Best Publishing Co., Flagstaff, AZ. (Ex. 3–12.)

(2) Diving Science and Technology (1995). ''Analysis of Proposed Oxygen Exposure Limits for DSAT Oxygen Exposure Table Against Existing Database of Manned Oxygen Test Dives.'' Enriched Air Operations and Resource Guide. International PADI, Inc., Rancho Santa Margarita, California. (Ex. 3–13.)

(3) R. W. Hamilton, R. E. Rogers, M. R. Powell, and R. D. Vann (1994). ''Development and Validation of No-Stop Decompression Procedures for Recreational Diving: The DSAT Recreational Dive Planner.'' Hamilton Research, Ltd., Tarrytown, New York. (Ex. 3–14.)

(4) J. R. Clarke. ''Statistically Based CO_2 Canister Duration Limits for Closed-Circuit Underwater Breathing Apparatus.'' U.S. Navy Experimental Diving Unit, Report 2–99, 1999. (Ex. 2–9.)

Copies of these references are available from the OSHA's Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 or fax (202) 693–1648.

IV. Legal Considerations

Employers covered by this proposal currently are covered by OSHA's Commercial Diving Operations (CDO) standards at 29 CFR 1910, subpart T. The requirements of these standards are protecting their employees from significant risk. In issuing the variance from this standard, the Agency determined that the practices and protections in the variance would provide recreational diving instructors and diving guides with comparable protection to that provided by the CDO standards. The present proposal would extend these alternative protections to all such instructors and guides. In this regard, the proposed amendment would not replace existing requirements, but instead would be a limited alternative to them. Therefore, OSHA finds that the proposed amendment would not directly increase or decrease the protection afforded to employees, nor would it increase employers' compliance burdens. As demonstrated in the following sections, the proposed revision likely would reduce employers' compliance burdens by eliminating the requirement to have a decompression chamber at the dive site when they comply with the conditions specified in the proposed amendment.

V. Preliminary Economic Analysis and Regulatory Flexibility Certification

The proposed amendment is not a significant rulemaking under Executive Order 12866, or a ''major rule'' under the Unfunded Mandates Reform Act or Section 801 of the Small Business Regulatory Enforcement Fairness Act (SBREFA). The proposal would impose no additional costs on any private or public sector entity, and does not meet any of the criteria for a significant or major rule specified by the Executive Order or relevant statutes.

OSHA believes that the proposed amendment likely would offer employers of recreational diving instructors and diving guides an opportunity to expand these services into nitrox diving operations by eliminating costs associated with purchasing and maintaining a decompression chamber at the dive site when they comply with the conditions specified in the proposed amendment. By providing regulatory flexibility to these employers, the proposal may reduce their costs and increase productive time. Therefore, the Agency concludes that the proposed amendment would not impose any additional costs on these employers; consequently, the proposal requires no preliminary economic analysis. Furthermore, because the proposal imposes no costs on employers, OSHA certifies that it would not have a significant impact on a substantial number of small businesses; accordingly, the Agency need not prepare an initial regulatory flexibility analysis.

VI. Paperwork Reduction Act

After a thorough analysis of the proposal, OSHA believes that it contains the following two collection-of-information (*i.e.*, paperwork) requirements: Conditions 9(b)(i) and 9(b)(ii) of proposed Appendix C. Condition 9(b)(i) requires employers to ensure that the diving log conforms to the requirements specified by paragraph (d) (''Record of dive'') of § 1910.423, while Condition 9(b)(ii) specifies that employers must keep a record of the dive in accordance with § 1910.440 (''Recordkeeping requirements''). However, these paperwork requirements already apply to these employers under subpart T, regardless of this proposal, because their divers are using a mixed (*i.e.*, nitrox) gas breathing supply. The regulatory alternative in this proposed rulemaking only exempts the covered employers from having to maintain decompression chambers at the dive site, and does not exempt them from the other provisions of subpart T that apply to mixed-gas diving operations. Accordingly, the Agency already incorporates the time and cost burdens associated with these two paperwork requirements under Control No. 1218–0069.

Interested parties who wish to comment on OSHA's determination that this proposal contains no additional paperwork requirements must send their written comments to the Office of Information and Regulatory Affairs,

Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, 726 Jackson Place, NW., Washington, DC 20503. The Agency also encourages commenters to submit their comments on this paperwork determination to OSHA along with their other comments on the proposed rule.

VII. Federalism

The Agency has reviewed the proposed amendment to its Commercial Diving Operations standards according to the most recent Executive Order on Federalism (Executive Order 13132, 64 FR 43225, August 10, 1999). This Executive Order requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States before taking actions that restrict their policy options, and take such actions only when clear constitutional authority exists and the problem is of national scope. The Executive Order allows Federal agencies to preempt State law only with the expressed consent of Congress; in such cases, Federal agencies must limit preemption of State law to the extent possible.

Under section 18 of the OSH Act, Congress expressly provides OSHA with authority to preempt State occupational safety and health standards to the extent that the Agency promulgates a Federal standard under section 6 of the OSH Act. Accordingly, section 18 of the OSH Act authorizes the Agency to preempt State promulgation and enforcement of requirements dealing with occupational safety and health issues covered by OSHA standards unless the State has an OSHA-approved occupational safety and health plan (*i.e.*, is a State-plan State). (See *Gade* v. *National Solid Wastes Management Association,* 112 S. Ct. 2374 (1992).) Therefore, with respect to States that do not have OSHA-approved plans, the Agency concludes that this proposal conforms to the preemption provisions of the OSH Act. Additionally, section 18 of the OSH Act prohibits States without approved plans from issuing citations for violations of OSHA standards; the Agency finds that the proposed rulemaking does not expand this limitation.

OSHA has authority under Executive Order 13132 to propose this amendment to its Commercial Diving Operations standards because the problems addressed by these requirements are national in scope. In this regard, the proposed amendment offers thousands of employers across the nation whose divers provide recreational diving instruction and dive-guiding services an opportunity to expand these services into nitrox diving operations, and to do so without the expense involved in purchasing a decompression chamber. The proposed amendment would provide employers in every State with alternative means of compliance to protect their recreational diving instructors and diving guides from the risks of decompression sickness and arterial gas embolism while using a breathing-gas mixture consisting of a high percentage of oxygen mixed with nitrogen supplied by an open-circuit, semi-closed-circuit, or closed-circuit self-contained breathing apparatus.

Section 18(c)(2) of the OSH Act (29 U.S.C. 667(c)(2)) requires State-plan States to adopt OSHA standards, or develop alternatives, that are at least as effective as the OSHA amendment. The States have already adopted OSHA's Commercial Diving Operations (CDO) standards at 29 CFR 1910, subpart T, in particular, the decompression chamber provisions of paragraphs (b)(2) and (c)(3)(iii) of § 1910.423(b)(2) and paragraph (b)(1) of § 1910.426(b)(1). Compliance with the proposed amendment would only provide employers with an alternative to the requirements of the CDO standards; therefore, the alternative is not, itself, a mandatory standard. Accordingly, State-plan States are not obligated to adopt the final amendment that results from this rulemaking. Nevertheless, OSHA strongly encourages them to adopt to the final amendment to provide compliance options to employers in their States.

VIII. State Plans

The Agency strongly encourages the 23 States and two Territories with their own OSHA-approved occupational safety and health plans to revise their current Commercial Diving Operations standards when the Agency publishes the final amendment that results from this rulemaking. OSHA believes that such a revision would provide employers in the State-plan States the economic benefits that are likely to accrue from its enactment, while protecting the safety and health of recreational diving instructors and diving guides. These States and Territories are: Alaska, Arizona, California, Connecticut, New York (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

IX. Unfunded Mandates

OSHA reviewed the proposed amendment according to the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. As discussed above in section V (''Preliminary Economic Analysis and Regulatory Flexibility Certification'') of this preamble, the Agency has made a preliminary determination that the proposed amendment imposes no additional costs on any private or public sector entity. The substantive content of the proposed amendment applies only to employers of recreational diving instructors and diving guides, and compliance with the proposed amendment would be strictly optional for the employers. Accordingly, the proposed amendment would require no additional expenditures by either public or private employers.

OSHA standards do not apply to State and local governments, except in States that have voluntarily elected to adopt a State plan approved by the Agency. Consequently, the proposed amendment does not meet the definition of a ''federal intergovernmental mandate'' (see section 421(5) of the UMRA (2 U.S.C. 658(5)). In conclusion, the proposed amendment does not mandate that State, local, and tribal governments adopt new, unfunded regulatory obligations.

X. Applicability of Existing Consensus Standards

OSHA is not aware of any national consensus standards that are similar to the amendment that it is proposing in this rulemaking.

XI. Public Participation

The Agency requests members of the public to submit written comments and other information concerning this proposal. These comments may include objections to the proposal with or without a hearing request, as well as comments that endorse or support the proposed amendment set forth in this notice. OSHA welcomes such comments and information so that the record of this rulemaking will represent a balanced public response on the issues involved. See the sections above titled **DATES** and **ADDRESSES** for information on submitting these comments and information to the Agency. Submissions received within the specified comment period will become part of the record, and will be available for public inspection and copying in the OSHA Docket Office.

Under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, members of the public may request an informal hearing by following the instructions under the section of this **Federal Register** notice titled **ADDRESSES.** These requests must include the objections to the proposal

that warrant a hearing. The party making objections that are part of a hearing request must:

• Include their name and address.

• Ensure that the request is sent or postmarked no later than April 10, 2003.

• Separately number each objection.

• Specify with particularity the grounds for each objection.

• Include a detailed summary of the evidence supporting each objection which they plan to offer at the requested hearing.

List of Subjects in 29 CFR Part 1910

Decompression chamber; Diving; Diving instruction; Occupational safety and health; Safety.

Authority and Signature

John Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency issues the proposed amendment under the following authorities: Sections 4, 6, and 8 of the OSH Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 5–2002 (67 FR 65008), and 29 CFR part 1911.

Signed at Washington, DC on January 3, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

XII. Proposed Amendment to Standard

For the reasons stated in the preamble, the Agency proposes to amend 29 CFR part 1910, subpart T as follows:

PART 1910—[AMENDED]

Subpart T—[AMENDED]

1. Revise the authority citation for subpart T of part 1910 to read as follows:

Authority: Sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); sec. 107, Contract Work Hours and Safety Standards Act (the Construction Safety Act) (40 U.S.C. 333); sec. 41, Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secretary of Labor's Order Nos. 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008), as applicable; 29 CFR part 1911.

2. Add new paragraph (a)(3) to § 1910.401 to read as follows:

§ 1910.401 Scope and application.

* * * * *

(a) * * *

(3) *Alternative requirements for recreational diving instructors and diving guides.* Employers of recreational diving instructors and diving guides may forego the decompression-chamber requirements specified by paragraphs (b)(2) and (c)(2)(iii) of § 1910.423 and paragraph (b)(1) of § 1910.426 when they meet all of the following conditions:

(i) The instructor or guide is engaging solely in recreational diving instruction or dive-guiding operations;

(ii) The instructor or guide is diving within the no-decompression limits in these operations;

(iii) The instructor or guide is using a nitrox breathing-gas mixture consisting of a high percentage of oxygen (more than 22% by volume) mixed with nitrogen;

(iv) The instructor or guide is using an open-circuit, semi-closed-circuit, or closed-circuit self-contained underwater breathing apparatus (SCUBA); and

(v) The employer of the instructor or guide is complying with all requirements of Appendix C of this subpart.

* * * * *

3. Add definitions for ''Dive-guiding operations'' and ''Recreational diving instructors'' in alphabetical order to § 1910.402 to read as follows:

§ 1910.402 Definitions.

* * * * *

Dive-guiding operations means leading small groups of trained sports divers, who use open-circuit, semi-closed-circuit, or closed-circuit SCUBA, to local undersea diving locations for recreational purposes.

* * * * *

Recreational diving instruction means training diving students in the use of recreational diving procedures and the safe operation of diving equipment, including open-circuit, semi-closed-circuit, or closed-circuit SCUBA during dives.

* * * * *

4. Add a new Appendix C to 29 CFR part 1910, subpart T to read as follows:

Appendix C to Subpart T of Part 1910—Alternative Conditions Under § 1910.401(a)(3) for Recreational Diving Instructors and Diving Guides (Mandatory)

Paragraph (a)(3) of § 1910.401 specifies that employers of recreational diving instructors and diving guides (hereafter, ''divers'') who comply with all conditions in this Appendix C do not need to provide a decompression chamber for their recreational diving training and dive-guiding operations as required under § 1910.423(b)(2) or (c)(3), or § 1910.426 (b)(1).

1. Equipment Requirements for Rebreathers

(a) Employers must ensure that employees operate each rebreather (*i.e.*, semi-closed-circuit and closed-circuit self-contained underwater breathing apparatuses (hereafter, ''SCUBAs'')) according to the rebreather manufacturer's instructions.

(b) Employers are to ensure that each rebreather has a counterlung that supplies a volume of breathing gas to their divers that is sufficient to sustain the divers' respiration rate, and that contains a baffle system that keeps moisture from entering the scrubber.

(c) Employers must place a moisture trap in the breathing loop of the rebreather, and ensure that:

(i) The rebreather manufacturer approves both the moisture trap and its location in the breathing loop; and

(ii) Employees use the moisture trap according to the rebreather manufacturer's instructions.

(d) Employers must ensure that each rebreather has a continuously functioning moisture sensor, and that:

(i) The moisture sensor connects to a visual (*e.g.*, digital, graphic, analog) or auditory (*e.g.*, voice, pure tone) alarm that is readily detectable by the divers under the diving conditions in which they operate and warns them of moisture in the breathing loop in sufficient time to terminate the dive and return safely to the surface; and

(ii) The divers use the moisture sensor according to the rebreather manufacturer's instructions.

(e) Employers are to ensure that each rebreather contains a continuously functioning CO_2 sensor in the breathing loop, and that:

(i) The rebreather manufacturer approves the location of the CO_2 sensor in the breathing loop;

(ii) The CO_2 sensor is integrated with an alarm that operates in a visual (*e.g.*, digital, graphic, analog) or auditory (*e.g.*, voice, pure tone) mode that is readily detectable by the divers under the diving conditions in which they operate; and

(iii) The CO_2 sensor remains continuously activated when the inhaled CO_2 level reaches and exceeds 0.005 ATA.

(f) Before each day's diving operations, and more often when necessary, employers must calibrate the CO_2 sensor according to the sensor manufacturer's instructions, and ensure that:

(i) The equipment and procedures used to perform this calibration are accurate to within 10% of a CO_2 concentration of 0.005 ATA or less;

(ii) They maintain this accuracy as required by the sensor manufacturer's instructions; and

(iii) The calibration of the CO_2 sensor is accurate to within 10% of a CO_2 concentration of 0.005 ATA or less.

(g) Employers must replace the CO_2 sensor when it fails to meet the accuracy requirements specified above in paragraph 1(f)(iii), and ensure that the replacement CO_2 sensor meets the accuracy requirements specified above in paragraph 1(f)(iii) before placing the rebreather in operation.

(h) As an alternative to using a continuously functioning CO_2 sensor,

employers may use schedules for replacing CO_2-sorbent material provided by the rebreather manufacturer. When doing so, employers must use:

(i) A CO_2-sorbent replacement schedule only when the rebreather manufacturer has developed the replacement schedule according to the canister-testing protocol specified below in Condition 11; and

(ii) A rebreather at a water temperature that is lower than the minimum, or higher than the maximum, water temperature used in the canister-testing protocol specified below in Condition 11 only when the rebreather manufacturer adds that lower or higher temperature to the protocol.

(i) When using CO_2-sorbent replacement schedules, employers must ensure that each rebreather uses a manufactured (*i.e.*, commercially pre-packed), disposable scrubber cartridge containing a CO_2-sorbent material that:

(i) Is approved by the rebreather manufacturer;

(ii) Removes CO_2 from the diver's exhaled gas; and

(iii) Maintains the CO_2 level in the breathable gas (*i.e.*, the gas that a diver inhales directly from the regulator) below a partial pressure of 0.01 atmospheres absolute (''ATA'').

(j) As an alternative to manufactured, disposable scrubber cartridges, employers may fill CO_2 scrubber cartridges manually with CO_2-sorbent material when:

(i) The rebreather manufacturer permits manual filling of scrubber cartridges;

(ii) The employer fills the scrubber cartridges according to the rebreather manufacturer's instructions;

(iii) The employer replaces the CO_2-sorbent material using a replacement schedule developed under paragraph 1(h) above; and

(iv) The employer demonstrates that manual filling meets the requirements specified above in paragraph 1(i).

(k) Employers must ensure that each rebreather has an information module that provides:

(i) Visual (*e.g.*, digital, graphic, analog) or auditory (*e.g.*, voice, pure tone) displays that effectively warn their divers of solenoid failure (when the rebreather uses solenoids) and other electrical weaknesses or failures (*e.g.*, low battery voltage);

(ii) For semi-closed circuit rebreathers, visual displays for the partial pressure of CO_2, or deviations above and below a preset CO_2 partial pressure of 0.005 ATA; and

(iii) For closed-circuit rebreathers, visual displays for: Partial pressures of O_2 and CO_2, or deviations above and below a preset CO_2 partial pressure of 0.005 ATA and a preset O_2 partial pressure of 1.40 ATA; gas temperature in the breathing loop; and water temperature.

(l) Before each day's diving operations, and more often when necessary, employers must ensure that the electrical power supplies and electrical and electronic circuits in each rebreather are operating as required by the rebreather manufacturer's instructions.

2. Special Requirements for Closed-Circuit Rebreathers

(a) Employers must ensure that closed-circuit rebreathers use supply-pressure sensors for the O_2 and diluent (*i.e.*, air or nitrogen) gases and continuously functioning sensors for detecting temperature in the inhalation side of the gas-loop and the ambient water.

(b) Employers are to ensure that:

(i) At least two O_2 sensors are located in the inhalation side of the breathing loop; and

(ii) The O_2 sensors are: Functioning continuously; temperature-compensated; and approved by the rebreather manufacturer.

(c) Before each day's diving operations, and more often when necessary, employers must calibrate O_2 sensors as required by the sensor manufacturer's instructions. In doing so, they must:

(i) Ensure that the equipment and procedures used to perform the calibration are accurate to within 1% of the O_2 fraction by volume;

(ii) Maintain this accuracy as required by the manufacturer of the calibration equipment;

(iii) Ensure that the sensors are accurate to within 1% of the O_2 fraction by volume;

(iv) Replace O_2 sensors when they fail to meet the accuracy requirements specified above in paragraph 2(c)(iii); and

(v) Ensure that the replacement O_2 sensors meet the accuracy requirements specified above in paragraph 2(c)(iii) before they place a rebreather in operation.

(d) Employers must ensure that closed-circuit rebreathers have:

(i) A gas-controller package with electrically-operated solenoid O_2-supply valves;

(ii) A pressure-activated regulator with a second-stage diluent-gas addition valve;

(iii) A manually operated gas-supply bypass valve to add O_2 or diluent gas to the breathing loop; and

(iv) Separate O_2 and diluent-gas cylinders to supply the breathing-gas mixture.

3. O_2 Concentration in the Breathing Gas

Employers must ensure that the fraction of O_2 in the nitrox breathing-gas mixture:

(a) Is greater than the fraction of O_2 in compressed air (*i.e.*, exceeds 22% by volume);

(b) For open-circuit SCUBA, never exceeds a maximum fraction of breathable O_2 of 40% by volume or a maximum O partial pressure of 1.40 ATA, whichever exposes divers to less O_2; and

(c) For rebreathers, never exceeds a maximum O_2 partial pressure of 1.40 ATA.

4. Limiting O_2 Partial Pressure and Diving Depth

(a) Regarding O_2 exposure, employers must:

(i) Ensure that the exposure of their divers to partial pressures of O_2 between 0.60 and 1.40 ATA does not exceed the 24-hour single-exposure time limits specified either by the 2001 National Oceanic and Atmospheric Administration Diving Manual (the ''2001 NOAA Diving Manual'') or by the report entitled ''Enriched Air Operations and Resources Guide,'' published in 1995 by the Professional Association of Diving Instructors (known commonly as the ''1995 DSAT Oxygen Exposure Table'') (see References (1) and (2) at the end of this appendix for complete information regarding these references); and

(ii) Determine a diver's O_2-exposure duration using the diver's maximum O_2 exposure (partial pressure of O_2) during the dive and the total dive time (*i.e.*, from the time the diver leaves the surface until the diver returns to the surface).

(b) Regardless of the diving equipment used, employers must ensure that their divers do not exceed a depth of 130 feet of sea water (''fsw'') or to a maximum O_2 partial pressure of 1.40 ATA, whichever exposes them to less O_2.

5. Mixing and Analyzing the Breathing Gas

(a) Employers must ensure that:

(i) Properly trained personnel mix nitrox-breathing gases, and that nitrogen is the only inert gas used in the breathing-gas mixture; and

(ii) When mixing nitrox-breathing gases, they mix the appropriate breathing gas before delivering the mixture to the breathing-gas cylinders, using the continuous-flow or partial-pressure mixing techniques specified in the 2001 NOAA Diving Manual, or using a filter-membrane system.

(b) Before the start of each day's diving operations, employers must determine the O_2 fraction of the breathing-gas mixture using an O_2 analyzer. In doing so, they must:

(i) Ensure that the O_2 analyzer is accurate to within 1% of the O_2 fraction by volume; and

(ii) Maintain this accuracy as required by the manufacturer of the analyzer.

(c) When the breathing gas is a commercially supplied nitrox breathing-gas mixture, employers must ensure that the O_2 is Grade A (also known as ''aviator's oxygen'') or Grade B (referred to as ''industrial-medical oxygen''), and meets the specifications, including the purity requirements, found in the ANSI-Compressed Gas Association Commodity Specification for Air, G–7.1–1997. In addition, employers are to ensure that the commercial suppliers:

(i) Determine the O_2 fraction in the breathing-gas mixture using an analytic method that is accurate to within 1% of the O_2 fraction by volume;

(ii) Make this determination when the mixture is in the charged tank and after disconnecting the charged tank from the charging apparatus;

(iii) Document the O_2 fraction in the mixture; and

(iv) Provide the employer with a written certification of the O_2 analysis.

(d) Before producing nitrox breathing-gas mixtures using a compressor in which the gas pressure in any system component exceeds 125 pounds per square inch (psi), employers must:

(i) Have the compressor manufacturer certify in writing that the compressor is suitable for mixing high-pressure air with the highest O_2 fraction used in the nitrox breathing-gas mixture;

(ii) Ensure that the compressor is oil-less or oil-free and rated for O_2 service, unless they comply with the requirements of paragraph 5(e) below; and

(iii) Ensure that the compressor meets the requirements specified in paragraphs (i)(1) and (i)(2) of § 1910.430 whenever the highest O_2 fraction used in the mixing process exceeds 40%.

(e) Before employers produce nitrox breathing-gas mixtures using an oil-lubricated compressor to mix high-pressure air with O_2, and regardless of the gas pressure in any system component, they must:

(i) Use only uncontaminated air (*i.e.*, air containing no hydrocarbon particulates) for the nitrox breathing-gas mixture;

(ii) Have the compressor manufacturer certify in writing that the compressor is suitable for mixing the high-pressure air with the highest O_2 fraction used in the nitrox breathing-gas mixture;

(iii) Filter the high-pressure air to produce O_2-compatible air;

(iv) Have the filter-system manufacturer certify in writing that the filter system used for this purpose is suitable for producing O_2-compatible air; and

(v) Continuously monitor the air downstream from the filter for hydrocarbon contamination.

(f) Employers are to ensure that diving equipment using nitrox breathing-gas mixtures or pure O_2 under high pressure (*i.e.*, exceeding 125 psi) conforms to the O_2-service requirements specified in paragraphs (i)(1) and (i)(2) of § 1910.430.

6. Use of No-Decompression Limits

(a) For diving conducted while using nitrox breathing-gas mixtures, employers must ensure that each of their divers remains within the no-decompression limits specified for single and repetitive air diving and published in the 2001 NOAA Diving Manual or the report entitled ''Development and Validation of No-Stop Decompression Procedures for Recreational Diving: The DSAT Recreational Dive Planner,'' published in 1994 by Hamilton Research Ltd. (known commonly as the ''1994 DSAT No-Decompression Tables''). (See References (1) and (3) at the end of this appendix for complete information regarding these references.)

(b) Employers may permit their divers to use dive-decompression computers designed to regulate decompression when the dive-decompression computer uses the no-decompression limits specified above in paragraph 6(a), and provides output that reliably represents those limits.

7. Emergency Egress

(a) Regardless of the diving equipment used by divers (*i.e.*, open-circuit SCUBA or rebreathers), employers must ensure that the diving equipment consists of an open-circuit emergency-egress system (a ''bail-out'' system) in which the second stage of the regulator connects to a separate supply of emergency breathing gas, and the emergency breathing gas consists of air or the same nitrox breathing-gas mixture used during the dive.

(b) For open-circuit SCUBA, employers may use as an alternative to the ''bail-out'' system specified above under Condition (7)(a), the emergency-egress system (*i.e.*, the reserve breathing-gas supply) specified for open-circuit SCUBA by § 1910.424(c)(4)(i).

(c) Employers must ensure that the bail-out or alternative system performs reliably and provides sufficient emergency breathing gas to enable the diver to terminate the dive and return safely to the surface.

8. Treating Diving-Related Medical Emergencies

(a) Before each day's diving operations, employers must:

(i) Verify that a hospital, qualified health-care professionals, and the nearest Coast Guard Coordination Center (or an equivalent rescue service operated by a State, county, or municipal agency) are available to treat diving-related medical emergencies;

(ii) Ensure that each dive site has a means to alert these treatment resources in a timely manner when a diving-related medical emergency occurs; and

(iii) Ensure that transportation to a suitable decompression chamber is readily available when no decompression chamber is at the dive site, and that this transportation can deliver the injured diver to the decompression chamber within two (2) hours travel time from the dive site.

(b) Employers must ensure that portable O_2 equipment is available at the dive site to treat injured divers. In doing so, employers must ensure that:

(i) The equipment delivers medical-grade O_2 that meets the requirements for Medical USP oxygen (Type I, Quality Verification Level A) of CGA G–4.3–2000 (''Commodity Specification for Oxygen'');

(ii) The equipment delivers this O_2 to a transparent mask that covers the injured diver's nose and mouth; and

(iii) Sufficient O_2 is available for administration to the injured diver from the time the employer recognizes the symptoms of a diving-related medical emergency until the injured diver reaches a decompression chamber for treatment.

(c) Before each day's diving operations, employers must:

(i) Ensure that at least two attendants, either employees or non-employees, qualified in first-aid and administering O_2 treatment are available at the dive site to treat diving-related medical emergencies; and

(ii) Verify their qualifications for this task.

9. Diving Logs and Decompression Tables

(a) Before starting each day's diving operations, employers must:

(i) Designate an employee or a non-employee to make entries in a diving log; and

(ii) Verify that this designee understands the diving and medical terminology, and proper procedures, for making correct entries in the diving log.

(b) Employers are to:

(i) Ensure that the diving log conforms to the requirements specified by paragraph (d) (''Record of dive'') of § 1910.423; and

(ii) Keep a record of the dive in accordance with § 1910.440 (''Recordkeeping requirements'').

(c) Employers must ensure that a hard-copy of the decompression tables used for the dives (as specified above in paragraph 6(a)) is readily available at the dive site, whether or not your divers use dive-decompression computers.

10. Diver Training

Employers must ensure that their divers receive training that enables them to perform their work safely and effectively while using open-circuit SCUBAs or rebreathers supplied with nitrox breathing-gas mixtures. Accordingly, the divers must be able to demonstrate that they can perform critical tasks safely and effectively, including, but not limited to: Recognizing the effects of breathing excessive CO_2 and O_2; taking appropriate action after detecting excessive levels of CO_2 and O_2; and properly evaluating, operating, and maintaining their diving equipment under the diving conditions they encounter.

11. Testing Protocol for Determining the CO_2 Limits of Rebreather Canisters

(a) Employers must ensure that the rebreather manufacturer used the following procedures for determining that the CO_2-sorbent material meets the specifications of the material's manufacturer:

(i) The NATO CO_2 absorbent-activity test;

(ii) The RoTap shaker and nested sieves;

(iii) The Navy Experimental Diving Unit (''NEDU'')-derived Schlegel test; and

(iv) The NEDU's MeshFit software;

(b) Employers must ensure that the rebreather manufacturer applied the following canister-testing materials, methods, procedures, and statistical analyses:

(i) A nitrox breathing-gas mixture that has an O_2 fraction maintained at 0.28 (equivalent to 1.4 ATA of O_2 at 130 fsw, the maximum O_2 concentration permitted at this depth);

(ii) While operating the rebreather at a maximum depth of 130 fsw, used a breathing machine to continuously ventilate the rebreather with breathing gas that is at 100% humidity and warmed to a temperature of 98.6 degrees F (37 degrees C) in the heating-humidification chamber;

(iii) Measured the O_2 concentration of the inhalation breathing gas delivered to the mouthpiece;

(iv) Tested the canisters using the three ventilation rates listed in the following table (with the required breathing-machine tidal volumes and frequencies, and CO_2-injection rates, provided for each ventilation rate):

Ventilation rates (Lpm, ATPS [1])	Breathing machine tidal volumes (L)	Breathing machine frequencies (breaths per min.)	CO_2 injection rates (Lpm, STPD [2])
22.5	1.5	15	0.90
40.0	2.0	20	1.35
62.5	2.5	25	2.25

[1] ATPS means ambient temperature and pressure, saturated with water.

[2] STPD means standard temperature and pressure, dry; the standard temperature is 32 degrees F (0 degrees C).

(v) When using a work rate (*i.e.*, breathing-machine tidal volume and frequency) other than the work rates listed in the table above, added the appropriate combinations of ventilation rates and CO_2-injection rates;

(vi) Performed the CO_2 injection at a constant (steady) and continuous rate during each testing trial;

(vii) Determined canister duration using a minimum of four (4) water temperatures, including 40, 50, 70, and 90 degrees F (4.4, 10.0, 21.1, and 32.2 degrees C, respectively).

(viii) Monitored the breathing-gas temperature at the rebreather mouthpiece (at

the ''chrome T'' connector), and ensured that this temperature conforms to the temperature of a diver's exhaled breath at the water temperature and ventilation rate used during the testing trial; [9]

(ix) Implemented at least eight (8) testing trials for each combination of temperature and ventilation-CO_2-injection rates (*e.g.*, eight testing trials at 40 degrees F using a ventilation rate of 22.5 Lpm at a CO_2-injection rate of 0.90 Lpm);

(x) Allowed the water temperature to vary no more than ± 2.0 degrees F (± 1.0 degree C) *between* each of the eight testing trials, and no more than ± 1.0 degree F (± 0.5 degree C) *within* each testing trial;

(xi) Used the average temperature for each set of eight testing trials in the statistical analysis of the testing-trial results, with the testing-trial results being the time taken for the inhaled breathing gas to reach 0.005 ATA of CO_2 (*i.e.*, the canister-duration results);

(xii) Analyzed the canister-duration results using the repeated-measures statistics described in NEDU Report 2–99 (see Reference (4) at the end of this appendix for complete information regarding this reference);

(xiii) Specified the replacement schedule for the CO_2-sorbent materials in terms of the lower prediction line (or limit) of the 95% confidence interval; and

(xiv) Derived replacement schedules only by interpolating among, but not by extrapolating beyond, the depth, water temperatures, and exercise levels used during canister testing.

12. References

This section provides detailed information regarding the references cited in this appendix.

(1) National Oceanic and Atmospheric Administration (2001). NOAA Diving Manual: Diving for Science and Technology. Joiner, J. T. (ed.). Best Publishing Co., Flagstaff, AZ.

(2) Diving Science and Technology (1995). ''Analysis of Proposed Oxygen Exposure Limits for DSAT Oxygen Exposure Table Against Existing Database of Manned Oxygen Test Dives.'' Enriched Air Operations and Resource Guide. International PADI, Inc., Rancho Santa Margarita, California.

(3) R. W. Hamilton, R. E. Rogers, M. R. Powell, and R. D. Vann (1994). ''Development and Validation of No-Stop Decompression Procedures for Recreational Diving: The DSAT Recreational Dive Planner.'' Hamilton Research, Ltd., Tarrytown, New York.

(4) J. R. Clarke. ''Statistically Based CO_2 Canister Duration Limits for Closed-Circuit Underwater Breathing Apparatus.'' U.S. Navy Experimental Diving Unit, Report 2–99, 1999.

* * * * *

[FR Doc. 03–372 Filed 1–9–03; 8:45 am]

BILLING CODE 4510–26–P

[9] NEDU can provide the manufacturer with information on the temperature of a diver's exhaled breath at various water temperatures and ventilation rates, as well as techniques and procedures used to maintain these temperatures during the testing trials.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IN148–1b; FRL–7436–3]

Redesignation and Approval and Promulgation of Indiana Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to redesignate Lake County, Indiana, to attainment for particulate matter with a nominal aerodynamic diameter of 10 microns or less (PM_{10}). EPA also proposes to approve Indiana's plan for continuing to attain the PM_{10} standards.

DATES: Written comments on this proposed rule must arrive on or before February 10, 2003.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of Indiana's submittal at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, *summerhays.john@epa.gov,* (312) 886–6067.

SUPPLEMENTARY INFORMATION: On September 25, 2002, Indiana requested that EPA redesignate Lake County from nonattainment to attainment for PM_{10}. The criteria for redesignations from nonattainment to attainment are in section 107(d)(3)(E) of the Clean Air Act. EPA proposes to conclude that (i) Lake County has attained the PM_{10} air quality standards, (ii) EPA has fully approved the applicable State Implementation Plan (SIP) under section 110(k) of the Act, (iii) the improvement in air quality in the area is due to permanent and enforceable emission reductions, (iv) the maintenance plan for the area satisfies section 175A of the Act, and (v) the state has met all requirements applicable to the area under section 110 and part D of the Act. Based on these findings, EPA proposes to approve Indiana's maintenance plan and redesignate Lake County, Indiana, to attainment for PM_{10}.

For additional information see the direct final rule published in the rules section of this **Federal Register**.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovermental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: December 23, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 03–283 Filed 1–9–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[021213308–2308–01, 111802B]

RIN 0648–AQ60

List of Fisheries for 2003

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Marine Fisheries Service (NMFS) proposes changes for 2003 to the List of Fisheries (LOF) as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2003 reflects new information on interactions between commercial fisheries and marine mammals. Under the MMPA, NMFS must place each commercial fishery on the LOF into one of three categories based upon the level of serious injury and mortality of marine mammals that occurs incidental to that fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

DATES: Comments must be received by February 10, 2003.

ADDRESSES: Send comments to Chief, Marine Mammal Conservation Division,

Attn: List of Fisheries, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding the burden-hour estimates or any other aspect of the collection of information requirements contained in this proposed rule should be sent to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and to the Office of Information and Regulatory Affairs, OMB, Attention: NOAA Desk Officer, Washington, DC 20503.

Registration information, materials, and marine mammal reporting forms may be obtained from the following regional offices:

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, Attn: Marcia Hobbs.

NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702, Attn: Teletha Griffin.

NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Don Peterson.

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office.

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Tanya Dobrzynski, Office of Protected Resources, 301–713–2322; Kim Thounhurst, Northeast Region, 978–281–9138; Katie Moore, Southeast Region, 727–570–5312; Cathy Campbell, Southwest Region, 562–980–4060; Brent Norberg, Northwest Region, 206–526–6733; Amy Van Atten, Alaska Region, 907–586–7642. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

What is the List of Fisheries?

Under section 118 of the MMPA, NMFS must publish, at least annually, an LOF that places all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals that occurs in each fishery (16 U.S.C. 1387 (c)(1)). The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

How Does NMFS Determine in which Category a Fishery is Placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the Potential Biological Removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the implementing regulations for Section 118 at 50 CFR 229.2.

Tier 1: If the total annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR level of this stock, all fisheries interacting with this stock would be placed in Category III. Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2, Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level.

Tier 2, Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level.

Tier 2, Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level.

While Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock, Tier 2 considers fishery-specific mortality and serious injury for a particular stock. Additional details regarding how threshold percentages between the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Note that, since fisheries are categorized on a per-stock basis, a fishery may qualify as one Category for one marine mammal stock and a distinct Category for a different marine mammal stock. A fishery is typically placed on the LOF at its highest level of classification (e.g., a fishery that qualifies for Category III for one marine mammal stock and for Category II for another marine mammals stock will be listed under Category II).

Other Criteria That May Be Considered

In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury or mortality qualifies for Category II by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator (50 CFR 229.2).

How Do I Find Out if a Specific Fishery is in Category I, II, or III?

This proposed rule includes two tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the fisheries in the Pacific Ocean (including Alaska). Table 2 lists all of the fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

Am I Required to Register Under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization from NMFS in order to lawfully incidentally take a marine mammal in a commercial fishery. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How Do I Register?

Fishers must register with the Marine Mammal Authorization Program (MMAP) by contacting the relevant NMFS Regional Office (see **ADDRESSES**) unless they participate in a fishery that has an integrated registration program (described below). Upon receipt of a completed registration, NMFS will issue vessel or gear owners physical evidence of a current and valid registration that must be displayed or that must be in the possession of the master of each vessel

while fishing in accordance with Section 118 of the MMPA (16 U.S.C. 1387(c)(3)(A)).

What is the Process for Registering in an Integrated Fishery?

For some fisheries, NMFS has integrated the MMPA registration process with existing state and Federal fishery license, registration, or permit systems and related programs. Participants in these fisheries are automatically registered under the MMPA and are not required to submit registration or renewal materials or pay the $25 registration fee. Following is a list of integrated fisheries and a summary of the integration process for each Region. Fishers who operate in an integrated fishery and have not received registration materials should contact their NMFS Regional Office (see **ADDRESSES**).

Which Fisheries Have Integrated Registration Programs?

The following fisheries have integrated registration programs under the MMPA:

1. All Alaska Category II fisheries.
2. All Washington and Oregon Category II fisheries.
3. Northeast Regional fisheries for which a state or Federal permit is required. Individuals fishing in fisheries for which no state or Federal permit is required must register with NMFS by contacting the Northeast Regional Office (see **ADDRESSES**).
4. All North Carolina, South Carolina, Georgia, and Florida Category II fisheries for which a state permit is required.

Alaska Region

The Alaska Region has integrated MMAP registration for Alaska Category II fisheries with the Alaska State system for registering commercial vessels and permitting commercial fishers. Therefore, if a vessel owner plans to participate in one or more of the Category II fisheries and is licensed under the State of Alaska's Commercial Fisheries Entry Program, the vessel owner will be registered automatically in the MMAP and will not have to submit MMAP registration or renewal materials or pay a processing fee. The information required for MMAP registration will be obtained by NMFS directly from the State of Alaska and will be automatically incorporated into the NMFS MMAP database. At the beginning of each calendar year, permitted vessel owners and set net operators will be sent an MMAP certificate for that year, an MMAP decal, the terms and conditions of the authorization, and marine mammal injury and mortality reporting forms. MMAP certificates will be valid only if presented with a valid fishing permit.

Northwest Region

Washington and Oregon have integrated MMAP registration with existing permit programs for all Washington and Oregon Category II fisheries. These states issue MMAP certificates for Category II fisheries as part of the fishing license renewal process. MMAP certificates will be valid only if presented with a valid fishing permit. If a vessel owner plans to participate in one or more of the Category II fisheries or has a license issued by the states of Oregon or Washington, the vessel owner will be registered automatically in the MMAP and will not have to submit MMAP registration or renewal materials or pay a processing fee.

Southwest Region

No Southwest Region fisheries are integrated under the MMAP.

Northeast Region

In the Northeast Region, MMAP registration is integrated with existing fishing permit processes for all fishers engaged in Category I or II fisheries for which a state or federal permit is required. At the beginning of each calendar year, these vessel owners will be sent an MMAP certificate for that year, the terms and conditions of the authorization, and marine mammal and injury reporting forms. However, all state and Federal permit holders that receive new permits for Category I or II fisheries after the beginning of the calendar year must submit a registration or renewal application to NMFS Northeast Regional Office (see **ADDRESSES**). MMAP certificates will be valid only if presented with a valid state or Federal fishing permit. Individuals fishing in Category I or II fisheries in the Northeast Region for which state or federal permits are not required must register under the MMAP by submitting a registration or renewal form to NMFS Northeast Regional Office (see **ADDRESSES**). No fees are required for either integrated or non-integrated fisheries.

Southeast Region

NMFS has integrated registration for all participants in North Carolina, South Carolina, Georgia, and Florida Category II fisheries for which a state permit is required. Therefore, for these fisheries, the vessel owner will be registered automatically in the MMAP and will not have to submit MMAP registration or renewal materials or pay a processing fee. At the beginning of each calendar year, these vessel owners will be sent an MMAP certificate for that year, the terms and conditions of the authorization, and marine mammal and injury reporting forms. MMAP certificates will be valid only if presented with a valid state permit. All fishers who plan to participate in any other Category I or II fishery in the Southeast Region must register under the MMAP by submitting a registration or renewal form and the processing fee to NMFS. The Southeast Region is currently working towards integrating additional state and federal licensing and permitting systems with the MMAP.

How Do I Renew My Registration Under the MMPA?

Regional Offices, except for the Northeast Region, annually send renewal packets to participants in Category I or II fisheries that have previously registered; however, it is the responsibility of the fisher to ensure that registration or renewal forms are completed and submitted to NMFS at least 30 days in advance of fishing. Individuals who have not received a renewal packet by January 1 or are registering for the first time should request a registration form from the appropriate Regional Office (see **ADDRESSES**).

Am I Required to Submit Reports When I Injure or Kill a Marine Mammal During the Course of Commercial Fishing Operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or fisher (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must report all incidental injuries or mortalities of marine mammals that occur during commercial fishing operations to NMFS. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the absence of any wound or other evidence of an injury, and must be reported. Instructions on how to submit reports can be found in 50 CFR 229.6.

Am I Required to Take an Observer Aboard My Vessel?

Fishers participating in a Category I or II fishery are required to accommodate an observer aboard vessel(s) upon request. Observer requirements can be found in 50 CFR 229.7.

Am I Required to Comply With Any Take Reduction Plan Regulations?

Fishers participating in a Category I or II fishery are required to comply with any applicable take reduction plans.

Sources of Information Reviewed for the Proposed 2003 LOF

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the Stock Assessment Reports (SARs) for all observed fisheries to determine whether changes in fishery classification were warranted. NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, and other information that is not included in the SARs.

NMFS SARs provide the best available information on both the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the PBR levels for marine mammal stocks.

The information contained in the SARs is reviewed by regional scientific review groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and the Caribbean. The SRGs were created by the MMPA to review the science that goes into the stock assessment reports and to advise NMFS on population status and trends, stock structure, uncertainties in the science, research needs, and other issues.

The proposed LOF for 2003 was based on information provided in the final SARs for 1996 (63 FR 60, January 2, 1998), the final SARs for 2001 (67 FR 10671, March 8, 2002), and the draft SARs for 2002 (67 FR 19417, April 19, 2002).

Summary of Changes to the Proposed LOF for 2003

With the following exceptions, the placement and definitions of U.S. commercial fisheries are identical to those provided in the LOF for 2002. The following summarizes changes in fishery classification, fishery definition, fisheries listed on the LOF, number of participants in a particular fishery, and the species and/or stocks that are incidentally killed or seriously injured in a particular fishery, that are proposed for the 2003 LOF.

Commercial Fisheries in the Pacific Ocean: Fishery Classification

Alaska Bering Sea Aleutian Islands Groundfish Trawl Fishery

NMFS proposes to elevate the Alaska (AK) Bering Sea and Aleutian Islands (BSAI) groundfish trawl fishery to Category II based on a review of observer data from 1995–1999 and the following tier analysis. Observer coverage in the AK BSAI groundfish trawl fishery ranged from 53 percent to 76 percent per year between 1990 and 2000. Marine mammal species incidentally injured or killed in the AK BSAI groundfish trawl fishery include: western North Pacific stock of humpback whales, eastern North Pacific stock of resident killer whales, eastern North Pacific stock of transient killer whales, central North Pacific stock of humpback whales, western U.S. stock of Steller sea lions, northeast Pacific stock of fin whales, North Pacific stock of Pacific white-sided dolphin, Bering Sea stock of harbor porpoise, Eastern Pacific stock of northern fur seals, Bering Sea stock of harbor seals, Alaska stock of bearded seals, Alaska stock of ringed seals, Alaska stock of spotted seals, Alaska stock of Dall's porpoise, Alaska stock of ribbon seals, CA breeding stock of northern elephant seals, Alaska stock of sea otters, and Alaska stock of Pacific walrus.

Tier 1 Evaluation: Total annual incidental mortality and serious injury across all fisheries is greater than or equal to 10 percent of the PBR levels for the following stocks: western North Pacific humpback whales, eastern North Pacific resident killer whales, eastern North Pacific transient killer whales, central North Pacific humpback whales, and western U.S. Steller sea lions. Therefore, the AK BSAI Groundfish Trawl Fishery is subject to Tier 2 analysis.

Tier 2 Evaluation: Total annual mortality and serious injury of the western North Pacific stock of humpback whales in this fishery is 0.4 animals per year, or 57.1 percent of the PBR level (0.7 animals per year). Because this level of mortality and serious injury exceeds 50 percent of the PBR level, this fishery qualifies for elevation to Category I.

Total annual mortality and serious injury of the eastern North Pacific transient stock of killer whales in this fishery is 0.6 animals per year, or 14.3 percent of the PBR level (2.8 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for elevation to Category II.

Total annual mortality and serious injury of the eastern North Pacific resident stock of killer whales in this fishery is 0.6 animals per year, or 8.3 percent of the PBR level (7.2 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for elevation to Category II.

Total annual mortality and serious injury of the central North Pacific stock of humpback whales in this fishery is 0.4 animals per year, or 5.4 percent of the PBR level (7.4 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for elevation to Category II.

Total annual mortality and serious injury of the western U.S. stock of Steller sea lions in this fishery is 7.8 animals per year, or 3.8 percent of the PBR level (208 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for elevation to Category II.

The data presented above, specifically the serious injury and mortality of western North Pacific humpback whales, appears to justify placement of the AK BSAI groundfish trawl fishery into Category I. However, NMFS considered additional information about the data. The PBR level for western North Pacific humpback whales is based on a minimum population estimate of 367 animals, which may be an underestimate of the true population size. Recent vessel surveys of a small portion of the Bering Sea resulted in an estimate of approximately 1,100 humpback whales. However, it is not possible to determine what portion of this estimate can be assigned to the central stock versus the western stock of humpback whales. If the minimum population estimate for the western stock is underestimated by only 43 animals, total annual mortality and serious injury in this fishery would be less than 50 percent of the PBR level and the fishery would qualify for Category II.

Additionally, it is not known whether the humpback whale mortalities incidental to this fishery (1 in 1998 and 1 in 1999) should be assigned to the western or central stocks. The mortalities are assigned to both stocks (i.e., 2 mortalities assigned to the western stock and 2 mortalities assigned to the central stock) and therefore the mortalities are ''double-counted'' in the above tier analysis. If one mortality was from the western stock and one mortality was from the central stock, NMFS could not justify placing this fishery in Category I.

Finally, this analysis reflects observer data through 1999. Based on preliminary data from 2000, one unidentified large whale was killed incidental to this fishery. Photographs

of this incident clearly show that the unidentified animal was not a humpback whale. Further examination of the photographs may provide additional insight as to the species. Preliminary data from 2000 also indicate that the numbers of Steller sea lions seriously injured or killed remained roughly comparable to the numbers in previous years (approximately 6–7 animals per year).

For the reasons listed above, NMFS proposes to elevate the AK BSAI groundfish trawl fishery to Category II.

California/Oregon Thresher Shark/Swordfish Drift Gillnet Fishery (≥14 in. mesh)

NMFS proposes to reclassify the Category I California/Oregon (CA/OR) thresher shark/swordfish drift gillnet fishery (≥14 in. mesh) as Category II. This fishery includes all vessels using drift gillnets of greater than or equal to 14 inch stretched mesh to target thresher shark and swordfish off California and Oregon. It operates primarily outside of state waters to about 150 miles offshore, and ranges from the U.S./Mexico border north to the Columbia River in Oregon. Observer coverage in this fishery ranged from 22.7 percent to 20.4 percent from 1997 to 2001.

The Pacific Offshore Cetacean Take Reduction Team (Team) was convened in 1996 to address incidental mortality and serious injury of marine mammals in this fishery. NMFS implemented a Pacific Offshore Cetacean Take Reduction Plan (Plan) in 1997 based on the Team's recommendations. As a result of the Plan, serious injury and mortality of marine mammals has been reduced to below 50 percent of the PBR level for the marine mammal stocks interacting with this fishery. Therefore, NMFS proposes to reclassify this fishery as Category II. NMFS will continue to place observers on vessels participating in this fishery and work with the Team to monitor and address entanglement of marine mammals in the fishery. The Team supported the reclassification of this fishery at their meeting in May 2002.

NMFS' analysis of the incidental mortality and serious injury of marine mammals in this fishery is based on observer data collected between 1997 and 2001. Marine mammals incidentally injured or killed in the CA/OR thresher shark/swordfish drift gillnet fishery between 1997 and 2001 include: U.S. stock of CA sea lions, CA breeding stock of northern elephant seals, California/Oregon/Washington (CA/OR/WA) stock of Dall's porpoise, CA/OR/WA Northern and Southern stocks of Pacific white-sided dolphin, CA/OR/WA stock of Risso's dolphin, CA/OR/WA stock of short-beaked common dolphin, CA/OR/WA stock of long-beaked common dolphin, CA/OR/WA stock of northern right-whale dolphin, CA/OR/WA stock of short-finned pilot whales, CA/OR/WA stock of sperm whales, CA/OR/WA stock of fin whales, and eastern North Pacific stock of gray whales. There are approximately 113 participants in this fishery, which is the number of permits issued for this fishery by California Department of Fish and Game in 2001. Following is the Tier analysis supporting the reclassification of this fishery.

Tier 1 Evaluation: The estimated total annual incidental mortality and serious injury across all fisheries is greater than 10 percent of the PBR levels for the following stocks: U.S. stock of CA sea lions, CA/OR/WA stock of northern right-whale dolphin, CA/OR/WA stock of short-finned pilot whales, CA/OR/WA stock of sperm whales, and CA/OR/WA stock of fin whales. Therefore, this fishery is subject to Tier 2 analysis for these stocks.

Tier 2 Evaluation: The average annual estimated mortality and serious injury of California sea lions incidental to the CA/OR thresher shark/swordfish drift gillnet fishery during 1997–2001 was 82 animals per year, or 1.2 percent of the PBR level for California sea lions (6,591 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for reclassification as a Category II fishery.

The average annual estimated mortality and serious injury of northern right-whale dolphins incidental to this fishery during this period was 23.8 animals per year, or 24.5 percent of the PBR level for this stock (97 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for reclassification as a Category II fishery.

The average annual estimated mortality and serious injury of short-finned pilot whales incidental to this fishery from 1997–2001 was 1.2 animals per year, or 21.1 percent of the PBR level for this stock (5.7 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for reclassification as a Category II fishery.

The average annual estimated mortality and serious injury of sperm whales incidental to this fishery during this period was 1 animal per year, or 47.8 percent of the PBR level for this stock (2.1 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for reclassification as a Category II fishery.

The average annual estimated mortality and serious injury of fin whales incidental to this fishery from 1997 to 2001 was 1 animal per year, or 31.3 percent of the PBR level for this stock (3.2 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for reclassification as a Category II fishery.

Since the annual estimated level of marine mammal mortality and serious injury incidental to this fishery is less than 50 percent and greater than 1 percent of the PBR level for all marine mammal stocks described in the Tier 2 analysis, NMFS proposes to reclassify this fishery as Category II.

AK Cook Inlet Salmon Drift Gillnet Fishery

NMFS proposes to reclassify the Cook Inlet salmon drift gillnet fishery from Category II to Category III. The Category II Cook Inlet salmon drift gillnet fishery was observed in 1999 and 2000. One serious injury of a Gulf of Alaska harbor porpoise was observed in the drift gillnet fishery during the 2000 fishing season. This take constitutes less than 1 percent of the PBR for Gulf of Alaska harbor porpoise (PBR = 166). There were no other marine mammal stocks reported interacting with this fishery during the 1999–2000 fishing seasons. Based on the observed level of take in this fishery, NMFS proposes to reclassify the fishery as Category III at this time. An analysis of all takes in this fishery from 1995–2000, relative to the classification criteria support a reclassification from Category III to Category II.

AK Cook Inlet Salmon Set Gillnet Fishery

The Category II Cook Inlet set gillnet fishery was observed in 1999 and 2000. No serious injuries or mortalities of marine mammals were observed in this fishery. Therefore, NMFS proposes to reclassify this fishery from Category II to Category III.

Addition of Fisheries to the LOF

CA Yellowtail, Barracuda, White Seabass, and Tuna Drift Gillnet Fishery (mesh size > 3.5 inches and <14 inches)

NMFS proposes to add the CA yellowtail, barracuda, white seabass,

and tuna drift gillnet fishery (mesh size > 3.5 inches and < 14 inches) to the LOF as a Category II fishery based on this fishery's similarity to other drift gillnet fisheries, and therefore, its potential to entangle marine mammals. California Department of Fish and Game logbook and landings data for 1999–2001 indicate that there are approximately 24 vessels that use drift gillnets of greater than 3.5 inches and less than 14 inches to target yellowtail, barracuda, and white seabass of southern California, as well as to target bluefin and albacore tuna primarily off central California. These drift gillnets are up to 6,000 feet long and are set at the surface. Of the 24 vessels known to participate in this fishery in 1999–2001, 19 vessels targeted white seabass during 1999 and 2000, making a total of 277 sets; 7 vessels targeted yellowtail during 1999 and 2000, making a total of 45 sets; and 7 vessels targeted tuna, making a total of 43 sets in 2001.

NMFS does not currently have observer data on the mortality or serious injury of marine mammals incidental to this fishery. Nonetheless, this fishery has a potential to entangle marine mammals because other drift gillnet fisheries with similar characteristics are known to entangle marine mammals. The CA/OR thresher shark/swordfish drift gillnet fishery, for instance, which uses a larger mesh size, historically resulted in frequent incidental mortality and serious injury of marine mammals and is currently subject to take reduction plan regulations. These regulations include requirements to use acoustic pingers on drift gillnets and to set gillnets at least 36 feet below the surface in order to reduce the likelihood of entanglement of marine mammals. While NMFS is uncertain of the likelihood that this new smaller mesh drift gillnet fishery will entangle marine mammals, there are similarities between this fishery and the CA/OR thresher shark/swordfish drift gillnet fishery. As a result, NMFS proposes that this fishery be placed in Category II, based on analogy with the CA/OR thresher shark/swordfish fishery and other gillnet fisheries. This fishery would include all vessels using drift gillnets of mesh size greater than 3.5 inches and less than 14 inches to target yellowtail, barracuda, white seabass and tuna off California.

In July 2002, NMFS began placing observers on some vessels in this fishery to better assess its potential to entangle marine mammals. Based on information collected by observers, NMFS will reassess the categorization of this fishery in a future LOF and evaluate whether this fishery should be addressed by the Pacific Offshore Cetacean Take Reduction Team.

Removals of Fisheries from the LOF

CA Shark/Bonito Longline/Set Line Fishery

In the final LOF for 1998 (63 FR 5748, 5750, February 4, 1998), NMFS revised the name of the CA shark/bonito longline/set line fishery to the CA offshore longline fishery because the fishery primarily targeted swordfish and tunas. Because of a technical error, this name change was not carried forward into the LOF for subsequent years and the fishery remained listed as the CA shark/bonito longline/set line fishery. NMFS is not proposing to implement this name change at this time as it would be duplicative of the CA pelagic longline fishery discussed below. Additionally, there is no evidence that this fishery currently operates. Rather, NMFS proposes to remove the CA shark/bonito longline/set line from the LOF.

Fishery Name and Organizational Changes and Clarifications

Alaska Crustacean Pot Fishery

All shrimp and crab pot fisheries in Alaska are grouped into the Category III Alaska crustacean pot fishery. Since 1996, there have been at least 11 reports of humpback whales entangled in pot gear from the Alaska crustacean pot fishery. Of these entanglements, at least 2 likely caused serious injuries leading to the mortality of the entangled humpback whale. While all 11 of the entanglements were observed in areas where the central North Pacific stock of humpback whales is found, it is not clear whether the entangling gear originated in these same areas. For example, one report identified the gear as tanner crab gear, but the tanner crab fishery has not been active in the known range of the central North Pacific stock of humpback whales since 1996.

NMFS has been studying the stock structure of central North Pacific humpback whales and may propose to separate a portion of the stock that forages in southeast Alaska from the remainder of the stock in the draft 2003 Stock Assessment Report. During this revision, additional effort will be made to determine the likely sources of the pot gear entanglements for central North Pacific humpback whales. NMFS proposes to retain the Alaska crustacean pot fishery in Category III at this time, but will evaluate whether or not to reclassify this fishery in the 2004 LOF, once more information is obtained about humpback whale stock structure.

CA Angel Shark/Halibut and Other Species Large Mesh (>3.5 in. mesh) Set Gillnet Fishery

The CA angel shark/halibut and other species large mesh set gillnet fishery includes all vessels using set gillnets of greater than 3.5 inches stretched mesh to target angel shark and halibut, as well as other species, such as yellowtail and white seabass. This fishery operates off southern and central California. It is a Category I fishery because the average estimated annual mortality and serious injury of the Monterey Bay stock of harbor porpoise in this fishery exceeds 50 percent of the PBR level (11 animals per year) for this stock.

NMFS proposes to remove the reference to ''large mesh'' in the name of this fishery, and rename it the ''CA angel shark/halibut and other species set gillnet fishery (>3.5 in. mesh).'' According to 50 CFR Part 229.2, a large mesh gillnet is a gillnet with a mesh size of 7 to 18 inches. Since the CA angel shark/halibut and other species set gillnet fishery uses a mesh size of greater than 3.5 inches, NMFS believes that the term ''large mesh'' is not applicable to this fishery.

In September 2002, the California Department of Fish and Game issued permanent regulations prohibiting set gillnet fishing in ocean waters that are 60 fathoms or less in depth in central California from Point Reyes to Point Arguello, citing concerns over the incidental take of seabirds and sea otters. NMFS expects that this closure will result in a significant reduction in effort in this fishery off central California, and subsequently, in incidental mortality and serious injury of harbor porpoise.

CA Longline Fishery

NMFS proposes to revise the name of the ''CA longline fishery'' to the ''CA pelagic longline fishery.'' As was explained in the proposed LOF for 2001 (66 FR 6545, 6552, January 22, 2001), this fishery is directed primarily toward swordfish caught outside the U.S. Exclusive Economic Zone off California but unloaded in California ports. The name ''CA pelagic longline fishery'' more accurately describes this fishery and will eliminate confusion between this fishery and the WA/OR/CA groundfish, bottomfish longline/set line fishery, which is a demersal longline fishery.

CA Set and Drift Gillnet Fisheries that Use a Stretched Mesh Size of 3.5 Inches or Less

NMFS is not proposing to change the definition or categorization of this

Category III fishery, but provides the following explanation for clarification and comparison with gillnet fisheries for which changes are proposed. This fishery includes CA gillnet fisheries that use a mesh size of 3.5 inches or less that target white croaker, bonito, flying fish, herring, smelt, shad, bottomfish, mullet, perch, and rockfish. There have been no observed or reported incidental takes of marine mammals in this fishery. Due to the small mesh used in this fishery, the likelihood of incidental marine mammal mortality and serious injury is very low. For these reasons, this fishery remains in Category III.

CA/OR Thresher Shark/Swordfish Drift Gillnet Fishery

NMFS proposes to modify the name of this Category I (proposed Category II) fishery to clarify that it includes drift gillnets of greater than or equal to 14 inches stretched mesh only. NMFS proposes to rename the fishery the ''CA/OR thresher shark/swordfish drift gillnet fishery (≥14 in. mesh).

Number of Vessels/Persons

AK Bering Sea Aleutian Islands Groundfish Longline/Set Line Fishery

NMFS proposes to change the number of participants in this fishery from 115 to 148 based on 2000 data.

AK Gulf of Alaska Groundfish Longline/Set Line Fishery

NMFS proposes to change the number of participants in this fishery from 876 to 1030 based on 2000 data.

AK Bering Sea Aleutian Islands Groundfish Trawl Fishery

NMFS proposes to change the number of participants in this fishery from 166 to 157 based on 2000 data.

AK Gulf of Alaska Groundfish Trawl Fishery

NMFS proposes to change the number of participants in this fishery from 198 to 145 based on 2000 data.

AK Bering Sea, Gulf of Alaska Finfish Pot Fishery

NMFS proposes to change the number of participants in this fishery from 257 to 314 based on 2000 data.

CA Longline Fishery

NMFS proposes to change the number of participants in this fishery from 45 to 30 to reflect current effort in this fishery.

CA/OR Thresher Shark/Swordfish Drift Gillnet Fishery

NMFS proposes to revise the number of participants in this fishery to 113, which is the number of permits issued for this fishery by the California Department of Fish and Game in 2001.

List of Species that are Incidentally Injured or Killed

AK Bering Sea Aleutian Islands Groundfish Trawl Fishery

NMFS proposes to remove the Gulf of Alaska stock of harbor seal from the list of marine mammal species and stocks incidentally injured or killed by the AK BSAI groundfish trawl fishery because there is no known interaction between this stock of harbor porpoise and this fishery.

NMFS proposes to add the Northeast Pacific stock of fin whales to the list of marine mammal species and stocks incidentally injured or killed by the AK Bering Sea Aleutian Islands groundfish trawl fishery because this stock is known to interact with this fishery and was inadvertently omitted from the list of marine mammal species in the past.

CA Herring Purse Seine Fishery

NMFS proposes to remove the CA coastal stock of bottlenose dolphins from the list of marine mammal species and stocks incidentally injured or killed in the CA herring purse seine fishery. The designation of this stock as interacting with this fishery was based on one interaction from the early 1990s reported in a logbook; however, neither the species identification, nor the location of the take, was ever verified. No other bottlenose dolphins are known to have interacted with this fishery.

CA/OR Thresher Shark/Swordfish Drift Gillnet Fishery (≥14 in. mesh)

NMFS proposes to add the CA/OR/WA stock of fin whales and the eastern North Pacific stock of gray whales to the list of marine mammals incidentally injured or killed in the CA/OR thresher shark/swordfish drift gillnet fishery (≥14 in. mesh). Interactions between each of these marine mammal stocks and this fishery have been documented in previous Stock Assessment Reports. The absence of these marine mammals from previous LOFs was in error. Therefore, NMFS proposes to correct this oversight in the 2003 LOF.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean: Fishery Classification

Atlantic Mixed Species Trap/Pot Fishery

NMFS proposes to add the ''Atlantic mixed species trap/pot fishery'' to the LOF to encompass the Northeast trap/pot fishery, the Mid-Atlantic mixed species trap/pot fishery, and the U.S. Mid-Atlantic and Southeast U.S. Atlantic black sea bass trap/pot fisheries and include any other trap/pot gear that is not included in other trap/pot fisheries specifically identified in the LOF. Additionally, NMFS proposes to list the Atlantic mixed species trap/pot fishery as a Category II fishery. This fishery would extend throughout U.S. Atlantic waters from Maine to Florida.

NMFS has documented entanglement of whales, pinnipeds, and small cetaceans in fixed gear. Often, however, the gear involved in whale entanglements cannot be attributed to a specific fixed gear fishery. Lobster pot gear, in particular, has been identified in whale entanglements. Between 1995 and 1999, at least two serious injuries or mortalities of right whales were attributed to lobster trap/pot gear. Trap/pot gear is generally fished either as single pots with one buoy line or as strings of pots with one or more buoy lines. Whales may become entangled in the vertical or horizontal components of the gear (e.g., buoy lines and groundlines). The Gulf of Maine/ U.S. Mid-Atlantic lobster trap/pot fishery was elevated to Category I in the 1997 LOF (62 FR 33, January 2, 1997) because of evidence of incidental take resulting in serious injury and mortality of right whales, and the fishery was renamed the Northeast/Mid-Atlantic American lobster trap/pot fishery in the 2001 LOF (66 FR 42780, August, 15, 2001). Additionally, small cetaceans and pinnipeds occasionally become entangled in buoy lines and traps. The Atlantic blue crab trap/pot fishery was elevated to Category II in the 2001 LOF (66 FR 42780, August 15, 2001) based on a review of fishery interaction data from bottlenose dolphin strandings.

Other trap/pot fisheries in the Northeast, Mid-Atlantic, and South Atlantic use gear components similar to those used in the Northeast/Mid-Atlantic American lobster trap/pot fishery and the Atlantic blue crab trap/pot fishery, and therefore, may take marine mammals where fishing effort overlaps with marine mammal distribution. While the majority of records of entanglements in fixed gear cannot be attributed to a specific fishery, it is likely that some entanglements occurred in trap/pot fisheries other than lobster and blue crab trap/pot fisheries. These other trap/pot fisheries may occasionally result in incidental serious injury and mortality to marine mammals. Therefore, NMFS proposes to reclassify these fixed gear fisheries based on analogy with the Northeast/Mid-Atlantic American lobster trap/pot fishery and the Atlantic blue crab trap/pot fishery. NMFS does not believe that the rate of incidental

serious injury/mortality in non-lobster trap/pot fisheries would be at the Category I level because, while the exact number of participants is unknown, there are far fewer participants in these fixed gear fisheries than in the lobster fishery. Therefore, NMFS proposes to capture these other trap/pot fisheries in the newly named Atlantic mixed species trap/pot fishery and to classify this fishery as Category II.

Specifically, this fishery would combine the Category II Northeast trap/pot fishery, the Category III Mid-Atlantic mixed species trap/pot fishery, and the Category III U.S. Mid-Atlantic and Southeast U.S. Atlantic black sea bass trap/pot fishery and include any other trap/pot gear that is not included in other trap/pot fisheries specifically identified in the LOF. An estimate of the number of participants in the Atlantic mixed species trap/pot fishery is currently unavailable. The marine mammal species or stocks incidentally injured and killed in these trap/pot fisheries include the Western North Atlantic stock of fin whales, the Gulf of Maine stock of humpback whales, the Canadian east coast stock of Minke whales, and the Gulf of Maine/Bay of Fundy stock of harbor porpoise.

The Category I Northeast/Mid-Atlantic American lobster trap/pot fishery and the Category II Atlantic blue crab trap/pot fishery would retain their separate listings under the LOF. The Category III Florida spiny lobster trap/pot, Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot, and U.S. Mid-Atlantic eel trap/pot fisheries would remain as separate fisheries in Category III because the operation of these trap/pot fisheries does not overlap with right whale distribution and these particular fisheries are not known to interact with marine mammals except on rare occasions. The Southeastern U.S. Atlantic, Gulf of Mexico golden crab fishery would also remain a separate fishery in Category III because this fishery is a deep water fishery that does not use vertical buoy lines typically used in other trap/pot fisheries.

Gulf of Mexico Blue Crab Trap/Pot Fishery

NMFS continues to monitor incidental mortality and serious injury of marine mammals in the Gulf of Mexico blue crab trap/pot fishery. Initially, NMFS proposed to elevate the fishery to Category II in the 2001 LOF based on documented interactions with Gulf of Mexico stocks ofbottlenose dolphins. NMFS will continue to monitor this fishery while maintaining it in Category III in the 2003 LOF. Over the next year, NMFS will work with the Gulf States Marine Fisheries Commission and the National Sea Grant Extension Enhancement Program to improve data on bottlenose dolphin entanglements and to reduce incidental takes of bottlenose dolphins in this fishery by removing derelict traps and educating crabbers. NMFS will reevaluate this fishery in the 2004 LOF.

Gulf of Mexico Gillnet Fishery

NMFS proposes to elevate the Gulf of Mexico gillnet fishery to Category II. In the 2001 LOF (66 FR 42780, August 15, 2001), NMFS combined the Category III Gulf of Mexico inshore gillnet, Gulf of Mexico coastal gillnet, and Gulf of Mexico king and Spanish mackerel gillnet fisheries into one fishery named the ''Gulf of Mexico gillnet fishery.'' NMFS initially proposed to elevate this fishery to Category II based on documented interactions with Gulf of Mexico stocks of bottlenose dolphins. Ultimately, NMFS decided to reevaluate the available data and maintained the fishery in Category III in the 2001 LOF.

Estimates of incidental mortality and serious injury of marine mammals in this fishery are derived primarily from stranding data. Although gillnet effort has been declining in the Gulf of Mexico, a reevaluation of stranding data indicates that bottlenose dolphin strandings continue to occur in areas where gillnet fishing occurs. Because of the small population size of some of the dolphin stocks in the bays, sounds, and estuaries of the Gulf of Mexico, the PBR levels for these stocks are also low, and one interaction every few years can exceed the thresholds for Tier I and Category I and II levels. Based on analogy with other gillnet fisheries, the Atlantic Scientific Review Group's recommendation that NMFS elevate all gillnet fisheries to at least Category II unless there is evidence to the contrary, and the stranding data presented in the following Tier anlaysis, NMFS proposes to elevate the Gulf of Mexico gillnet fishery to Category II. There are approximately 724 participants in this fishery. The species or stocks incidentally injured and killed in this fishery include the Western, Northern, and Eastern Gulf of Mexico coastal stocks of bottlenose dolphins and the Gulf of Mexico Bay, Sound, and Estuarine stocks of bottlenose dolphins. Gulf of Mexico Bay, Sound, and Estuarine stocks of bottlenose dolphins have been broken down into a series of smaller stocks based on geographic area (e.g., Charlotte Harbor, Mississippi River Delta) given information that these bottlenose dolphins exhibit finely-scaled population structure and occur in relatively discrete communities throughout these areas. PBR levels have been calculated for each smaller stock where abundance estimates are available.

Tier 1 Evaluation: NMFS reviewed data from stranded bottlenose dolphins from the Gulf of Mexico that were necropsied and examined for signs of human interaction. Between 1997 and 2000, stranding network members in Gulf of Mexico states recovered 39 bottlenose dolphins from the Gulf of Mexico Bay, Sound, and Estuarine stocks (approximately 10 animals per year) that died as a result of human interactions. Of the 39 animals recovered, up to 12 showed evidence that gillnet interactions could have caused the resulting mortality. Of the 12 animals with signs of gillnet interaction, the cause of death of 5 of the animals was clearly attributable to gillnet gear. Therefore, gillnet gear accounted for the mortality of a minimum of 1.25 animals per year, averaged over the 4 years from 1997 to 2000. More specifically, the 5 dolphins were distributed in the following areas over a period of 4 years from 1997 to 2000: 1 from Charlotte Harbor (PBR = 1.5 animals per year) for an annual mortality of 17 percent of the PBR level; 2 from Mississippi Sound (PBR = 13 animals per year) for an annual mortality of 4 percent of the PBR level; and one each from the Mississippi River Delta and Vermillion Bay, where abundance estimates, and therefore the PBR levels, are unknown because no dolphins were sighted in surveys of those areas. Incidental mortality and serious injury of Charlotte Harbor bottlenose dolphins in this fishery alone exceeds 10 percent of the PBR level for this stock. Therefore, this fishery is subject to Tier 2 analysis.

Tier 2 Evaluation: The incidental mortality and serious injury of Charlotte Harbor bottlenose dolphins and Mississippi Sound bottlenose dolphins in the Gulf of Mexico gillnet fishery exceeds 1 percent of the PBR level, but is less than 50 percent of the PBR level, for each of these marine mammal stocks. Therefore, NMFS proposes to elevate this fishery to Category II.

Mid-Atlantic Coastal Gillnet Fishery

NMFS proposes to elevate the Mid-Atlantic coastal gillnet fishery to Category I as justified by the following tier analysis. Marine mammal species and stocks incidentally injured and killed by this fishery include: the Gulf of Maine stock of humpback whales, the Canadian east coast stock of Minke whales, the western North Atlantic (WNA) offshore and coastal stocks of bottlenose dolphin, the Gulf of Maine/

Bay of Fundy stock of harbor porpoise, the WNA stock of harbor seals, the WNA stock of harp seals, the WNA stocks of long-finned and short-finned pilot whales, the WNA stock of white-sided dolphin, and the WNA stock of common dolphin. There are approximately 655 participants in this fishery. The following tier analysis supports elevation of this fishery to Category I.

Tier 1 Evaluation: NMFS' observer program has documented incidental mortality and serious injury of the WNA coastal stock of bottlenose dolphins in the Mid-Atlantic coastal gillnet fishery. For management purposes, coastal bottlenose dolphins have been assigned to seven management units based on the results of genetic, stable isotope ratio, photo-identification, and telemetry studies. Incidental mortality and serious injury of the WNA coastal stock of bottlenose dolphins across all fisheries exceeds 10 percent of the PBR level for this stock of bottlenose dolphins. Therefore, this fishery is subject to Tier 2 analysis.

Tier 2 Evaluation: Annual incidental mortality and serious injury in the Mid-Atlantic coastal gillnet fishery has been estimated from observer coverage. The Mid-Atlantic coastal gillnet fishery causes an estimated incidental mortality and serious injury of 233 WNA coastal bottlenose dolphins per year, which exceeds the PBR (171 animals per year) for this stock. Because the annual incidental mortality and serious injury in the Mid-Atlantic coastal gillnet fishery exceeds 50 percent of the PBR for this stock, the fishery qualifies for reclassification as a Category I fishery.

Addition of Fisheries to the LOF

See discussion of U.S. Atlantic Trap/Pot Mixed Species Fishery.

Removals of Fisheries from the LOF

No changes proposed.

Fishery Name and Organizational ChangesNo changes proposed.

Number of Vessels/PersonsNo changes proposed.

List of Species that are Incidentally Injured or Killed

No changes proposed.

List of Fisheries

The following two tables list U.S. commercial fisheries according to their assigned categories under section 118 of the MMPA. The estimated number of vessels/participants is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the 1996 LOF is used.

The tables also list the marine mammal species and stocks that are incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fisher reports. This list includes all species or stocks known to experience injury or mortality in a given fishery, but also includes species or stocks for which there are anecdotal or historical, but not necessarily current, records of interaction. Additionally, species identified by logbook entries may not be verified. Therefore, not all species or stocks identified are the reason for a fishery's placement in a given category. There are a few fisheries that are in Category II that have no recently documented interactions with marine mammals. Justifications for placement of these fisheries are by analogy to other gear types that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995).

Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
Category I		
GILLNET FISHERIES:		
CA angel shark/halibut and other species (>3.5 in mesh) set gillnet	58	Harbor porpoise, central CA Common dolphin, short-beaked, CA/OR/WA Common dolphin, long-beaked CA California sea lion, U.S. Harbor seal, CA Northern elephant seal, CA breeding Sea otter, CA
Category II		
GILLNET FISHERIES:		
AK Bristol Bay salmon drift gillnet	1,903	Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific Harbor seal, Bering Sea Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Spotted seal, AK Pacific white-sided dolphin, North Pacific
AK Bristol Bay salmon set gillnet	1,014	Harbor seal, Bering Sea Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Northern fur seal, Eastern Pacific Spotted seal, AK
AK Kodiak salmon set gillnet	188	Harbor seal, GOA Harbor porpoise, GOA Sea otter, AK
AK Metlakatla/Annette Island salmon drift gillnet	60	None documented

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK Peninsula/Aleutian Islands salmon drift gillnet	164	Northern fur seal, Eastern Pacific Harbor seal, GOA Harbor porpoise, Bering Sea Dall's porpoise, AK
AK Peninsula/Aleutian Islands salmon set gillnet	116	Steller sea lion, Western U.S. Harbor porpoise, Bering Sea
AK Prince William Sound salmon drift gillnet	541	Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific Harbor seal, GOA Pacific white-sided dolphin, North Pacific Harbor porpoise, GOA Dall's porpoise, AK Sea Otter, AK
AK Southeast salmon drift gillnet	481	Steller sea lion, Eastern U.S. Harbor seal, Southeast AK Pacific white-sided dolphin, North Pacific Harbor porpoise, Southeast AK Dall's porpoise, AK Humpback whale, central North Pacific
AK Yakutat salmon set gillnet	170	Harbor seal, Southeast AK Gray whale, Eastern North Pacific
CA/OR thresher shark/swordfish drift gillnet (≥ 14 in. mesh)	113	Steller sea lion, Eastern U.S. Sperm whale, CA/OR/WA Dall's porpoise, CA/OR/WA Northern Pacific white-sided dolphin, CA/OR/WA Southern Pacific white-sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Bottlenose dolphin, CA/OR/WA offshore Short-beaked common dolphin CA/OR/WA Long-beaked common dolphin CA/OR/WA Northern right-whale dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA Baird's beaked whale, CA/OR/WA Mesoplodont beaked whale, CA/OR/WA Cuvier's beaked whale, CA/OR/WA Pygmy sperm whale, CA/OR/WA California sea lion, U.S. Northern elephant seal, CA breeding Humpback whale, CA/OR/WA-Mexico Minke whale, CA/OR/WA Striped dolphin, CA/OR/WA Killer whale, CA/OR/WA Pacific coast Northern fur seal, San Miguel Island
CA yellowtail, barracuda, white seabass, and tuna drift gillnet fishery (mesh size >3.5 inches and <14 inches).	24	None documented
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line Treaty Indian fishing is excluded).	725	Harbor porpoise, inland WA Dall's porpoise, CA/OR/WA Harbor seal, WA inland
PURSE SEINE FISHERIES:		
AK Southeast salmon purse seine	416	Humpback whale, central North Pacific
CA anchovy, mackerel, tuna purse seine	150	Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Harbor seal, CA
CA squid purse seine	65	Short-finned pilot whale, CA/OR/WA

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
TRAWL FISHERIES:		
AK Bering Sea and Aleutian Islands Groundfish Trawl	157	Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient Pacific white-sided dolphin, North Pacific Harbor porpoise, Bering Sea Harbor seal, Bering Sea Bearded seal, AK Ringed seal, AK Spotted seal, AK Dall's porpoise, AK Ribbon seal, AK Northern elephant seal, CA breeding Sea otter, AK Pacific walrus, AK Humpback whale, Central North Pacific Humpback whale, Western North Pacific Fin whale, Northeast Pacific
AK miscellaneous finfish pair trawl	2	None documented
LONGLINE FISHERIES:		
California pelagic longline	30	California sea lion
OR swordfish floating longline	2	None documented
OR blue shark floating longline	1	None documented
Category III		
GILLNET FISHERIES:		
AK Cook Inlet salmon drift gillnet	576	Steller sea lion, Western U.S. Harbor seal, GOA Harbor porpoise, GOA Dall's porpoise, AK Beluga whale, Cook Inlet
AK Cook Inlet salmon set gillnet	745	Steller sea lion, Western U.S. Harbor seal, GOA Harbor porpoise, GOA Dall's porpoise, AK Beluga whale, Cook Inlet
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,922	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	30	Steller sea lion, Western U.S. Harbor seal, GOA
AK roe herring and food/bait herring gillnet	2,034	None documented
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less.	341	None documented
Hawaii gillnet	115	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet.	913	None documented
WA, OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	3	None documented
AK octopus/squid purse seine	2	None documented
AK roe herring and food/bait herring beach seine	8	None documented
AK roe herring and food/bait herring purse seine	624	None documented
AK salmon beach seine	34	None documented
AK salmon purse seine (except Southeast Alaska, which is in Category II).	953	Harbor seal, GOA
CA herring purse seine	100	California sea lion, U.S. Harbor seal, CA
CA sardine purse seine	120	None documented
HI opelu/akule net	16	None documented
HI purse seine	18	None documented
HI throw net, cast net	47	None documented

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
WA (all species) beach seine or drag seine	235	None documented
WA, OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA, OR smelt, herring dip net	119	None documented
MARINE AQUACULTURE FISHERIES:		
CA salmon enhancement rearing pen	>1	None documented
OR salmon ranch	1	None documented
WA, OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
TROLL FISHERIES:		
AK North Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.	1,530 (330 AK)	None documented
AK salmon troll	2,335	Steller sea lion, Western U.S. Steller sea lion, Eastern U.S.
American Samoa tuna troll	<50	None documented
CA/OR/WA salmon troll	4,300	None documented
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented
Guam tuna troll	50	None documented
HI net unclassified	106	None documented
HI trolling, rod and reel	1,795	None documented
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands groundfish longline/set line (federally regulated waters, including miscellaneous finfish and sablefish).	148	Northern elephant seal, CA breeding Killer whale, Eastern North Pacific resident Killer whale, transient Steller sea lion, Western U.S. Pacific white-sided dolphin, North Pacific Dall's porpoise, AK Harbor seal, Bering Sea
AK Gulf of Alaska groundfish longline/set line (federally regulated waters, including miscellaneous finfish and sablefish).	1,030	Steller sea lion, Western U.S. Harbor seal, Southeast AK Northern elephant seal, CA breeding
AK halibut longline/set line (State and Federal waters)	3,079	Steller sea lion, Western U.S.
AK octopus/squid longline	7	None documented
AK state-managed waters groundfish longline/setline (including sablefish, rockfish, and miscellaneous finfish).	731	None documented
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line.	140	Humpback whale, Central North Pacific False killer whales, HI Risso's dolphin, HI Bottlenose dolphin, HI Spinner dolphin, HI Short-finned pilot whale, HI Sperm whale, HI
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented
WA, OR North Pacific halibut longline/set line	350	None documented
TRAWL FISHERIES:		
AK food/bait herring trawl	3	None documented
AK Gulf of Alaska groundfish trawl	145	Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific Harbor seal, GOA Dall's porpoise, AK Northern elephant seal, CA breeding Fin whale, Northeast Pacific
AK miscellaneous finfish otter or beam trawl	6	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	58	None documented
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl	2	None documented
WA, OR, CA groundfish trawl	585	Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific Pacific white-sided dolphin, central North Pacific Dall's porpoise, CA/OR/WA California sea lion, U.S. Harbor seal, OR/WA coast
WA, OR, CA shrimp trawl	300	None documented
POT, RING NET, AND TRAP FISHERIES:		
AK Bering Sea, Gulf of Alaska finfish pot	314	Harbor seal, GOA Harbor seal, Bering Sea Sea otter, AK
AK crustacean pot	1,852	Harbor porpoise, Southeast AK

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK octopus/squid pot	72	None documented
AK snail pot	2	None documented
CA lobster, prawn, shrimp, rock crab, fish pot	608	Sea otter, CA
OR, CA hagfish pot or trap	25	None documented
WA, OR, CA crab pot	1,478	None documented
WA, OR, CA sablefish pot	176	None documented
WA, OR shrimp pot & trap	254	None documented
HI crab trap	22	None documented
HI fish trap	19	None documented
HI lobster trap	15	Hawaiian monk seal
HI shrimp trap	5	None documented
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline and mechanical jig	100	None documented
AK North Pacific halibut handline and mechanical jig	93	None documented
AK octopus/squid handline	2	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	<50	None documented
HI aku boat, pole and line	54	None documented
HI deep sea bottomfish	434	Hawaiian monk seal
Hi inshore handline	650	Bottlenose dolphin, HI
HI tuna	144	Rough-toothed dolphin, HI Bottlenose dolphin, HI Hawaiian monk seal
WA groundfish, bottomfish jig	679	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	228	None documented
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	452	None documented
AK Southeast herring roe/food/bait pound net	3	None documented
WA herring brush weir	1	None documented
BAIT PENS:		
WA/OR/CA bait pens	13	None documented
DREDGE FISHERIES:		
Coastwide scallop dredge	108 (12 AK)	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	1	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK dungeness crab	3	None documented
AK herring spawn on kelp	363	None documented
AK urchin and other fish/shellfish	471	None documented
CA abalone	111	None documented
CA sea urchin	583	None documented
HI coral diving	2	None documented
HI fish pond	10	None documented
HI handpick	135	None documented
HI lobster diving	6	None documented
HI squiding, spear	267	None documented
WA, CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection.	637	None documented
WA shellfish aquaculture	684	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK, WA, OR, CA commercial passenger fishing vessel	>7,000 (1,107 AK)	None documented
HI ''other''	114	None documented
LIVE FINFISH/SHELLFISH FISHERIES:		
CA finfish and shellfish live trap/hook-and-line	93	None documented

List of Abbreviations Used in Table 1: AK--Alaska; CA--California; GOA-- Gulf of Alaska; HI--Hawaii; OR--Oregon; WA--Washington.

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Category I		
GILLNET FISHERIES:		
Mid-Atlantic coastal gillnet	>655	Humpback whale, Gulf of Maine Minke whale, Canadian east coast Bottlenose dolphin, WNA offshore Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA Common dolphin, WNA
Northeast sink gillnet	341	North Atlantic right whale, WNA Humpback whale, WNA Minke whale, Canadian east coast Killer whale, WNA White-sided dolphin, WNA Bottlenose dolphin, WNA offshore Harbor porpoise, GME/BF Harbor seal, WNA Gray seal, WNA Common dolphin, WNA Fin whale, WNA Spotted dolphin, WNA False killer whale, WNA Harp seal, WNA
LONGLINE FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline	<200	Humpback whale, WNA Minke whale, Canadian east coast Risso's dolphin, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA Common dolphin, WNA Atlantic spotted dolphin, WNA Pantropical spotted dolphin, WNA Striped dolphin, WNA Bottlenose dolphin, WNA offshore Bottlenose dolphin, GMX Outer Continental Shelf Bottlenose dolphin, GMX Continental Shelf Edge and Slope Atlantic spotted dolphin, Northern GMX Pantropical spotted dolphin, Northern GMX Risso's dolphin, Northern GMX Harbor porpoise, GME/BF
TRAP/POT FISHERIES:		
Northeast/Mid-Atlantic American lobster trap/pot	13,000	North Atlantic right whale, WNA Humpback whale, WNA Fin whale, WNA Minke whale, Canadian east coast Harbor seal, WNA
TRAWL FISHERIES:		
Atlantic squid, mackerel, butterfish trawl	620	Common dolphin, WNA Risso's dolphin, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA
Category II		
GILLNET FISHERIES:		
Gulf of Mexico gillnet	724	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, and Estuarine
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal
Northeast anchored float gillnet	133	Humpback whale, WNA White-sided dolphin, WNA Harbor seal, WNA
Northeast drift gillnet	unknown	None documented
Southeast Atlantic gillnet	779	Bottlenose dolphin, WNA coastal

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Southeastern U.S. Atlantic shark gillnet	12	Bottlenose dolphin, WNA coastal North Atlantic right whale, WNA Atlantic spotted dolphin, WNA
TRAWL FISHERIES:		
Atlantic herring midwater trawl (including pair trawl)	17	Harbor seal, WNA
TRAP/POT FISHERIES:		
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal West Indian manatee, FL
Atlantic mixed species trap/pot	unknown	Fin whale, WNA Humback whale, Gule of Maine Minke whale, Canadian east coast Harbor porpoise, GME/BF
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF
North Carolina long haul seine	33	Bottlenose dolphin, WNA coastal
STOP NET FISHERIES:		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal
POUND NET FISHERIES:		
Virginia pound net	187	Bottlenose dolphin, WNA coastal
Category III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
Chesapeake Bay inshore gillnet	45	Harbor porpoise, GME/BF
Delaware Bay inshore gillnet	60	Humpback whale, WNA Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF
Long Island Sound inshore gillnet	20	Humpback whale, WNA Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet.	32	Humpback whale, WNA Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF
TRAWL FISHERIES:		
Calico scallops trawl	12	None documented
Crab trawl	400	None documented
Georgia, South Carolina, Maryland whelk trawl	25	None documented
Gulf of Maine, Mid-Atlantic sea scallop trawl	215	None documented
Gulf of Maine northern shrimp trawl	320	None documented
Gulf of Mexico butterfish trawl	2	Atlantic spotted dolphin, Eastern GMX Pantropical spotted dolphin, Eastern GMX
Gulf of Mexico mixed species trawl	20	None documented
Mid-Atlantic mixed species trawl	>1,000	None documented
North Atlantic bottom trawl	1,052	Long-finned pilot whale, WNA Short-finned pilot whale, WNA Common dolphin, WNA White-sided dolphin, WNA Striped dolphin, WNA Bottlenose dolphin, WNA offshore
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, WNA coastal
U.S. Atlantic monkfish trawl	unknown	Common dolphin, WNA
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	30	Harbor porpoise, GME/BF Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
Mid-Atlantic menhaden purse seine	22	Bottlenose dolphin, WNA coastal Humpback whale, WNA
U.S. Atlantic tuna purse seine	unknown	None documented
U.S. Mid-Atlantic hand seine	>250	None documented

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
LONGLINE/HOOK-AND-LINE FISHERIES:		
Gulf of Maine tub trawl groundfish bottom longline/ hook-and-line	46	Harbor seal, WNA Gray seal, Northwest North Atlantic Humpback whale, WNA
Gulf of Maine, U.S. Mid-Atlantic tuna, shark, swordfish hook-and-line/harpoon.	26,223	Humpback whale, WNA
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line.	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/ hook-and-line.	124	None documented
Southeastern U.S. Atlantic, Gulf of Mexico, U.S. Mid-Atlantic pelagic hook-and-line/harpoon.	1,446	None documented
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
Florida spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern Gulf of Mexico coastal
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine West Indian manatee, FL
Gulf of Mexico mixed species trap/pot	unknown	None documented
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	None documented
U.S. Mid-Atlantic eel trap/pot	>700	None documented
STOP SEINE/WEIR/POUND NET FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	North Atlantic right whale, WNA Humpback whale, WNA Minke whale, Canadian east coast Harbor porpoise, GME/BF Harbor seal, WNA Gray seal, Northwest North Atlantic
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/ pound net (except the North Carolina roe mullet stop net).	751	None documented
DREDGE FISHERIES:		
Gulf of Maine mussel	>50	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented
Southeastern U.S. Atlantic, haul/beach seine	25	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	unknown	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	None documented

List of Abbreviations Used in Table 2: FL--Florida; GA--Georgia; GME/BF-- Gulf of Maine/Bay of Fundy; GMX--Gulf of Mexico; NC--North Carolina; SC-- South Carolina; TX--Texas; WNA--Western North Atlantic.

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have a significant economic impact on a substantial number of small entities. For convenience, the factual basis leading to the certification is repeated below.

Under existing regulations, all fishers participating in Category I or II fisheries must register under the MMPA, obtain an Authorization Certificate, and pay a fee of $25. The Authorization Certificate authorizes the taking of marine mammals incidental to commercial fishing operations. NMFS has estimated that approximately 40,000 fishing vessels operate in Category I or II fisheries, and therefore, are required to register. However, registration has been integrated with existing state or Federal registration programs for the majority of these fisheries so that the majority of fishers do not need to register separately under the MMPA. Currently, approximately 5,800 fishers register directly with NMFS under the MMPA authorization program.

An additional 935 fishers would be eligible to register as a result of this proposed rule. However, these fishers may already participate in Category I or II fisheries for which they currently register under the MMPA or participate in Federal or state fisheries with integrated registration programs, such as fisheries in Alaska, and therefore, would not be required to register separately under the MMPA or pay an additional $25 registration fee. Fisheries that this rule proposes to elevate to Category II and whose participants would be required to register include the Alaska Bering Sea and Aleutian Islands Groundfish Trawl fishery (157 participants) and the Gulf of Mexico gillnet fishery (724 participants). Addition of the California yellowtail, barracuda, white seabass, tuna drift gillnet fishery (mesh size > 3.5 in. and < 14 in.) to the LOF as a Category II fishery would require 24 additional participants to register. Addition of the Atlantic mixed species trap/pot fishery to the LOF as a Category II fishery, which involves combining the Northeast trap/pot fishery (already Category II), the Mid-Atlantic mixed species trap/pot fishery, and the U.S. Mid-Atlantic and Southeast U.S. Atlantic black seabass trap/pot fishery would require at least an additional 30 participants to register since it would require elevating the Mid-Atlantic mixed species trap/pot fishery (number of participants unknown) and the U.S. Mid-Atlantic and Southeast U.S. Atlantic black seabass trap/pot fishery (30 participants) to Category II.

Though this rule affects a substantial number of small entities, the $25 registration fee, with respect to anticipated revenues, is not considered a significant economic impact. As a result of this certification, an initial regulatory flexibility analysis was not prepared.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of fishers under the MMPA has been approved by the OMB under OMB control number 0648-0293 (0.25 hours per report for new registrants and 0.15 hours per report for renewals). The requirement for reporting marine mammal injuries or moralities has been approved by OMB under OMB control number 0648-0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA (1995 EA). The 1995 EA concluded that implementation of those regulations would not have a significant impact on the human environment. This proposed rule would not make any significant change in the management of reclassified fisheries, and therefore, this proposed rule is not expected to change the analysis or conclusion of the 1995 EA. If NMFS takes a management action, for example, through the development of a Take Reduction Plan (TRP), NMFS will first prepare an environmental document as required under NEPA specific to that action.

This proposed rule will not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this proposed rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would conduct consultation under section 7 of the ESA for that action.

This proposed rule will have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs or take reduction teams.

This proposed rule will not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

Dated: January 03, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–523 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 021113274–2274–01; I.D. 031501A]

RIN 0648–AO79

Atlantic Highly Migratory Species; Exempted Fishing Activities: Reopening of Comment Period

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

ACTION: Proposed rule; reopening of comment period.

SUMMARY: NMFS is reopening the deadline for filing comments on the proposed rule published December 6, 2002, which would modify existing exempted fishing regulations for Atlantic highly migratory species (HMS). Comments are currently due to be filed by 5 p.m. eastern standard time, on January 6, 2003. The comment period is being reopened to comply with requests submitted by a number of constituents who potentially could be affected by the proposed rule.

DATES: The effective data for reopening the comment period is January 10, 2003 through March 17, 2003. Comments must be received by 5 p.m. eastern standard time, on March 17, 2003.

ADDRESSES: Written comments on the proposed rule should be submitted to Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments regarding the collection-of-information requirement contained in this proposed rule should be sent to the Highly Migratory Species Management Division (F/SF1), 1315 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer). Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: Sari Kiraly or Heather Stirratt at 301–713–2347, fax 301–713–1917, e-mail *Sari.Kiraly@noaa.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was published on December 6, 2002 (67 FR 72629).

Subsequently, a public hearing was held on December 17, 2002, in Orlando, Florida. At the public hearing and in written correspondence a number of constituents who potentially could be affected by the proposed rule requested that the comment period be extended. This is to allow more time for preparing comments in response to the proposed rule. To that effect, the comment period is reopened until March 17, 2003.

Dated: January 6, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–520 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 7
Friday, January 10, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 03–001–1]

Declaration of Extraordinary Emergency Because of Exotic Newcastle Disease

Exotic Newcastle disease (END) has been confirmed in the State of California. The disease has been confirmed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption, and in commercial poultry.

END is a contagious and fatal viral disease affecting domestic, wild, and caged poultry and birds. It is one of the most infectious diseases of poultry in the world, and is so virulent that many birds die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry. This disease in poultry and birds is characterized by respiratory signs accompanied by nervous manifestations, gastrointestinal lesions, and swelling of the head.

END is spread primarily through direct contact between healthy birds or poultry and the bodily discharges of infected birds or poultry. Within an infected flock, END is transmitted by direct contact, contaminated feeding and watering equipment, and aerosols produced by coughing, gasping, and other respiratory disturbances. Dissemination between flocks over long distances is often due to movement of contaminated equipment and service personnel, such as vaccination crews. Movement of carrier birds and those in an incubating stage accounts for most of the outbreaks in the pet bird industry.

The existence of END in California represents a threat to the U.S. poultry and bird industries. It constitutes a real danger to the national economy and a potential serious burden on interstate and foreign commerce. The Department has reviewed the measures being taken by California to control and eradicate END and has consulted with the appropriate State Government and Indian tribal officials in California. Based on such review and consultation, the Department has determined that the measures being taken by the State are inadequate to control or eradicate END. Therefore, the Department has determined that an extraordinary emergency exists because of END in California.

This declaration of extraordinary emergency authorizes the Secretary to (1) hold, seize, treat, apply other remedial actions to, destroy (including preventative slaughter), or otherwise dispose of, any animal, article, facility, or means of conveyance if the Secretary determines the action is necessary to prevent the dissemination of END and (2) prohibit or restrict the movement or use within the State of California, or any portion of the State of California, of any animal or article, means of conveyance, or facility if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of END. The appropriate State Government and Indian tribal officials in California have been informed of these facts.

Effective Date: This declaration of extraordinary emergency shall become effective January 6, 2003.

Ann M. Veneman,
Secretary of Agriculture.

[FR Doc. 03–492 Filed 1–9–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman Report, (5) Status of Project Proposals, (6) Update on Approved Projects, (7) Follow Up Presentation/Sunflower CRMP (8) General Discussion, (9) House Committee Report.

DATES: The meeting will be held on January 9, 2003 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by January 7, 2003 will have the opportunity to address the committee at those sessions.

Dated: January 6, 2003.

James F. Giachino,
Designated Federal Official.

[FR Doc. 03–481 Filed 1–9–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, (USDA).

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss project development for 2003 and project updates for 2002. Agenda topics will include electing a chairperson for 2003, project proposal form modifications, and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and

Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on January 28, 2003, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *jmhiggins@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: January 6, 2003.

David T. Bull,

Forest Supervisor.

[FR Doc. 03–487 Filed 1–9–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, (USDA).

ACTION: Notice of resource advisory committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination ACt of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, January 20, 2003. The Madera Resource Advisory Committee will meet at the U.S.D.A. Forest Service Office, 57003 Road 225, North Fork, CA. The purpose of the meeting is to update RAC committee outreach and RAC Proposal presentations.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, January 20, 2003. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the U.S.D.A. Forest Service Office, 57003 Road 225, North Fork, CA.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, 57003 Road 225, North Fork, CA, 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) update RAC committee outreach, and (2) RAC Proposal presentations. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 3, 2002.

David W. Martin,

District Ranger.

[FR Doc. 03–488 Filed 1–9–02; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed collection; comment request.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the annual certifications of nonprofit agencies serving people who have severe disabilities (Committee Form 404).

DATES: Comments must be submitted on or before February 10, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen F. Lee, Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or be electronically e-mailed to *Karen_F._Lee@omb.eop.gov*. Requests for copies of documents pertaining to the collection should be addressed to Committee for Purchase From People Who Are Blind or Severely Disabled, Attention: Janet Yandik, Information Management Specialist, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259 or e-mailed to *jyandik@jwod.gov*.

SUPPLEMENTARY INFORMATION: The Committee has an annual certification form for nonprofit agencies serving people who have severe disabilities (Committee Form 404, OMB Control Number 3037–0002.)

Information on the form is needed to ensure that nonprofit agencies serving people who have severe disabilities, that participate in the Javits-Wagner-O'Day program, continue to meet the requirements of 41 U.S.C. 46–48c.

Committee Form 404 has been modified to add the following items:

1. In Section 5, Certification: A line will be added for the Agency Executive's email address.

2. In Section 7, Data for Work Performed under Javits-Wagner-O'Day (JWOD) Act Only: A line will be added to count the number of people who are severely disabled, who worked on JWOD products and the number of people who are severely disabled who worked on JWOD services.

3. In Section 8, Placement and Promotion of People With Severe Disabilities: A third column will be added entitled ''Direct Placement'' to account for individuals placed into competitive or supported employment, but cannot currently be accounted for under the JWOD and NON-JWOD categories.

4. In Section 9, Sales Data: A block will be added to collect sales data from Base Supply Centers separate from the service sales.

Sheryl D. Kennerly,

Director of Information Management.

[FR Doc. 03–506 Filed 1–9–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Proposed collection; comment request.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 30 days for public comment in response to the notice. This notice solicits comments on requirements relating to the annual certifications of

nonprofit agencies serving people who are blind (Committee Form 403).

DATES: Comments must be submitted on or before February 10, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen F. Lee, Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or be electronically e-mailed to *Karen_F._Lee@omb.eop.gov*. Requests for copies of documents pertaining to the collection should be addressed to Committee for Purchase From People Who Are Blind or Severely Disabled, Attention: Janet Yandik, Information Management Specialist, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259 or e-mailed to *jyandik@jwod.gov*.

SUPPLEMENTARY INFORMATION: The Committee has an annual certification form for nonprofit agencies serving people who are blind (Committee Form 403, OMB Control Number 3037–0001.)

Information on the form is needed to ensure that nonprofit agencies serving people who are blind, that participate in the Javits-Wagner-O'Day program, continue to meet the requirements of 41 U.S.C. 46–48c.

Committee Form 403 has been modified to add the following items:

1. In Section 5, Certification: A line will be added for the Agency Executive's email address.

2. In Section 7, Data for Work Performed under Javits-Wagner-O'Day (JWOD) Act Only: A line will be added to count the number of people who are blind, who worked on JWOD products and the number of people who are blind who worked on JWOD services.

3. In Section 8, Placement and Promotion of People Who Are Blind: A third column will be added entitled ''Direct Placement'' to account for individuals placed into competitive or supported employment, but cannot currently be accounted for under the JWOD and NON-JWOD categories.

4. In Section 9, Sales Data: A block will be added to collect sales data from Base Supply Centers separate from the service sales.

Sheryl D. Kennerly,

Director of Information Management.

[FR Doc. 03–507 Filed 1–9–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received On or Before: February 9, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Base Supply Center, Oceana Naval Air Station, Virginia Beach, Virginia.

NPA: Virginia Industries for the Blind, Charlottesville, Virginia.

Contract Activity: Fleet and Industries Supply Center, Norfolk, Virginia.

Service Type/Location: Grounds Maintenance, Naval & Marine Corps Reserve Center-Sacramento, Sacramento, California.

NPA: Easter Seal Society of Superior California, Sacramento, California.

Contract Activity: Naval Facilities Engineering Command, Alameda, California.

Service Type/Location: Janitorial/Custodial, U.S. Property and Fiscal Office Offices, Building 01, U.S. Property and Fiscal Warehouse, Building 02, Combined Support Maintenance Shop, Building 04.

NPA: Challenge Unlimited, Inc., Alton, Illinois.

Contract Activity: Illinois Air National Guard, Springfield, Illinois.

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Cincinnati, Ohio.

NPA: CRI, Inc., Cincinnati, Ohio.

Contract Activity: HQ, 88th Regional Support Command, Fort Snelling, Minnesota.

Service Type/Location: Janitorial/Custodial, U.S. Coast Guard Cutter Aspen, Yerba Buena Island, San Francisco, California.

NPA: Toolworks, Inc., San Francisco, California.

Contract Activity: U.S. Coast Guard Integrated Support Command, Alameda, California.

Service Type/Location: Janitorial/Custodial, USCG, Sandy Hook Detachment, Highlands, New Jersey.

NPA: Monmouth Center for Vocational Rehabilitation, Eatontown, NJ.

Contract Activity: USCG Activities New York, Staten Island, New York.

Service Type/Location: Janitorial/Custodial, VA Medical Center—1st Floor, Indianapolis, Indiana.

NPA: GW Commercial Services, Inc., Indianapolis, Indiana.

Contract Activity: VA Medical Center, Indianapolis, Indiana.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–504 Filed 1–9–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to the procurement list products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the procurement list products previously furnished by such agencies.

EFFECTIVE DATE: February 9, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On August 30, October 4, November 1, and November 15, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 55776, 62224, 66607, and 69186) of proposed additions to the procurement list.

The following comments pertain to highlighters, fluorescent and free-ink.

Comments were received from the current contractor in response to a request for sales data. While admitting that the items proposed for addition to the procurement list represent a very small part of the company's sales, the contractor noted that it had recently been affected by another addition to the procurement list, and that the company has been on a Federal supply schedule for these items for nearly 20 years. The contractor stated that it would be very difficult to recover from these impacts in the current business environment, with government purchasers bundling contracts and closing supply depots. The contractor also noted that stores operated on Federal installations by nonprofit agencies in the Committee's program compete with small companies like the contractor. The contractor did not provide data on the extent of sales lost to these stores.

The impact of the current and recent procurement list addition mentioned by the contractor together amount to only a very small percentage of the contractor's total sales. In addition, the contractor will retain its current Federal supply schedule contract until it expires in 2005. The schedule in question is a multiple award schedule, so the contractor is guaranteed only a minimum amount of sales and must compete for the rest with other schedule holders. Therefore, the contractor's longtime status as a schedule contractor and the sales it may have lost to the Federal installation stores do not add much weight to the impacts which the Committee has considered in deciding that this procurement list addition will not have a severe adverse impact on the contractor.

The following comments pertain to can, friction top and container, fuel sample.

Comments were received from the current contractor in response to a request for sales information. The commenter stated that the items proposed for addition to the procurement list represented a significant minority of the gross revenues the commenter is receiving on this specific contract. The commenter also stated that that individual packaging of the items is the most difficult and expensive part of the production process, and requested that it be allowed an opportunity to supply the unfinished items to the nonprofit agency designated by the Committee to provide them to the government.

The Committee looks to a company's total sales, not to revenues on a specific contract, when assessing the severity of the impact of a procurement list addition on a contractor. In this case, the contract value of the items being added to the procurement list represents a very small portion of the commenter's total sales. The designated nonprofit agency will be buying the unfinished items from the same source as the commenter did, so it would not be economically feasible to involve the commenter in the purchase, as the presence of the commenter in the chain of transactions would likely only increase the cost of the items.

The Following Material Pertains to All of the Items Being Added to the Procurement List

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the government.

2. The action will result in authorizing small entities to furnish the products and services to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the procurement list.

Accordingly, the following products and services are added to the procurement list:

Products

Product/NSN: Bag, trash, cloth, 2090–01–478–3561.

NPA: West Texas Lighthouse for the Blind, San Angelo, Texas.

Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.

Product/NSN: Binder, looseleaf, 7510–01–368–3486, 7510–01–412–6338.

NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: Can, friction top, 8110–00–178–8291, 8110–00–178–8292.

NPA: East Texas Lighthouse for the Blind, Tyler, Texas.

Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Product/NSN: Container fuel sample, 8110–01–371–8315.

NPA: East Texas Lighthouse for the Blind, Tyler, Texas.

Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Product/NSN: Highlighter, fluorescent, flat, 7520–00–NIB–1620, 7520–01–238–1728.

NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: Highlighters, free-ink, flat, 7520–00–NIB–1625, 7520–00–NIB–1630, 7520–00–NIB–1631.

NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: U.S. Geological Survey visual identity clothing, Baseball cap, delta dark green w/USGS identifier/8405–00–NIB–0182, Baseball cap, navy w/USGS identifier/8405–00–NIB–0183, T-shirt, ash w/USGS identifier/8415–00–NIB–0229, T-shirt, orange w/USGS identifier/8415–00–NIB–0230, T-shirt, navy blue w/USGS identifier/8415–00–NIB–0231, Polo shirt, dark green w/USGS identifier/8415–00–NIB–0232, Sweatshirt, dark green w/USGS identifier/8415–00–NIB–0233, Cruiser vest, orange w/USGS identifier/8465–00–NIB–0098, Cruiser vest, khaki w/USGS identifier/8465–00–NIB–0099.

NPA: Delaware Division for the Visually Impaired, New Castle, Delaware.

Contract Activity: U.S. Geological Survey, Reston, Virginia.

Services

Service Type/Location: Janitorial and mailroom operations, Environmental Protection Agency, Environmental Science Center, Fort Meade, Maryland.

NPA: Goodwill Industries of the Chesapeake, Inc., Baltimore, Maryland.

Contract Activity: Environmental Protection Agency, Philadelphia, Pennsylvania.

Service Type/Location: Janitorial/custodial, U.S. Army Reserve Center, Pewaukee, Wisconsin.

NPA: Milwaukee Center for Independence, Inc., Milwaukee, Wisconsin.

Contract Activity: HQ, 88th Regional Support Command, Fort Snelling, Minnesota.

Service Type/Location: Office Supply Center, Richard Bolling Federal Building, Kansas City, Missouri.

NPA: Alphapointe Association for the Blind, Kansas City, Missouri.

Contract Activity: U.S. Army Corps of Engineers, Kansas City, Missouri.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the products to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the procurement list.

After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following products are deleted from the procurement list:

Products

Product/NSN: Card set, guide, file, 7530–00–861–1263, 7530–00–861–1272.

NPA: Georgia Industries for the Blind, Bainbridge, Georgia.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: Disk, flexible, 7045–01–251–7527, 7045–01–365–2070, 7045–01–365–2071, 7045–01–209–2193.

NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.

Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Product/NSN: Strap assembly, litter, 1680–00–878–6964.

NPA: Huntsville Rehabilitation Foundation, Huntsville, Alabama.

Contract Activity: Defense Supply Center Richmond, Richmond, Virginia.

Product/NSN: Tape, computer, 7045–01–119–6357.

NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.

Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.

Product/NSN: Tape, electronic data processing, 7045–01–338–6542.

NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.

Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–505 Filed 1–9–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588–847]

Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order in Part: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review and intent to revoke order in part.

SUMMARY: In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), and section 351.216(b) of the Department of Commerce's (the Department's) regulations, NKK Corporation (NKK) and Mitsubishi International Steel, Inc. (MISI) filed a request for a changed circumstances review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (CTL plate) from Japan. Specifically, NKK and MISI request that the Department revoke the antidumping duty order with respect to two abrasion-resistant steel products produced by NKK that are described below. The domestic industry has affirmatively expressed no interest in the continuation of the order with respect to these products. In response to the request, the Department is initiating a changed circumstances review and issuing a notice of intent to revoke, in part, the antidumping duty order on CTL plate from Japan. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 10, 2003.

FOR FURTHER INFORMATION CONTACT: Jack K. Dulberger or Mark Manning, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5505 and (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 2002, NKK and MISI requested that the Department revoke the antidumping duty order on CTL plate from Japan with respect to two abrasion-resistant steel products produced by NKK: ''NK-EH-360 (NK Everhard 360)'' and ''NK-EH-500 (NK Everhard 500).'' *See* NKK's and MISI's letter to the Secretary, dated November 27, 2002 (Changed Circumstances Review Request). Specifically, NKK and MISI request that the Department revoke the order with respect to imports meeting the following detailed product descriptions: (1) NK-EH-360: a) Physical Properties: thickness ranging from 6–50 mm, Brinell Hardness: 361 min.; b) Heat Treatment: controlled heat treatment; and c) Chemical Composition (percent weight): C: 0.20 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max.,

Cr: 0.40 max., Ti: 0.005–0.020, B: 0.004 max; and (2) NK-EH-500: a) Physical Properties: thickness ranging from 6–50 mm, Brinell Hardness: 477 min.; b) Heat Treatment: controlled heat treatment; and c) Chemical Composition (percent weight): C: 0.35 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.80 max., Ti: 0.005–0.020, B: 0.004 max. *See* Changed Circumstances Review Request at 2. The order with regard to imports of other CTL plate from Japan is not affected by this request.

On December 17 and 18, 2002, Bethlehem Steel Corporation, IPSCO Steel Inc., Nucor Corporation, and United States Steel Corporation, producers of the domestic like product and, with the exception of Nucor Corporation, petitioners in the antidumping duty investigation of CTL plate from Japan, stated that they do not object to the exclusion of these two NKK products from the scope of the order. *See* Memorandum to the File from Jack Dulberger, dated December 19, 2002, which is on file in Import Administration's Central Records Unit, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room B-099, Washington, DC 20230.

Scope of the Order

The products covered by this antidumping duty order are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of the order are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')-for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of the order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to the order is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise covered by the order is dispositive.

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke, in Part

Section 751(d)(1) of the Act and section 351.222 (g) of the Department's regulations provide that the Department may revoke an antidumping or countervailing duty order, in whole or in part, after conducting a changed circumstances review and concluding from the available information that changed circumstances sufficient to warrant revocation or termination exist. The Department may conclude that changed circumstances sufficient to warrant revocation (in whole or in part) exist when producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the order, in whole or in part. *See* section 782(h) of the Act and section 351.222 (g)(1) of the Department's regulations. Based on affirmative statements by domestic producers of the like product, Bethlehem Steel Corporation, IPSCO Steel Inc., Nucor Corporation, and United States Steel Corporation, no interest exists in continuing the order with respect to the abrasion-resistant steel products (*i.e.*, NK-EH-360 and NK-EH-500) that meet the specifications listed above in the ''Background'' section of this notice.

Therefore, we are hereby notifying the public of our intent to revoke, in part, the antidumping duty order on CTL plate from Japan with respect to imports of two abrasion-resistant steel products (*i.e.*, NK-EH-360 and NK-EH-500) that meet the above-mentioned specifications. We intend to modify the scope of the order on CTL plate from Japan to read as follows:

The products covered by this antidumping duty order are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of these orders are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is

achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')-for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of these orders are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these orders unless otherwise specifically excluded. The following products are specifically excluded from these orders: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500, NK-EH-360 (NK Everhard 360), NK-EH-500 (NK Everhard 500)). (NK-EH-360 has the following specifications: a) Physical Properties: thickness ranging from 6–50 mm, Brinell Hardness: 361 min.; b) Heat Treatment: controlled heat treatment; and c) Chemical Composition (percent weight): C: 0.20 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.40 max., Ti: 0.005–0.020, B: 0.004 max. NK-EH-500 has the following specifications: a) Physical Properties: thickness ranging from 6–50 mm, Brinell Hardness: 477 min.; b) Heat Treatment: controlled heat treatment; and c) Chemical Composition (percent weight): C: 0.35 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.80 max., Ti: 0.005–0.020, B: 0.004 max); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these orders is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise covered by these orders is dispositive.

Furthermore, pursuant to section 351.221(c)(3)(ii) of the Department's regulations, because domestic producers have expressed a lack of interest, we determine that expedited action is warranted and have combined in this notice the notices of initiation and preliminary results.

If the final partial revocation occurs, we intend to instruct the U.S. Customs Service (Customs) to liquidate without regard to applicable antidumping duties, and refund any estimated antidumping duties collected on, all unliquidated entries of the two abrasion-resistant steel products (*i.e.*, NK-EH-360 and NK-EH-500) that meet the above-noted specifications entered, or withdrawn from warehouse, for consumption on or after February 1, 2002. We will also instruct Customs to pay interest on such refunds with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after February 1, 2002, in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on the two abrasion-resistant steel products (*i.e.*, NK-EH-360 and NK-EH-500), and meeting the above-noted specifications, will continue unless, and until, we publish a final determination to revoke in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Also, interested parties may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Case briefs and/or written comments may be submitted by interested parties not later than 14 days after the date of publication of this notice. Pursuant to section 351.309(d)(1) of the Department's regulations, rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than five days after the deadline for submission of case briefs. All written comments shall be submitted in accordance with section 351.303 of the Department's regulations and shall be served on all interested parties on the Department's service list. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will issue the final results of this review within the time limits established in section 351.216 (e) of its regulations.

This notice is published in accordance with section 751(b)(1) of the Act and sections 351.216 and 351.222 of the Department's regulations.

Dated: January 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–524 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-823–808]

Amendment to the Agreement Between the United States Department of Commerce and the Government of Ukraine Suspending the Antidumping Investigation on Cut-to-Length Carbon Steel Plate from Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amendment to the Agreement Between the United States Department of Commerce and the Government of Ukraine Suspending the Antidumping Investigation on Cut-to-Length Carbon Steel Plate from Ukraine.

SUMMARY: The Department of Commerce (the Department) and the Government of Ukraine (GOU) have signed an

Amendment to the Agreement Suspending the Antidumping Investigation on Cut-Length Plate from Ukraine.

EFFECTIVE DATE: December 20, 2002

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 1997, the Department published in the Federal Register the text of an Agreement between the Department and the GOU suspending the antidumping investigation involving certain cut-to-length carbon steel plate (62 FR 61766). Pursuant to section XII of the Agreement, the export limits on the volume of subject merchandise expired on November 1, 2002. On November 12, 2002 the Department and the GOU initialed an Amendment to provide for the continuation of exports of cut-to-length plate from Ukraine to the United States until November 1, 2003. The Department subsequently released the Amendment to interested parties for comment. No interested party filed comments and, therefore, the Department and the GOU signed a final Amendment on December 20, 2002. The text of the final Amendment follows this notice.

Dated: December 20, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–526 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–848]

Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Review, and Final Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On August 12, 2002, the Department of Commerce (the Department) published the preliminary results of its new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) for Shouzhou Huaxiang Foodstuffs Co., Ltd (Shouzhou Huaxiang) and North Supreme Seafood (Zhejiang) Co., Ltd. (North Supreme). *See Notice of Preliminary Results of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China*, 67 FR 52442 (August 12, 2002) (*Preliminary Results*). These new shipper reviews cover the periods September 1, 2000 through August 31, 2001 for Shouzhou Huaxiang and September 1, 2000 through October 15, 2001 for North Supreme. Based on a request by North Supreme, the POR was extended by 45 days to cover the entries of its shipments into the United States. *See Memorandum Re: Extension of the Period of Review in the New Shipper Administrative Review of Freshwater Crawfish Tail Meat From the People's Republic of China, from Holly Hawkins, Analyst, Group III, Office 7, Through Dana Mermelstein, Program Manager, Group III, Office 7, to the File*, dated April 29, 2002.

Based on our analysis of the comments received, we are rescinding the new shipper review of North Supreme. Furthermore, we have made changes to the margin calculation for Shouzhou Huaxiang. Therefore, the final results for these companies differ from the preliminary results. The final weighted-average dumping margin for Shouzhou Huaxiang is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: January 10, 2003.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay or Thomas Gilgunn; Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0780 and (202) 482–4236, respectively.

SUPPLEMENTARY INFORMATION:

Background

The companies covered by these new shipper reviews are North Supreme and Shouzhou Huaxiang. Since the publication of the *Preliminary Results*, the following events have occurred. On September 11, 2002, we received timely case briefs from the petitioners and from North Supreme and Shouzhou Huaxiang. On September 16, 2002, we received timely rebuttal briefs from petitioner, North Supreme and Shouzhou Huaxiang. On October 10, 2002, the Department conducted a public hearing on the issues presented by interested parties in their case and rebuttal briefs. On November 8, 2002, the Department issued an additional questionnaire requesting information from each respondent concerning the *bona fides* of their sales in these new shipper reviews. The Department received responses to these questionnaires on November 18, 2002. We received comments on these responses from petitioners (in the form of additional factual information and argument as provided under section 351.301(c)(1) of the Department's regulations) on November 25, 2002, and rebuttal comments from Shouzhou Huaxiang and North Supreme on December 3, 2002, and December 13, 2002. We requested additional information from the respondents on November 25, 2002, and we received responses from the respondents on December 3, 2002. In accordance with section 351.301(c)(1) of the Department's regulations, we received factual information from petitioners on December 10, 2002 that was submitted in order to rebut or clarify new factual information submitted by respondents. We received information from respondents on December 13, 2002, that was also submitted to rebut or clarify new factual information submitted by petitioners in their December 10, 2002 response.

The Department has now completed these reviews in accordance with section 751 (a)(2)(B) of the Act.

Scope of the Antidumping Duty Order

The merchandise covered by this antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the U.S. Customs Service in 2000, and HTS items 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and Customs purposes

only. The written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties to these new shipper reviews are addressed in the *Issues and Decision Memorandum for the Final Rescission of the New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China for North Supreme Seafood and for the Final Results of the New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China for Shouzhou Huaxiang*, dated January 2, 2003 (*Decision Memo*), which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in *Decision Memo*, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099 of the main Commerce Building. In addition, a complete version of *Decision Memo* can be accessed directly on the internet at http://ia.ita.doc.gov. The paper copy and electronic version of *Decision Memo* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made one change in the margin calculation for Shouzhu Huaxiang. We have removed from our calculation of normal value an offset for the production and sale of crawfish scrap. For a discussion of the issues for each company, refer to the *Decision Memo*. Since we are rescinding the new shipper review with respect to North Supreme, North Supreme will be subject to the PRC-wide rate.

Valuation of Crawfish Input

For this final decision in these crawfish new shipper reviews, we are using the trade statistics for whole live freshwater crawfish imports into Spain from Portugal, for September 1, 2000, through August 31, 2001, as published by the Agencia Estatal de Administracion Tributaria on its website on October 7, 2002. *See Memorandum Re: Final Data for the Surrogate Valuation of Whole Live Freshwater Crawfish, From Adina Teodorescu, Case Analyst, Office of AD/CVD Enforcement VII, Through Maureen Flannery, Program Manager, Office of AD/CVD Enforcement VII, To the File*, dated (November 19, 2002).

Rescission of New Shipper Review for North Supreme

In order to sustain a new shipper review, the exporter or producer must show that there was a *bona fide* first sale to the United States in accordance with 19 CFR 351.214(b)(2)(iv)(C). In these new shipper reviews, we have examined the *bona fides* of the sales under review for North Supreme and Shouzhou Huaxiang. *See Memorandum to Joseph A. Spetrini through Barbara E. Tillman: Freshwater Crawfish Tail Meat from The People's Republic of China: Whether the Sales in the New Shipper Review of North Supreme Are Bona Fide*, dated January 2, 2003 (*North Supreme Memo*).

Because much of the information relied upon in our analysis of whether these North Supreme's sales were *bona fide* is business proprietary, our full analysis is contained in the *North Supreme Memo*. For the reasons discussed therein and in the accompanying *Issues and Decision Memo*, we find that the new shipper sales made by North Supreme were not *bona fide*. North Supreme's new shipper sales were commercially unreasonable, were atypical of normal business practices, and were at prices and quantities that did not reflect its normal business practices. Therefore it is appropriate to rescind this new shipper review for North Supreme. For Shouzhou Huaxiang, we find that its sales were *bona fide*. Our reasoning is set forth in the *Department's Position on Comment 1* in the *Decision Memo*.

Final Results of Review

We determine that the following weighted-average margins exist for the period September 1, 2000 through August, 2001 for Shouzhou Huaxiang:

Manufacturer and Exporter	Time Period	Margin (percent)
Shouzhou Huaxiang	9/1/00–8/31/01	15.44

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review for Shouzhou Huaxiang. For North Supreme, the assessment rate will be the cash deposit rate at which the merchandise was entered. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's/customer's entries during the review period.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from North Supreme Seafood and Shouzhou Huaxiang of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice in the **Federal Register**. The following cash deposit requirements will be effective upon publication of these final results for this administrative review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act. For crawfish tail meat produced and exported by Shouzhou Huaxiang, we will establish a per kilogram cash deposit rate which will be equivalent to the company-specific cash deposit established in this review. For crawfish tail meat exported by North Supreme, since we are rescinding the review, we will apply as the cash deposit rate the PRC-wide rate, which is currently 223.01 percent. There are no changes to the rates applicable to any other company under this order.

The Department will disclose calculations performed in connection with these final results of reviews within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent

assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These new shipper reviews and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: January 2, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

List of Issues

1. The Bona Fides of North Supreme's and Shouzhou Huaxiang's Sales
2. Surrogate Value for Whole, Live Crawfish
3. Shouzhou Huaxiang's Scrap Credit
4. Application of Chain Rates

[FR Doc. 03–525 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review, application No. 02–00003.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Corn Refiners Association (''CRA''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (2001). The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certificate in the **Federal Register**. Under section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

High fructose corn syrup (''HFCS'') in the following two forms: 42 percent fructose and 55 percent fructose and enriched HFCS (greater than 55 percent fructose).

Export Markets

HFCS for which tariff-rate quota (TRQ) rights are allocated will be exported only to Mexico.

Export Trade Activities and Methods of Operation

Purpose

The CRA will manage the system as set forth below for allocating rights to ship under tariff-rate quotas (TRQs) permitting duty-free entry of U.S. HFCS into Mexico.

The CRA shall permit any producer of HFCS in the United States to become a member of the association for purposes of receiving TRQ rights under this system and shall seek an amendment of this Certificate to make such a producer a member under this Certificate.

TRQ Administrator

The CRA will contract with an independent third-party administrator who will bear responsibility for administering the TRQ System, subject to general oversight and supervision by the Board of Directors of the CRA. The administrator may not be otherwise related to the CRA or any member or in any way engaged in the production, distribution or sale of HFCS.

TRQ System

The administrator shall allocate TRQ rights based on the share each member's U.S. HFCS production capacity represents of total U.S. HFCS production capacity. The administrator may advise each member individually of the quantity of TRQ rights allocated to that member. In accordance with those allocations, the administrator shall, upon the request of a member, issue to the member evidence of TRQ rights to ship a specified quantity of U.S. HFCS duty-free to Mexico up to the outstanding total of the member's allocation.

Evidence of TRQ rights issued by the administrator shall be freely transferable. Transfers of TRQ rights are subject to the normal application of the antitrust laws.

Confidential Information

Each member may provide to the administrator information regarding its capacity to produce HFCS in the United States for the purpose of calculating the member's allocation of TRQ rights.

Any non-public, company-specific business information or data submitted by an applicant for membership, by a member, or by any other person in connection with the TRQ System shall be marked ''confidential'' and submitted to the administrator, who shall maintain its confidentiality. The administrator shall not disclose such confidential information to any member other than the submitter, or to any officers, agents, or employees of any member other than the submitter, and shall not disclose such confidential information to any other person except to another neutral third party as necessary to make the determination for which the information was submitted, to allocate TRQ quantities, or in connection with reports to the U.S. Department of Commerce as required by the Certificate or the arbitration of a dispute.

Cooperation with the U.S. and Mexican Governments

The CRA will provide to the U.S. Government and the Government of Mexico whatever information and consultations may be useful in order to facilitate cooperation between the governments concerning the implementation and operation of the TRQ System. Furthermore, directly or through the U.S. Government, the CRA will endeavor to accommodate any information requests from the Government of Mexico (while protecting confidential information entrusted to the administrator), and will consult with the Government of Mexico as appropriate. All such information and consultations shall be subject to the provision on Confidential Information (above) and the Terms and Conditions (below).

Definition

Neutral third-party, as used in this Certificate of Review, means a party not related to CRA or any member and who is not engaged in the production, distribution or sale of HFCS.

Members (Within the Meaning of Section 325.(1) of the Regulations)

Members (in addition to the CRA): A.E. Staley Manufacturing Company, Decatur, Illinois (subsidiary of Tate & Lyle plc, London, United Kingdom); Archer Daniels Midland Company, Decatur, Illinois; Cargill, Incorporated, Minneapolis, Minnesota; Corn Products International, Inc., Westchester, Illinois; National Starch and Chemical Company, Bridgewater, New Jersey (subsidiary of ICI plc, London, United Kingdom); Penford Corporation, Bellevue, Washington; and Roquette America, Inc., Keokuk, Iowa (subsidiary of Roquette Frères, Lestrem, France).

Protection Provided by Certificate

This Certificate protects the CRA, its members, and directors, officers, and employees acting on behalf of the CRA and its members from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Terms and Conditions of Certificate

1. In engaging in export trade activities and methods of operation, neither CRA, any member, the administrator, nor any neutral third-party shall intentionally disclose, directly or indirectly, to any member (including parent companies, subsidiaries, or other entities related to any member) any information regarding any other member's costs, production, inventories, domestic prices, domestic sales, domestic customers, capacity to produce HFCS for domestic sale, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless such information is already generally available to the trade or public.

2. CRA and its members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the export trade, export trade activities and methods of operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the regulations.

Other Conduct

Nothing in this Certificate prohibits the CRA and its members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to CRA by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or by the Attorney General concerning either (a) the viability or quality of the business plans of CRA or its members or (b) the legality of such business plans of CRA or its members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in section V.(D.) of the ''Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition),'' 50 FR 1786 (January 11, 1985).

In accordance with the authority granted under the Act and the Regulations, this Certificate of Review is hereby issued to the Corn Refiners Association, Inc.

The effective date of the Certificate is December 30, 2002. A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: December 30, 2002.

Jeffrey C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–451 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Payment of Patent and Trademark Office Fees by Credit Card.

Form Number(s): PTO–2038.

Agency Approval Number: 0651–0043.

Type of Request: Revision of a currently approved collection.

Burden: 29,497 hours annually.

Number of Respondents: 327,308 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 12 minutes (0.2 hours) to gather the necessary information, prepare, and submit the Credit Card Payment Form or 2 minutes (0.03 hours) to prepare and submit the Electronic Credit Card Payment Form.

Needs and Uses: The USPTO charges fees for processing and other services related to patents, trademarks, and information products, which may be paid by credit card. The Electronic Credit Card Payment Form is being added to this collection and allows the public to submit credit card payments online. The public uses this collection to submit credit card information in order to pay various fees and to indicate the purpose of the payment being submitted. The USPTO uses this information to determine whether the appropriate fee amount has been submitted and to process these credit card payments. The use of separate credit card payment forms is necessary in order to protect the confidentiality of the submitted credit card information and exclude this information from the patent and trademark records that are open to public inspection.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal Government, and state, local, or tribal governments.

Frequency: On occasion for recordkeeping and reporting.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, by phone at (703) 308–7400, or by e-mail at *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before February 10, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: January 6, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–500 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Technology Administration

Technology Administration Performance Review Board Membership

The Technology Administration Performance Review Board (TA PRB) reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and reviews performance-related pay increases for ST–3104 employees. The Board makes recommendations to the appropriate appointing authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

This notice lists the membership of the TA PRB and supersedes the list published in **Federal Register** Document 02–19569, Vol. 67. No. 149, page 50422, dated August 2, 2002.

Charles Clark (C), Chief, Electron & Optical Physics Division, Physics Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 13/31/04 (Limited).

Belinda L. Collins (C), Deputy Director for Technology Services, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 13/31/04 (Limited).

Stephen Freiman (C), Deputy Director, Materials Science & Engineering Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 13/31/04 (Limited).

Daniel Hurley (C), Director of Communication and Information, Infrastructure Assurance Program, National Telecommunications and Information Administration, Washington, DC 20230, *Appointment Expires:* 13/31/03 (General).

Christian Israel (NC), Deputy Assistant Secretary for Technology Policy, Technology Administration, Department of Commerce, Washington, DC 20230, *Appointment Expires:* 12/31/04 (General).

Richard F. Kayser (C), Director for Technology Services, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 13/31/04 (Limited).

William F. Koch (C), Deputy Director, Chemical Science & Technology Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 13/31/04 (Limited).

Willie E. May (C), Chief, Analytical Chemistry Division, Chemical Science & Technology Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires:* 13/31/04 (Limited).

Tyra Dent Smith (C), Chief, Human Resources Division, Census Bureau, Washington, DC 20233, *Appointment Expires:* 13/31/04 (Limited).

John F. Sopko (C), Deputy Director, National Technical Information Service, Springfield, VA 22161, *Appointment Expires:* 13/31/04 (Limited).

Dennis Swyt (C), Chief Precision Engineering Division, Manufacturing Engineering Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899–8210, *Appointment Expires:* 12/31/04 (Limited).

Kathleen Taylor (C), Chief, Employment and Labor Law Division, Assistant General Counsel for Administration, Office of the General Counsel, Office of the Secretary, Washington, DC 20230, *Appointment Expires:* 12/31/03 (General).

Susan Zevin (C), Deputy Director, Information Technology Laboratory, Information Technology Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899–8900, *Appointment Expires:* 12/31/03 (Limited).

Dated: December 22, 2002.

Benjamin H. Wu,

Deputy Under Secretary for Technology, Technology Administration, Department of Commerce.

[FR Doc. 03–485 Filed 1–9–03; 8:45 am]

BILLING CODE 3510–18–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act; Meeting

AGENCY: Consumer Product Safety Commission Washington, DC 20207.

TIME AND DATE: Thursday, January 16, 2003 2 p.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Part Open to the Public; Part Closed.

MATTERS TO BE CONSIDERED:

Open to the Public

1. *CPSC Vice Chairman:* The Commission will elect a Vice Chairman.

Closed to the Public

2. *Compliance Status Report:* The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: January 6, 2003.

Todd A. Stevenson,

Secretary.

[FR Doc. 03–647 Filed 1–8–03; 2:40 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice. The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by February 10, 2003.

Title, Form Number, and OMB Number: Offered Candidate Procedures; USMA forms 5–490, 2–66, 847, 5–489, 5–519, 8–2, 6–154, 5–515, 534, 5–516, 480–1, 5–499; OMB Number 0702–0062.

Type of Request: Reinstatement.

Number of Respondents: 16,600.

Responses per Respondent: 1.

Annual Responses: 16,600.

Average Burden per Response: 70 minutes (average).

Annual Burden Hours: 1,937.

Needs and Uses: Candidates to the United States Military Academy (USMA) provide personal background information, which allows the USMA Admissions Committee to make subjective judgments on non-academic experiences. Data are also used by the Office of West Point Institutional Research for correlation with success in graduation and military careers. The purpose of this activity is to obtain a group of applicants who eventually may be evaluated for admission to the USMA.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 2202–4302.

Dated: December 31, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–449 Filed 1–9–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 11, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 7, 2003.

John D. Tressler

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New Collection.

Title: Electronic Debit Payment Option for Student Loans (JS).

Frequency: Other: one time.

Affected Public: Businesses or other for-profit, Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 108541;

Burden Hours: 2.

Abstract: The need for an Electronic Debit Account Program will give the borrower another option in which to repay federally funded student loans via automatic debit deductions from their checking accounts.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 1118. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.reese@ed.gov.* Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–531 Filed 1–9–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 10, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 7, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension of a currently approved collection.

Title: Guaranty Agency Financial Report (JS).

Frequency: Monthly, annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary), Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 612;

Burden Hours: 33660.

Abstract: The Guaranty Agency Financial Report is used to request payments from and make payments to the Department of Education under the FFEL program authorized by Title IV, Part B of the HEA of 1965, as amended. The report is also used to monitor the agency's financial activities, including activities concerning its federal fund; operating fund and the agency's restricted account.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Lew Oleinick at (202) 205–3516 or at his e-mail address *lew.oleinick@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–530 Filed 1–9–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary proposes funding priorities under the Rehabilitation Engineering Research Center (RERC) program for up to nine Rehabilitation Engineering Research Centers under the National Institute on Disability and Rehabilitation Research (NIDRR) for Fiscal Years (FYs) 2003–2005. We take this action to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before February 10, 2003.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov.*

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding these proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these priorities in Room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: The proposed priorities support President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The proposed priorities are also in concert with NIDRR's Long-Range Plan, which can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/#LRP.*

Rehabilitation Engineering Research Centers Program

We may make awards for up to 60 months through grants or cooperative agreements to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and

training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. Each RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization.

Description of Rehabilitation Engineering Research Centers

RERCs carry out research or demonstration activities by:

(a) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (1) solve rehabilitation problems and remove environmental barriers and (2) study and evaluate new or emerging technologies, products, or environments and their effectiveness and benefits; or

(b) Demonstrating and disseminating (1) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

(c) Facilitating service delivery systems change through (1) the development, evaluation, and dissemination of consumer-responsive and individual and family-centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services and (2) other scientific research to assist in meeting the employment and independence needs of individuals with severe disabilities.

Each RERC must provide training opportunities, in conjunction with institutions of higher education and nonprofit organizations, to assist individuals, including individuals with disabilities, to become rehabilitation technology researchers and practitioners.

General RERC Requirements

The following requirements apply to each RERC pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these requirements will be assessed using applicable selection criteria in the peer review process.

Each RERC must have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings. Each RERC must evaluate the efficacy and safety of its new products, instrumentation, or assistive devices.

Each RERC must develop and implement in the first three months of the grant a plan that describes how the center will include, as appropriate, individuals with disabilities or their representatives in all phases of center activities including research, development, training, dissemination, and evaluation.

Each RERC must develop and implement in the first year of the grant, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to disseminate the RERC's research results to persons with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties.

Each RERC must develop and implement in the first year of the grant, in consultation with the NIDRR-funded RERC on Technology Transfer or other entities as appropriate, a plan for ensuring that all new and improved technologies developed by this RERC are successfully transferred to the marketplace.

Each RERC must conduct a state-of-the-science conference on its respective area of research in the third year of the grant and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant.

Each RERC will be expected to coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer.

Priorities

Background

Technology plays a vital role in the lives of millions of disabled and older Americans. Advances in assistive technology and adoption of principles of universal design have significantly improved the quality of life for these individuals. Individuals with significant disabilities regularly use products developed as the result of rehabilitation and biomedical research to achieve and maintain maximum physical function, live independently, study and learn, and attain gainful employment. The range of engineering research has broadened to encompass not only assistive technology but also technology at the systems level (*i.e.*, the built environment, information and communication technologies, transportation, etc.) and technology that interfaces between the individual and systems technology and is basic to community integration.

The NIDRR RERC program has been a major force in the development of technology to enhance independent function for individuals with disabilities. The RERCs are recognized as national centers of excellence in their respective areas and collectively represent the largest federally supported program responsible for advancing rehabilitation engineering research. For example, the RERC program was an early pioneer in the development of augmentative communication and has been at the forefront of prosthetics and orthotics research for both children and adults. RERCs have played a major role in the development of voluntary standards that industry uses when developing wheelchairs, wheelchair restraint systems, information technologies, and the World Wide Web. The RERC on Low Vision and Blindness helped develop talking sign technologies that are currently being utilized in major cities in both the United States and Japan to help blind and visually impaired individuals navigate city streets and subways. RERCs have been a driving force in the development of universal design principles that can be applied to the built environment, information technology and telecommunications, transportation, and consumer products. RERC research activities also contributed to the clinical use of electromyography, gait analysis, and functional electrical stimulation.

Advancements in basic biomedical science and technology have resulted in new opportunities to enhance further the lives of people with disabilities. Recent advances in biomaterials research, composite technologies, information and telecommunication technologies, nanotechnologies, micro electro mechanical systems (MEMS), sensor technologies, and the neurosciences provide a wealth of opportunities for individuals with disabilities and should be incorporated into research focused on disability and rehabilitation.

NIDRR intends to fund up to nine new RERCs in FY 2003. Applicants must select one of the following priority topic areas: (a) Hearing enhancement; (b) prosthetics and orthotics; (c) communication enhancement; (d) measurement and monitoring of functional performance; (e) technology access for land mine survivors; (f) universal interface and information technologies; (g) telerehabilitation; (h) accessible public transportation; (i) wheeled mobility; (j) cognitive technologies; and (k) technology

transfer. Applicants are allowed to submit more than one proposal as long as each proposal addresses only one RERC topic area.

Letters of Intent

Due to the open nature of this competition, NIDRR is requiring all potential applicants to submit a letter of intent (LOI). Each LOI must be limited to a maximum of four pages and must include the following information: (1) The title of the proposed RERC, the name of the host institution, the name of the Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals and objectives of the proposed RERC and a description of its research and development activities at a sufficient level of detail to allow potential peer reviewers to be selected; (3) a list of proposed RERC staff including the center Director and key personnel; and (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.

The signed, original LOI must be received by NIDRR no later than four weeks after the notice of final funding priorities for this competition is published in the **Federal Register**. Submission of a LOI is a prerequisite for eligibility to submit an application. With prior approval, an email or facsimile copy of a LOI will be accepted, but the signed original must be sent to: William Peterson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3425, Switzer Building, Washington, DC 20202–2645. For further information regarding the LOI requirement, contact William Peterson at (202) 205–9192 or by email at: *william.peterson@ed.gov*.

Proposed Priorities

The Assistant Secretary proposes to fund up to nine RERCs that will focus on innovative technological solutions, new knowledge, and concepts to promote the health, safety, independence, employment, active engagement in daily activities, and quality of life of persons with disabilities. Each RERC must:

(1) Contribute substantially to the technical and scientific knowledge-base relevant to its respective subject area;

(2) Research, develop, and evaluate innovative technologies, products, environments, performance guidelines, and monitoring and assessment tools as applicable to its respective subject area;

(3) Identify, implement, and evaluate, in collaboration with the relevant industry, professional associations, and institutions of higher education, innovative approaches to expand research capacity in its respective field of study;

(4) Monitor trends and evolving product concepts that represent and signify future directions for technologies in its respective area of research; and

(5) Provide technical assistance to public and private organizations responsible for developing policies, guidelines, and standards that affect its respective area of research.

(6) Each RERC must focus on one of the following priority topic areas:

(a) *Hearing Enhancement:* This center must research and develop methods, systems, and technologies that will assist hearing professionals with the process of matching hearing technology to individuals with hearing loss and associated conditions such as tinnitus. This includes improving the compatibility of hearing enhancement technologies with various environments such as school, work, recreation, and social settings;

(b) *Prosthetics and Orthotics:* This center must increase understanding of the scientific and engineering principles pertaining to human locomotion, reaching, grasping, and manipulation, and incorporate those principles into the design and fitting of prosthetic and orthotic devices;

(c) *Communication Enhancement:* This center must research and develop augmentative and alternative communication technologies and strategies that will enhance the communicative capacity of individuals of all ages with significant communication disorders across environments (*i.e.*, education, employment, recreation, social);

(d) *Measurement and Monitoring of Functional Performance:* This center must research and develop technologies and methods that effectively assess the outcomes of rehabilitation therapies by combining measurements of physiological performance with measures of functional performance;

(e) *Technology Access for Land Mine Survivors:* This center must address the unique rehabilitation needs of land mine survivors of all ages and develop low-cost replacement limbs, orthotics, and assistive technologies using indigenous materials and expertise from respective countries that will benefit the quality of life for individuals who have been severely injured due to land mine explosions;

(f) *Universal Interface and Information Technologies:* This center must research and develop innovative technological solutions for, and promote universal access to, current and emerging information technologies and technology interfaces that promote a seamless integration of the multiple technologies used by individuals with disabilities in the home, the community, and the workplace. This center must work collaboratively with the RERC on Telecommunication Access, the RERC on Mobile Wireless Technologies, and the NIDRR-funded Information Technology Technical Assistance and Training Center;

(g) *Telerehabilitation:* This center must research and develop methods, systems, and technologies that support remote delivery of rehabilitation and home health care services for individuals who have limited local access to comprehensive medical and rehabilitation outpatient services;

(h) *Accessible Public Transportation:* This center must research and develop methods, systems, and devices that will promote and enhance the ability of people with disabilities to safely, comfortably, and efficiently identify destination information, embark/disembark, and use restroom facilities on various types of public transportation systems such as passenger trains and airplanes;

(i) *Wheeled Mobility:* This center must research and develop innovative technologies and strategies that will improve the current state of the science, design standards, and usability of wheeled mobility devices and wheelchair seating systems;

(j) *Cognitive Technologies:* This center must research, develop, and evaluate innovative technologies and approaches that will have a positive impact on the way in which individuals with significant cognitive disabilities function independently within their communities and workplace; and

(k) *Technology Transfer:* This center must research and develop innovative ways to facilitate and improve the process of moving new, useful, and more effective assistive technology inventions and applications from the prototype phase to the marketplace. This center will be expected to provide technical assistance to all RERCs on issues pertaining to technology transfer, including the development of long-range technology transfer plans.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet

at the following site: *http://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 published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.133E, Rehabilitation Engineering Research Center Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Dated: January 6, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–529 Filed 1–9–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Wind Farm at the Nevada Test Site

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of withdrawal.

SUMMARY: On July 25, 2001, the Department of Energy (DOE), National Nuclear Security Administration (NNSA) announced its intent to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for the proposed Wind Farm at the Nevada Test Site (NTS) in Nye County, Nevada. This EIS would evaluate the range of reasonable alternatives for a private enterprise project to construct, operate, and maintain a wind farm for production of electrical power. The action alternatives considered included a range of electrical generating capacities up to about 600 megawatts (MW) at various locations on the NTS. On July 5, 2002, the Administrator of the NNSA decided to cancel consideration of the wind farm proposal on the NTS due to potentially significant adverse impacts to national security missions of the U. S. Air Force at the Nevada Test and Training Range (NTTR), which has boundaries contiguous with the NTS on three sides. Therefore, further processing of the preliminary draft EIS, which was under review in NNSA, is no longer warranted. The notice of intent to prepare an EIS is withdrawn and the NEPA process is hereby terminated.

FOR FURTHER INFORMATION CONTACT: For information on the Wind Farm Project, please contact: Kevin D. Thornton, National Nuclear Security Administration Nevada Operations Office, P.O. Box 98518, Las Vegas, NV 89193–8518. Telephone (702) 295–1541; facsimile (702) 295–0625; electronic mail: *thornton@nv.doe.gov.*

For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 encouraged DOE to minimize the social and economic impacts on workers and communities affected by downsizing of defense-related facilities. Among other things, section 3161 authorized DOE to encourage private sector economic development at its sites and facilities. In the record of decision for the ''Final Environmental Impact Statement for the Nevada Test Site and Off-Site Locations in the State of Nevada'' (DOE/EIS 0243), DOE decided, in part, to continue to support ongoing program operations and pursue diversification of uses to include non-defense and private use. The proposed wind farm would be a private sector enterprise located on the NTS.

DOE received a proposal from M&N Wind Power, Inc. and Siemens to construct, operate, and maintain a wind farm at the NTS. Full implementation of the proposal would have consisted of up to 545 wind turbines generating up to approximately 600 MW. The wind farm would encompass about 432 hectares (1069 acres) of land. NNSA Nevada Operations Office (NV) began preparation of an environmental assessment (EA) for the proposed project in November 2000. Following public review of the pre-approval draft EA, NNSA/NV determined that a finding of no significant impact could not be supported and that an EIS would be required. Preparation of the EIS began with publication of a notice of intent to prepare an EIS in the **Federal Register** on July 25, 2001. On July 3, 2002, the U.S. Air Force wrote a letter to the Manager of NNSA/NV which indicated, based on the results of a classified study, that the presence of large wind turbines on the NTS would be incompatible with the mission of the NTTR. The primary concern was for significant adverse impacts to certain NTTR missions within the ranges surrounding the NTS. Some of those mission capabilities are unique to the NTTR and impacts caused by wind turbines could adversely affect national security. During the same timeframe Air Force officials articulated these concerns in a classified briefing to the NNSA Administrator. Based on the concerns articulated by the Air Force, the Administrator of NNSA decided to cancel consideration of the wind farm proposal on the NTS. Therefore, further processing of the preliminary draft EIS, which was under review within NNSA, is no longer warranted. The notice of intent to prepare an EIS is withdrawn and the NEPA process is hereby terminated.

Issued in Washington, DC, this 20th day of December, 2002.

Linton Brooks,

Acting Administrator, National Nuclear Security Administration.

[FR Doc. 03–499 Filed 1–9–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–38–000]

Cargill Power Markets, LLC, Complainant, v. Midwest Independent Transmission System Operator, Inc., Respondent; Notice of Complaint Requesting Fast Track Processing

January 3, 2003.

Take notice that on December 31, 2002, Cargill Power Markets, LLC (CPM), filed with the Federal Energy Regulatory Commission (Commission), a complaint against Midwest Independent Transmission System Operator, Inc. (MISO) requesting fast track processing by the Commission. CPM alleges that MISO has violated its open access transmission tariff and Commission policy by recalling CPM's confirmed Long-Term Firm Point-to-Point reservation.

CPM states that a copy of its complaint was served on MISO.

Any person desiring to be heard 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. The answer to the complaint and all comments, interventions or protests must be filed on or before January 15, 2003. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–466 Filed 1–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–220–000]

Chandeleur Pipe Line Company; Notice of Tariff Filing

January 3, 2003.

Take notice that on December 30, 2002, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, revised tariff sheets listed below to become effective February 1, 2003:

First Revised Sheet No. 1
Original Sheet No. 2A
Third Revised Sheet No. 6
Original Sheet No. 6B
Third Revised Sheet No. 8
First Revised Sheet No. 10
First Revised Sheet No. 12
Second Revised Sheet No. 13
First Revised Sheet No. 15
First Revised Sheet No. 17
Original Sheet No. 25A
Original Sheet No. 27A
Original Sheet No. 30A
Fourth Revised Sheet No. 34
Second Revised Sheet No. 35
Second Revised Sheet No. 36
Second Revised Sheet No. 37
Second Revised Sheet No. 39
First Revised Sheet No. 40
First Revised Sheet No. 42
Third Revised Sheet No. 43A
Original Sheet No. 53A
Original Sheet No. 54A
First Revised Sheet No. 56A
Original Sheet No. 58A
First Revised Sheet No. 60
First Revised Sheet No. 62
Third Revised Sheet No. 2
First Revised Sheet No. 4
Second Revised Sheet No. 6A
Second Revised Sheet No. 7
First Revised Sheet No. 9
Second Revised Sheet No. 11
Original Sheet No. 12A
Second Revised Sheet No. 14
First Revised Sheet No. 16
First Revised Sheet No. 25
Fourth Revised Sheet No. 27
Second Revised Sheet No. 30
Third Revised Sheet No. 33
Original Sheet No. 34A
Original Sheet No. 35A
Original Sheet No. 36A
Second Revised Sheet No. 38
Original Sheet No. 39A
First Revised Sheet No. 41
Fifth Revised Sheet No. 43
First Revised Sheet No. 53
First Revised Sheet No. 54
Second Revised Sheet No. 56
First Revised Sheet No. 58
First Revised Sheet No. 59
First Revised Sheet No. 61
First Revised Sheet No. 63

Chandeleur asserts that the purpose of this filing is to clean up its FERC Gas Tariff in a ''housekeeping'' filing, and that the tariff sheets correct such items as typographical errors, page formatting, vague language, and remove electronic bulletin board language.

Chandeleur states that it has served copies of the filing upon its firm and interruptible customers, and state commissions, and interested parties.

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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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.

Intervention Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–469 Filed 1–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–324–005]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

January 3, 2003.

Take notice that on December 4, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing a response to the Commission's Order on Compliance filing issued November 4, 2002 (101 FERC ¶ 61,156 (2002).

Gulf South states that the appropriate cost-based price of the fuel gas Gulf South transferred to the cash pool was $2.16, and $1.98 as suggested in the order. Gulf South asserts that if the Commission rejects the compliance filing based upon a $2.16 transfer price, Gulf South seeks rehearing of the Commission's holding that an accounting adjustment made to comply with Generally Accepted Accounting Principles (GAAP) provides an appropriate basis to adjust the ''historical average weighted cost of excess retained fuel.

Gulf South states that if the Commission does not accept $2.16 as the appropriate transfer price, Gulf South will suffer further financial loss because it will be precluded from recovering the actual cost of the fuel gas transferred to operate the cash pool service.

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 on or before January 10, 2003. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202)502–8659. 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. 03–470 Filed 1–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 400–038]

Williard Janke Complainant, v. Public Service Company of Colorado, Respondent; Notice of Complaint, Request for Fast Track Processing, and Petition for Relief

January 3, 2003.

Take notice that on December 31, 2002, Mr. Williard Janke (Petitioner) filed with the Federal Energy Regulatory Commission (Commission), a Complaint against the Public Service Company of Colorado, licensee of the Tacoma-Ames Project, FERC Project No. 400, alleging various violations of the issued license for the Tacoma-Ames Project and the Commission's regulations under part 12. Petitioner has also requested Fast Track Processing of the Complaint and is petitioning for several forms of relief including a stay of the Licensee's authority to grant permission to cross over and along the Ames penstock and penstock route.

Petitioner states that copies of the Complaint have been served upon the Licensee and the private property owner that has maintained an access road across and along a portion of the Ames penstock route and penstock.

Any person desiring to be heard 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. The answer to the complaint and all comments, interventions or protests must be filed on or before January 21, 2003. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–468 Filed 1–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–13–000]

Northwest Pipeline Corporation; Notice of Intent To Prepare an Environmental Assessment of the Proposed Clackamas Project and Request for Comments on Environmental Issues

January 3, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Clackamas Project involving abandonment of facilities by Northwest Pipeline Corporation (Northwest) in Clackamas County, Oregon.[1] These facilities would consist of 1.42 miles of pipeline on its Camas to Eugene Lateral (Lateral) that would be abandoned. 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 pipeline company 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, the pipeline company could initiate condemnation proceedings in accordance with state law.

[1] Northwest's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Northwestprovided 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 (*www.ferc.gov*).

Summary of the Proposed Project

Northwest proposes to abandon in place and by removal 1.42 miles (7,500 feet) of its 16-inch-diameter Lateral from mileposts (MPs) 19.57 to 20.99. part of this pipeline crosses the Clackamas River. River scour from high flood events has exposed part of the pipeline traversing the Clackamas River and poses a navigational hazard for recreational users. Northwest plans to take the this portion of the Lateral out of service. Service from the Lateral would be maintained by Northwest's use of a 20-inch-diameter loop that parallels the Lateral. Northwest seeks authority to:

- Abandon in place a 5,850-foot-long segment of pipeline from MP 19.57 near the Southeast Portland Meter Station to MP 19.68 on the north bank of the north channel of the Clackamas River;
- Abandon by removal a 370-foot-long segment of pipeline from MP 19.68 to MP 19.75 in the north channel of the Clackamas River. No disturbance of Northwest's parallel 20-inch-diameter loop is required;
- Abandon in place a 1,267-foot-long segment of pipeline from MP 20.75 to MP 20.99 beginning at the northern edge of an island that separates the north and south channels of the Clackamas River, and ending just north of the Oregon City Compressor Station;
- Construct and operate a temporary pig launching facility within the existing fenced-in yard of the Southeast Portland Meter Station, and a temporary pig receiving facility just north of the Oregon City Compressor Station.

The segments of pipeline to be abandoned in place will be purged with nitrogen and capped. The location of the project facilities is shown in appendix 1, figures 1–3.[2]

Land Requirements for Construction

Construction of the proposed facilities would require 13.9 acres of land, most of which would be temporary right-of-way. This land is comprised of residential property, riverine shoreline (river island), emergent and forested wetlands, and open water. No new permanent right-of-way would be required, and all temporary right-of-way would be restored to previous condition. Northwest plans to retain and maintain as before its permanent right-of-way along all portions of the pipeline to be abandoned.

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[3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, 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. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries,and wetlands
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species;
- Public safety.

We will make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, 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.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northwest. This preliminary list of issues may be changed based on your comments and our analysis.

- Residential area in and around the Eiler's Circle access road and the SR 224 access road on the north side of the Clackamas River.
- Suitable habitat for federally listed or proposed threatened and endangered species, including Coho salmon, Chinook salmon, steeled and cutthroat trout, may occur in the project area.
- Temporary disturbance of 7.7 acres of wetlands and open water associated with the Clackamas River, including temporary construction of a dry-area structure in the north channel.

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 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:

1. 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.
2. Label one copy of the comments for the attention of Gas 2 Branch.
3. Reference Docket No. CP03–013–000.
4. Mail your comments so that they will be received in Washington, DC on or before February 3, 2003.

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

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the ''FERRIS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's 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 may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). 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) (*see* appendix 2). [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.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://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 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–465 Filed 1–9–03; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC03–41–000, et al.]

Canadian Niagara Power Company, Limited, et al.; Electric Rate and Corporate Filings

January 3, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Canadian Niagara Power Company, Limited

[Docket No. EC03–41–000]

Take notice that on January 2, 2003, Canadian Niagara Power Company Limited tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 203 of the Federal Power Act, 16 U.S.C. Section 824b (1994), and part 33 of the Commission's regulations, 18 CFR part 33, an application for authorization to dispose of jurisdictional facilities pursuant to an intra-corporate reorganization of Canadian Niagara Power Company Limited and Fortis Inc.

Comment Date: January 23, 2003.

2. GenWest, LLC

[Docket No. EG03–34–000]

Take notice that on December 30, 2002, GenWest, LLC (GenWest) tendered for filing with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

GenWest states that it will develop, own and operate a 590 MW electric generating facility located at Apex, Nevada, and sell electric energy exclusively at wholesale. GenWest's principal business offices are located at 400 North 5th Street, Phoenix, Arizona.

Comment Date: January 24, 2003.

3. Entergy Services, Inc.

[Docket No. ER03–171–001]

Take notice that on December 13, 2002, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc. (Entergy Mississippi), tendered for filing for informational purposes the Agreement for the Lease of Silver Creek Substation between Entergy Mississippi and South Mississippi Electric Association (SMEPA), dated July 1, 2002, as additional information in support of the Interconnection and Operating Agreement between Entergy Mississippi and SMEPA filed in this docket on November 7, 2002.

Comment Date: January 17, 2003.

4. GenWest, LLC

[Docket No. ER03–352–000]

Take notice that on December 30, 2002, GenWest, LLC (GenWest) filed an initial rate schedule to sell power at market-based rates.

Comment Date: January 21, 2003.

5. San Diego Gas & Electric Company

[Docket No. ER03–353–000]

Take notice that on December 30, 2002, San Diego Gas & Electric (SDG&E) tendered for filing a change in rate for the Transmission Revenue Balancing Account Adjustment and its Transmission Access Charge Balancing Account Adjustment set forth in its Transmission Owner Tariff. The effect of this rate change is to reduce rates for jurisdictional transmission service utilizing that portion of the California Independent System Operator-controlled grid owned by SDG&E. SDG&E requests that this rate change be made effective January 1, 2003.

SDG&E states that copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment Date: January 21, 2003.

6. Ormet Primary Aluminum Corporation

[Docket No. ER03–354–000]

Take notice that on December 30, 2002, Ormet Power Marketing, LLC

(Ormet Power Marketing) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Ormet Power Marketing Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Ormet Power Marketing states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Ormet Power Marketing is not in the business of generating or transmitting electric power. Ormet Corporation, parent of Ormet Power Marketing, and its subsidiaries produce a wide range of aluminum products for the fabrication, extrusion and conversion markets.

Comment Date: January 21, 2003.

7. Southern Company Services, Inc.

[Docket No. ER03–355–000]

Take notice that on December 30, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed one rollover transmission service agreement under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5). Specifically, this agreement is a firm point-to-point transmission service agreement for rollover service with Oglethorpe Power Corporation (First Revised Service Agreement No. 431).

Comment Date: January 21, 2003.

8. San Diego Gas & Electric Company

[Docket No. ER03–356–000]

Take notice that on December 30, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing its forecast of the charges it will pay for Reliability Must Run (RMR) services under contracts administered by the California Independent System Operator (CAISO) for the year 2003 along with its proposed rates for recovery of the RMR charges. Under Section 5.2.8 of the CAISO Tariff, SDG&E is the Responsible Utility (RU) for payments to owners of RMR generation units within its service territory. SDG&E recovers its costs for those payments through a dedicated rate component. SDG&E requests an effective date of January 1, 2003 for the proposed rate.

SDG&E states that copies of the filing have been served on the CAISO and on the California Public Utilities Commission.

Comment Date: January 21, 2003.

9. Soyland Power Cooperative, Inc.

[Docket No. ER03–357–000]

Take notice that on December 30, 2002, Soyland Power Cooperative, Inc. (Soyland) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of cancellation of its all-requirements service contract with M.J.M. Electric Cooperative, Inc. (MJM). Soyland states that MJM has withdrawn from membership in Soyland, and Soyland will no longer provide all-requirements electric service to MJM.

Soyland requests an effective date of December 31, 2002 for the notice of cancellation. Soyland states that a copy of the filing has been served on MJM.

Comment Date: January 21, 2003.

10. Pacific Gas and Electric Company

[Docket No. ER03–358–000]

Take notice that on December 31, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing Generator Special Facilities Agreements (GSFAs), Generator Interconnection Agreements (GIAs) and Letter Agreements Supplementing, Clarifying, and Modifying the Generator Special Facilities Agreement (Supplemental Letter Agreements) between PG&E and the following Calpine-owned parties: Gilroy Energy Center, LLC (Gilroy); Los Esteros Critical Energy Facility, LLC (Los Esteros); Yuba City Energy Center, LLC (Yuba City); Metcalf Energy Center, LLC (Metcalf); Lambie Energy Center, LLC (Lambie); Goose Haven Energy Center, LLC (Goose Haven); and Creed Energy Center, LLC (Creed); King City Energy Center, LLC (King City); Feather River Energy Center, LLC (Feather River); Riverview Energy Center, LLC (Riverview); Wolfskill Energy Center, LLC (Wolfskill); and Delta Energy Center, LLC (DEC).

PG&E states that copies of this filing have been served upon Calpine, Gilroy, Los Esteros, Yuba City, Metcalf, Lambie, Goose Haven, Creed, King City, Feather River, Riverview, Wolfskill, DEC, the California Independent System Operator Corporation and the CPUC.

Comment Date: January 21, 2003.

11. Midwest Energy, Inc.

[Docket No. ES03–15–001]

Take notice that on December 23, 2002, Midwest Energy, Inc. submitted an amendment to its original application in this proceeding, pursuant to section 204 of the Federal Power Act. The amendment seeks to reduce the amount of long-term debt that Midwest Energy, Inc. proposes to issue from $37,714,286 to $34,204,626.

Comment Date: January 17, 2003.

Standard Paragraph

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 field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–471 Filed 1–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Establishing Procedural Schedule for the Relicensing and a Deadline for Submission of Final Amendments

January 3, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2233–043.

c. *Date Filed:* December 27, 2002.

d. *Applicant:* Portland General Electric Company.

e. *Name of Project:* Willamette Falls Hydroelectric Project.

f. *Location:* On the Willamette River in Clackamas County, Oregon near the towns of Oregon City and West Linn.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a.

h. *Applicant Contact:* Julie S. Keil, Portland General Electric Company, 121 SW Salmon Street, Portland, Oregon 97204, (503) 464–8864; Bruce Martin, Blue Heron Paper Company, 419 Main Street, Oregon City, Oregon.

i. *FERC Contact:* John Blair (202) 502–6092 or *john.blair@FERC.gov*.

j. *The existing project:* Portland General Electric (PGE) and Blue Heron Paper Company (BHPC) propose to continue operation of the Willamette Falls Hydroelectric Project on the Willamette River. The dam is a 2300 feet long horseshoe shaped concrete structure that caps the crest of Willamette Falls. The Project is operated run-of-river. It is comprised of two separate hydroelectric generating developments located on the east (Oregon City) and west (West Linn) sides of Willamette Falls. The Project has a total generation capacity of 17.5 megawatts (MW) 16 MW at PGE's T.W. Sullivan plant and 1.5 MW at BHPC. T.W. Sullivan powerhouse contains 13 vertical turbine generators; BHPC powerhouse contains 2 horizontal turbine generators.

k. A copy of the application is on file with the Commission and is available for public inspection. 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. The number must be proceeded by the letter ''P''. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item ''h'' above.

l. With this notice, we are initiating consultation with the Oregon State Historic Preservation Officer (SHPO), as required by '106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency or Acceptance Letter February 2003.

Notice soliciting comments, final terms and conditions February 2003.

Notice of the availability of the draft EA September 2003.

Notice of the availability of the final EA January 2004.

Ready for Commission's decision on the application February 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice soliciting comments, final terms and conditions.

Magalie R. Salas,

Secretary.

[FR Doc. 03–467 Filed 1–9–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7437–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; See List of ICRs Planned to be Submitted in Section A

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 three continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB): (1) National Pollutant Discharge Elimination System and Sewage Sludge Management State Program Requirements, EPA ICR No. 0168.07, OMB Control No. 2040–0057, expiring on April 30, 2003, (2) National Pollutant Discharge Elimination System Modification and Variance Requests, EPA ICR No. 0029.08, OMB Control No. 2040–0068, expiring on April 30, 2003, and (3) Applications for National Pollutant Discharge Elimination System Discharge Permits and the Sewage Sludge Management Permits, EPA ICR No. 0226.17, OMB Control No. 2040–0086, expiring on April 30, 2003. Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of the **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be submitted on or before March 11, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Section I.B. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Please direct questions or requests for copies of these ICR to: Jack Faulk, Industrial Branch, Water Permits Division, Office of Wastewater Management; tel.: (202) 564–0768, fax: (202) 564–6431; or e-mail: *faulk.jack@epa.gov.* Or see Section I.C of the **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION:

I. General Information for All ICRs

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 displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(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;

(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 automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

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.

A. How Can I Get Copies of the ICR Supporting Statement and Other Related Information?

1. Docket. EPA has established an official public docket for these ICRs under: (1) Docket ID No. OW–2002–0063 for National Pollutant Discharge Elimination System and Sewage Sludge Management State Program Requirements, EPA ICR No. 0168.07, OMB Control No. 2040–0057; (2) Docket ID No. OW–2002–0064 for National Pollutant Discharge Elimination System Modification and Variance Requests, EPA ICR No. 0029.08, OMB Control No. 2040–0068; and (3) Docket ID No. OW–2002–0065 for Applications for National Pollutant Discharge Elimination System Discharge Permits and the Sewage Sludge Management Permits, EPA ICR No. 0226.17, OMB Control No. 2040–0086.

The official public docket consists of the documents specifically referenced in the ICRs, any public comments received, and other information related to these ICRs. 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 Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B135, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

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/.*

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 docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. 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 Section I.A. 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.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments in formulating a final decision. If you wish to submit CBI or information that is otherwise protected by statute, please contact the person listed in **FOR FURTHER INFORMATION CONTACT.** 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 described below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in the appropriate Docket ID No. (*i.e.*, OW–2002–0063, OW–2002–0064, or OW–2002–0065). 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 electronic mail (e-mail) to: *ow-docket@epa.gov,* Attention Docket ID No. (please use appropriate Docket ID number, either) OW–2002–0063, OW–2002–0064, or OW–2002–0065. 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 Section I.B.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 four of copies of your comments to: Water Docket, Environmental Protection Agency, Mail code: #4101T, 1200 Pennsylvania Ave., NW, Washington, DC, 20460, Attention Docket ID No. (please use appropriate Docket ID number, either) OW–2002–0063, OW–2002–0064, or OW–2002–0065.

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC, Attention Docket ID No. (please use appropriate Docket ID number, either) OW–2002–0063, OW–2002–0064, or OW–2002–0065. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.A.1.

C. 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 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 your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

D. What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are 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 estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

II. List of ICRs Planned To Be Submitted

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following three continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) National Pollutant Discharge Elimination System and Sewage Sludge Management State Program Requirements, EPA ICR No. 0168.07, OMB Control No. 2040–0057, expiring on April 30, 2003.

(2) National Pollutant Discharge Elimination System Modification and Variance Requests, EPA ICR No. 0029.08, OMB Control No. 2040–0068, expiring on April 30, 2003.

(3) Applications for National Pollutant Discharge Elimination System Discharge Permits and the Sewage Sludge Management Permits, EPA ICR No. 0226.17, OMB Control No. 2040–0086, expiring on April 30, 2003.

A. Contact Individual for ICRs

For all three ICRs, please contact: Jack Faulk, Industrial Branch, Water Permits Division, Office of Wastewater Management; tel.: (202) 564–0768, fax: (202) 564–6431; or e-mail: faulk.jack@epa.gov.

B. Individual ICRs

(1) National Pollutant Discharge Elimination System and Sewage Sludge Management State Program Requirements, EPA ICR No. 0168.07, OMB Control No. 2040–0057, expiring on April 30, 2003.

Affected Entities: Entities potentially affected by this action are those State and Tribal governments and governments of U.S. Territories that are authorized by EPA to administer the National Pollutant Discharge Elimination System (NPDES) Permitting Program.

Abstract: Under the NPDES program, States, Federally Recognized Indian Tribes, and U.S. Territories, hereafter referred to as States, may acquire the authority to issue permits. States that administer NPDES programs are also required to obtain pretreatment authority (authority to require publicly owned treatment works (POTWs) to establish pretreatment programs and to require that indirect dischargers meet pretreatment standards) and authority to issue permits to federal facilities. These governments have the option of acquiring authority to issue general permits (permits that cover a category or categories of similar discharges). States with existing NPDES programs must submit requests for program modifications to add pretreatment, Federal facilities, or general permit authority. In addition, as federal statutes and regulations are modified, States must submit program modifications to ensure that their program continues to meet Federal requirements.

States have the option of obtaining a sludge management program. This program may be a component of a State NPDES Program, or it may be administered as a separate program. To obtain a NPDES or sludge program, a State must submit an application that includes a program description, an Attorney General's Statement, draft Memorandum of Agreement (MOA) with the EPA Region, and copies of the State's statutes and regulations.

Once a State obtains authority for an NPDES or sludge program, it becomes responsible for implementing the program in that jurisdiction. The State must retain records on the permittees and perform inspections. In addition, when a State obtains NPDES or sludge authority, EPA must oversee the program. Thus, States must submit permit information and compliance reports to the EPA.

When EPA issues a permit in an unauthorized State, that State must certify that the permit requirements comply with State water laws. According to the Clean Water Act (CWA) (section 510), States may adopt discharge requirements that are equal to or more stringent than requirements in the CWA or Federal regulations.

The purpose of this ICR is to revise and extend the current recordkeeping and reporting requirements associated with State NPDES and sludge programs. There are three categories of reporting requirements that are covered by this ICR. The first category, ''State Program

Requests,'' includes the activities States must complete to request a new NPDES or sludge program, or to modify an existing program. The second category, ''State Program Implementation,'' includes the activities that approved States must complete to implement an existing program, and also certification requirements for non-NPDES States. The third category, ''State Program Oversight,'' includes activities required of NPDES States so that EPA may satisfy its statutory requirements for state program oversight. The information collected by EPA is used to evaluate the adequacy of States' NPDES or sludge program and to provide EPA with the information necessary to fulfill its statutory oversight functions over State program performance and individual permit actions. EPA will use this information to evaluate States' requests for full or partial program approval and program modifications. In order to evaluate the adequacy of a State's proposed program, appropriate information must be provided to ensure that proper procedures, regulations, and statutes are in place and consistent with the CWA requirements.

Burden Statement: The public reporting and burden for collecting information is estimated to average 966,966 hours annually. EPA estimates an average of 19,226 responses each year.

This estimate includes the time required to review the instructions, search existing data sources, gather and maintain all necessary data, and complete and review the information collected. The respondents are the 50 States, 7 U.S. Territories, and 567 Federally-Recognized Indian Tribes (of which 45 States and 1 Territory are authorized to administer the NPDES Program); the burden per respondent is variable although the majority of the burden is on the 45 States and 1 Territory that are authorized to administer the NPDES Program.

(2) National Pollutant Discharge Elimination System Modification and Variance Requests, EPA ICR No. 0029.08, OMB Control No. 2040–0068, expiring on April 30, 2003.

Affected Entities: Entities potentially affected by this action are NPDES permit applicants that request a variance from the conditions that would normally be imposed on the applicant's discharge or NPDES permittees that request a modification of the NPDES or sewage sludge management permit conditions.

Abstract: This ICR calculates the burden and costs associated with modifications and variances made to NPDES permits and to the National Sewage Sludge Management Program permit requirements. The regulations specified at 40 CFR 122.62 and 122.63 specify information a facility must report in order for the U.S. Environmental Protection Agency (EPA) to determine whether a permit modification is warranted. A NPDES permit applicant may request a variance from the conditions that would normally be imposed on the applicant's discharge. An applicant must submit information so the permitting authority can assess whether the facility is eligible for a variance, and what deviation from Clean Water Act (CWA) provisions is necessary. In general, EPA and authorized States use the information to determine whether: (1) The conditions or requirements that would warrant a modification or variance exist, and (2) the progress toward achieving the goals of the Clean Water Act will continue if the modification or variance is granted. Other uses for the information provided include: Updating records on permitted facilities, supporting enforcement actions, and overall program management, including policy and budget development and responding to Congressional inquiries.

Burden Statement: EPA estimates that a total of 13,091 NPDES permittees will submit Modification and Variance Requests each year. Nationally, NPDES permittees will spend 57,051 hours collecting information for and preparing these requests. Each permittee submitting a request will spend an average of 4.36 hours preparing a request (57,051 burden hours divided by 13,091 permittees). However, there is a wide range in the actual time spent on the preparation of modification and variance requests.

State government burden is also a respondent burden for this ICR. Total State government burden hours for the 45 States and 1 Territory authorized to administer the NPDES Program are estimated to be 246,946 for reviewing and approving these modification and variance requests.

The total respondent burden hours are 303,997 for 13,137 respondents.

(3) Applications for National Pollutant Discharge Elimination System Discharge Permits and the Sewage Sludge Management Permits, EPA ICR No. 0226.17, OMB Control No. 2040–0086, expiring on April 30, 2003.

Affected entities: Publicly owned treatment works (POTWs), privately owned treatment works, new and existing manufacturing and commercial dischargers, storm water dischargers, treatment works treating domestic sewage (TWTDS), and other entities that apply for NPDES permits.

Abstract: This ICR calculates the burden and costs associated with permit applications for NPDES discharges and sewage sludge management activities. EPA uses the data contained in applications and supplemental information requests to set appropriate permit conditions, issue permits, and assess permit compliance. EPA maintains certain national application information in databases, that assists permit writers in determining permit conditions. For most permits, EPA has developed standard application forms. In some cases, such as requests for additional information and storm water applications from municipal separate sewer systems, standard forms do not exist because standard forms are not appropriate for the information collected or because they have not been developed. Application forms correspond to the different types of applicants, each form requesting information necessary for issuing permits to the associated applicants. Applicants include POTWs, privately owned treatment works, new and existing manufacturing and commercial dischargers, storm water dischargers, TWTDS, and others. Depending on the application form they are using, applicants may be required to supply information about their facilities, discharges, treatment systems, sewage sludge use and disposal practices, pollutant sampling data, or other relevant information. Section 308 of the Clean Water Act authorized EPA to request from dischargers any information that may be reasonably required to carry out the objectives and provisions of the Act. Under this authority, EPA sometimes requests information supplemental to that contained in permit applications. In its burden and cost calculations, this ICR includes requests for information supplemental to permit applications. Other parts of the Clean Water Act and federal regulations authorize EPA to collect information that supplements permit applications, such as section 403(c). This ICR calculates the burden and costs for all information collection activities associated with applications for permits. Application information is necessary to obtain an NPDES or sewage sludge permit.

Burden Statement: The total respondent burden nation-wide for the Applications for National Pollutant Discharge Elimination System Discharge Permits and the Sewage Sludge Management Permits is 1,306,704 burden hours for 291,898 permittee respondents per year. Additionally, the 45 State and 1 Territory respondents

authorized to administer the NPDES Program incur a burden of 92,033 hours annually.

Dated: January 6, 2003.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 03–516 Filed 1–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6636–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*. Weekly receipt of Environmental Impact Statements Filed December 30, 2002 Through January 03, 2003 Pursuant to 40 CFR 1506.9.

EIS No. 030000, DRAFT EIS, FHW, TX, TX–121 Highway from Interstate Highway 30 to Farm-to-Market 1187 (FM 1187) in Forth Worth, Construction, USCG Section 9, COE Section 10 and 404 Permits, Tarrant County, TX, Comment Period Ends: February 24, 2003, Contact: Patrick Bauer (512) 536–5950.

EIS No. 030001, FINAL EIS, FHW, MO, U.S. Route 50 East-Central Corridor Study, Highway Improvements from Route 50 to Route 63 east of Jefferson City, Major Transportation Investment Analysis, Osage, Gasconade, and Franklin Counties, MO, Wait Period Ends: February 10, 2003, Contact: Don Neumann (573) 636–7104.

EIS No. 030002, DRAFT EIS, AFS, CO, Trout-West Hazardous Fuels Reduction Project, Proposed Action to Reduce Fuels, Pike-San Isabel National Forest, Trout and West Creek Watersheds, Teller, El Paso and Douglas Counties, CO, Comment Period Ends: March 03, 2003, Contact: Rochelle Desser (541) 592–4075. This document is available on the Internet at: (*http://www.fs.fed.us/r2/psicc/spl/twest.htm.*)

EIS No. 030003, FINAL EIS, FSA, Programmatic EIS—Conservation Reserve Program Implementation and Expansion, Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), in the United States, Wait Period Ends: February 10, 2003, Contact: Don Steck (202) 690–0224. This document is available on the Internet at: *http://www.fsa.usda.gov/cepd/epb/nepa/htm.*

EIS No. 030004, DRAFT EIS, FTA, LA, Desire Streetcar Ling Project, Restoration of Streetcar Service Along North Rampart Street/St. Claude Avenue between Canal Street and Poland Avenue, Regional Transit Authority of New Orleans, New Orleans, LA, Comment Period Ends: February 24, 2003, Contact: Jesse Balleza (817) 978–0559.

EIS No. 030005, DRAFT SUPPLEMENT, DOE, WA, Kangley-Echo Lake Transmission Line Project, Construct a New 500 Kilovolt (kV) Transmission Line, Updated Information on the Re-evaluating Alternative Not Analyzed, COE Section 10 and Permits (DOE/EIS–0317), King County, WA, Comment Period Ends: February 24, 2003, Contact: Gene Lynard (503) 230–3790.

Dated: January 07, 2003.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 03–528 Filed 1–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7438–1]

EPA National Advisory Council for Environmental Policy and Technology—Compliance Assistance Advisory Committee; Notification of Public Advisory Committee Teleconference Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory Committee teleconference meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Compliance Assistance Advisory Committee (CAAC) under the National Advisory Council for Environmental Policy and Technology (NACEPT) will meet in a public teleconference on Friday, January 24, 2003, from 11 a.m. to 1 p.m. eastern time. The meeting will be hosted out of Conference Room #6148, U.S. EPA, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting is open to the public, however, due to limited space, seating will be on a registration-only basis. For further information regarding the teleconference meeting, or how to register and obtain the phone number, please contact the individuals listed below.

Background: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Pub. L. 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serves as a sounding board for new strategies that the Agency is developing. The CAAC, a subcommittee of NACEPT, provides a Federal advisory forum from which the Agency can receive valuable multi-stakeholder advice and recommendations on enhancing EPA's compliance assistance program.

Purpose of Meeting: EPA is developing its new FY 2003–2008 Strategic Plan to serve as the Agency's road map for the next 5 years. The Strategic Plan will lay out EPA's five long-term goals and guide the Agency in establishing the annual goals it will need to meet along the way. It will help EPA to measure how far it has come towards achieving its goals and to recognize where it needs to adjust its approaches or directions to achieve better results. Finally, it will provide a basis from which EPA's managers can focus on the highest priority environmental issues and ensure that the Agency uses taxpayer dollars effectively. EPA is building its Strategic Plan around five goals, centered on the themes of air, water, land, communities and ecosystems, and compliance and environmental stewardship. These themes reflect EPA's mission, ''to protect human health and the environment.'' In addition, the Plan will discuss strategies the Agency is applying across all five goals, in areas such as science, human capital, innovation, information, homeland security, and partnerships.

The Compliance Assistance Advisory Committee (CAAC) will review and comment on EPA's Strategic Plan Architecture and identify opportunities for EPA to enhance the compliance assistance program. The comments submitted by the CAAC will be presented to the NACEPT Council for their review and approval at a future date. EPA is currently soliciting public comments on the draft goals and objectives that will provide the structure for the new Strategic Plan.

Availability of Review Materials: EPA's draft FY 2003–2008 Strategic Plan Architecture is available electronically from EPA's Office of Chief Financial Officer, at *http://www.epa.gov/ocfopage/plan/plan.htm.*

FOR FURTHER INFORMATION CONTACT: Members of the public wishing to gain access to the conference room on the

day of the meeting must contact Ms. Joanne Berman, Designated Federal Officer for the CAAC, U.S. Environmental Protection Agency (2224A), Office of Enforcement and Compliance Assurance, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–7064, fax at (202) 564–7083; or via email at *berman.joanne@epa.gov.* Written comments from the public are welcome any time before or at the time of the meeting.

The agenda will be available to the public upon request. Written comments from the public are welcome any time before, during or after the meeting.

General Information: Additional information concerning the National Advisory Council for Environmental Policy and Technology (NACEPT) can be found on our web site (*http://www.epa.gov/ocem*).

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Berman at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 8, 2003.

Frederick F. Stiehl,

Acting Director, Office of Compliance.

[FR Doc. 03–619 Filed 1–9–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approval of a collection of information under the emergency processing procedures in the Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting that this information collection be approved by January 27, 2003. The approval will authorize FEMA to use the collection through July 31, 2003. FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of information.

SUPPLEMENTARY INFORMATION: Section 404 of the Robert R. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, authorizes Hazard Mitigation Grant Program awards to grantees to administer the program, which is a post-disaster program that contributes funds toward the cost of hazard mitigation activities in order to reduce the risk of future damage, hardship, loss or suffering in any area affected by a major disaster. Grantees are defined as any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, or an Indian tribal government that chooses to act as a grantee. Subgrantees can be a State agency, local government, private nonprofit organization, or Indian tribal government to which a subgrant is awarded, and which is accountable to the grantee for the use of the funds provided. In addition, grantees must report quarterly to FEMA as to the performance and financial status of the grant.

Collection of Information

Title: Hazard Mitigation Grant Program Application and Reporting.

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0207.

Abstract: FEMA will use HMGP subgrant applications submitted by the Grantee to determine whether the Grantee's proposed use of the funds meets the requirements and intent of the program. The application will provide FEMA the required information to determine whether the mitigation activity proposed for funding meets eligibility criteria, including environmental review, and to objectively evaluate its merits. The eligibility reviews must be completed and approved by FEMA before a subgrant can be awarded and the eligible activity initiated. Grantees must report on a quarterly basis, certifying how the funds are being used and reporting on the progress of activities funded under the subgrant awards made to the Grantee by FEMA.

Affected Public: State, local or tribal government, and not-for-profit institutions.

Estimated Total Annual Burden Hours:

Type of collection forms	Number of respondents (A)	Number of responses/ respondent (B)	Total number of annual responses	Hours per response and recordkeeping	Annual burden hours (A* B* C)
SF–424 (Application face sheet)	52	1	52	2 hours	104
FEMA Form 20–20 Budget—Non-Construction	52	15	780	9.7 hours	7,566
FEMA Form 20–16, 20–16A, 20–16B, 20–16C (Summary of assurances & certifications).	52	1	52	1 hour	52
SF LLL (lobbying disclosure)	52	1	52	10 minutes	8.7
Project Narrative (section 209.8(b)	52	15	780	12 hours	9,360
Benefit—Cost Determination	52	14	728	5 hours	3,640
Environmental Review	52	14	728	7.5 hours	5,460
HMGP Desk Reference	52	1	52	4 hours	208
Property Acquisition Handbook for Local Communities	52	10	520	4 hours	2,080

Type of collection forms	Number of respondents (A)	Number of responses/ respondent (B)	Total number of annual responses	Hours per response and recordkeeping	Annual burden hours (A* B* C)
FEMA Exhibit A (deed restrictions on property acquired).	1,763	1	1,763	30 minutes	881.5
OMB Circular A–94	52	15	780	2 hours	1,560
OMB Circular A–87 or A–122	52	15	780	2 hours	1,560
FEMA Form 20–17 Outlay Report and Request for Reimbursement.	52	15	780	17.2 hours	13,416
FEMA Form 20–10—Financial Status Report, Quarterly Progress Report.	52	4	208	10.5 hours	2,184
FEMA Form 20–18 Report of Government Property	52	6	312	4.2	1,310.4
FEMA 20–19 Report of Unobligated Balance (or substitute).	52	6	312	4 hours	1,248
Annual Audit & Audit Trail Requirements	52	1	52	30 hours	1560
Total Burden for HMGP	1,815	145	8,523		52,198.6

Estimated Cost: FEMA estimates hour burden costs to be $1,246,503 annually. The cost is based on the number of burden hours for each type of information collection/form, as indicated above, and the estimated wage rate for those individuals responsible for collecting the information or completing the form. FEMA assumes that urban and regional planners are the most likely staff to have responsibility for information collected and forms completed at the State level. Wage rates were determined using data from the Department of Labor, Bureau of Labor Statistics (BLS), which indicates that the median hourly earnings of urban and regional planners for 2000 are $23.88.

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; (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. Submit comments to the OMB within 30 days of the date of this notice. To ensure that FEMA is fully aware of any comments or concerns that you share with OMB, please provide us with a copy of your comments. FEMA will continue to accept comments for 60 days from the date of this notice.

OMB Addressee: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Emergency Management Agency, 725 17th Street, NW., Washington, DC 20503.

FEMA Addressee: Submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology and Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: For additional information contact Deborah Ingram, Federal Insurance and Mitigation Administration, at (202) 646–3856. Contact Ms. Anderson at (202) 646–2625, facsimile number (202) 646–3347, or e-mail address *InformationCollections@fema.gov* for copies of the proposed collection of information.

Dated: December 30, 2002.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–472 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1445–DR]

Alaska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–1445–DR), dated December 4, 2002, and related determinations.

EFFECTIVE DATE: December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is reopened due to additional flooding, caused by the same weather ''block'' that spawned the initial set of storms, and which is of the same nature, in the same location, causing the same type of impact as the initial event; occurs close in time to the initial event in the interim period between the request and the declaration; and on its own has impacts that meet the threshold to warrant supplemental federal disaster assistance. The incident period for this declared disaster is now October 23, 2002, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis

Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–474 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1445–DR]

Alaska; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–1445–DR), dated December 4, 2002, and related determinations.

EFFECTIVE DATE: December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 20, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–475 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1446–DR]

Guam; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Territory of Guam, (FEMA–1446–DR), dated December 8, 2002, and related determinations.

EFFECTIVE DATE: December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 16, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–476 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1446–DR]

Guam; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Territory of Guam, (FEMA–1446–DR), dated December 8, 2002, and related determinations.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Territory of Guam is hereby amended to include Categories C through G under the Public Assistance program for the Territory of Guam determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 8, 2002:

The Territory of Guam for Categories C through G under the Public Assistance program (already designated for debris removal and emergency protective measures (Categories A and B), including direct Federal Assistance, at 75 percent Federal funding).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–477 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1447–DR]

Northern Mariana Islands; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of the Northern Mariana Islands, (FEMA–1447–DR), dated December 11, 2002, and related determinations.

EFFECTIVE DATE: December 24, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the

Commonwealth of the Northern Mariana Islands is hereby amended to include Individual Assistance for the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 11, 2002:

The Island of Rota for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A and B) under Public Assistance, including direct Federal assistance, at 75 percent Federal funding).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–478 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1447–DR]

Northern Mariana Islands; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of the Northern Mariana Islands, (FEMA–1447–DR), dated December 11, 2002, and related determinations.

EFFECTIVE DATE: December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 16, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–479 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1447–DR]

Northern Mariana Islands; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of the Northern Mariana Islands, (FEMA–1447–DR), dated December 11, 2002, and related determinations.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of the Northern Mariana Islands is hereby amended to include Categories C through G under the Public Assistance program for the Island of Rota determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 11, 2002:

Island of Rota for Categories C through G under the Public Assistance program (already designated for debris removal and emergency protective measures (Categories A and B), including direct Federal Assistance, at 75 percent Federal funding).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–480 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting/Conference Call, Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting via conference call.

SUMMARY: In accordance with section 10 (a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy.

Dates of Meeting: January 15, 2003.

Place: Building J, Room 236, National Emergency Training Center, Emmitsburg, Maryland.

Time: January 15, 2003, 1–3 p.m.

Proposed Agenda: Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public in the Emmitsburg commuting area with seating available on a first-come, first-served basis. The meeting is open to the public; however, teleconference lines are limited. Members of the general public who plan to participate in the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before January 13, 2003. Dial-in information will be provided to those wishing to participate via telephone.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

Dated: December 23, 2002.

R. David Paulison,

U.S. Fire Administrator.

[FR Doc. 03–473 Filed 1–9–03; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 02-32976) published on page 79931 of the issue for Tuesday, December 31, 2002.

Under the Federal Reserve Bank of Chicago heading, the entry for Antonia Whalen, Clementine Whalen and Nathaniel Whalen, all of Chicago, Illinois, and Amanda Whalen, Portland, Oregon, acting in concert with their parents, Wayne W. Whalen and Paula Wolff, Chicago, Illinois, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. WPW Associates, L.P., Chicago, Illinois, and Antonia Whalen, Clementine Whalen and Nathaniel Whalen, all of Chicago, Illinois, and Amanda Whalen, Portland, Oregon, acting in concert with their parents, Wayne W. Whalen and Paula Wolff, Chicago, Illinois; all to retain ownership of the outstanding shares of Unionbancorp, Inc., Ottawa, Illinois, and thereby indirectly retain voting shares of Unionbank, Streator, Illinois; Unionbank/Central, Princeton, Illinois; Unionbank/West, Macomb, Illinois, and Unionbank/Northwest, Hanover, Illinois.

Comments on this application must be received by January 15, 2003.

Board of Governors of the Federal Reserve System, January 6, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–448 Filed 1–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 24, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. IBERIABANK Corporation, New Iberia, Louisiana; to indirectly acquire Cadence Holdings, L.L.C., Lafayette, Louisiana, through the acquisition of Acadiana Bancshares, Inc., Lafayette, Louisiana, and thereby engage in consumer lending, pursuant to § 225.28(b)(1) of Regulation Y, the issuance and sale of money orders, travelers checks and similar consumer–type payment instruments, pursuant to § 225.28(b)(13) of Regulation Y, and check cashing services and wire money transfer services, pursuant to Popular, Inc., 84 Fed. Res. Bull. 481 (1998).

Board of Governors of the Federal Reserve System, January 6, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–447 Filed 1–9–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

[Program Announcement 03012]

Public Health Conference Support Cooperative Agreement Program; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

The CDC program is authorized under section 317 (k) (2) of the Public Health Service Act, [42 U.S.C. 241] as amended. The Catalog of Federal Domestic Assistance number is 93.283.

The ATSDR program is authorized under sections 104 (i)(14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), [42 U.S.C. 9604(i)(14) and (15)]. The Catalog of Federal Domestic Assistance number is 93.161 for ATSDR.

B. Purpose

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for Public Health Conference Support. This program addresses the ''Healthy People 2010'' focus areas of Arthritis, Osteoporosis, and Chronic Back Conditions, Cancer, Diabetes, Disability and Secondary Conditions, Educational and Community-Based Programs, Environmental Health, Heart Disease and Stroke, Immunization and Infectious Diseases, Injury and Violence Prevention, Maternal, Infant and Child Health, Occupational Safety and Health, Oral Health, Physical Activity and Fitness, Public Health Infrastructure, Respiratory Diseases, Sexually Transmitted Diseases, and Tobacco Use. HIV Conferences are not permitted under this announcement For a copy of ''Healthy People 2010,'' visit the Internet site *http://www.health.gov/healthypeople.*

The purpose of conference support funding is to provide partial support for specific non-Federal conferences (not a series) in the areas of health promotion and disease prevention information and education programs, and applied research.

Conference support by CDC/ATSDR creates the appearance of CDC/ATSDR co-sponsorship and Congress has required that there will be active participation by CDC/ATSDR in the development and approval of the conference agenda to make sure there are no subjects that would embarrass the Government or be an improper use of funds. CDC/ATSDR funds will be expended only for approved portions of the conference.

The mission of CDC is to promote health and improve the quality of life by preventing and controlling disease, injury, and disability.

CDC supports faith-based organizations, local, Tribal, State, academic, national, and international health efforts to prevent unnecessary disease, disability, and premature death,

and to improve the quality of life. This support often takes the form of education, and the transfer of high quality research findings and public health strategies and practices through symposia, seminars, and workshops. Through the support of conferences and meetings (not a series) in the areas of public health research, education, prevention research in program and policy development in managed care and prevention application, CDC is meeting its overall goal of dissemination and implementation of new cost-effective intervention strategies.

ATSDR focus areas are: (1) Health effects of hazardous substances in the environment; (2) disease and toxic substance exposure registries; (3) hazardous substance removal and remediation; (4) emergency response to toxic and environmental disasters; (5) risk communication; (6) environmental disease surveillance; and (7) investigation and research on hazardous substances in the environment. The mission of ATSDR is to prevent both exposure and adverse human health effects that diminish the quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment.

ATSDR's systematic approaches are needed for linking applicable resources in public health with individuals and organizations involved in the practice of applying such research. Mechanisms are also needed to shorten the time frame between the development of disease prevention and health promotion techniques and their practical application. ATSDR believes that conferences and similar meetings (not a series) that permit individuals to engage in hazardous substances and environmental health research, education, and application (related to actual and/or potential human exposure to toxic substances) to interact, are critical for the development and implementation of effective programs to prevent adverse health effects from hazardous substances.

C. Eligible Applicants

Applications for CDC support may be submitted by public, private non-profit, and faith-based organizations. Public and private non-profit entities include State and local governments or their bona fide agents, faith-based organizations, voluntary associations, foundations, civic groups, scientific or professional associations, universities, and Federally-recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Only conferences planned for July 1, 2003 through September 30, 2004 are eligible to apply under this announcement.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal Funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

Applications for ATSDR support may be submitted by the official public health agencies of the States, or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, The Republic of the Marshall Island, the Republic of Palau, and Federally-recognized Indian Tribal governments. State organizations, including State universities, State colleges, and State research institutions must establish that they meet their respective State's legislature definition of a State entity or political subdivision to be considered an eligible applicant. Also eligible are nationally recognized associations of health professionals and other chartered organizations generally recognized as demonstrating a need for information to protect the public from the health effects of exposure to hazardous substances. Faith-based organizations are also encouraged to apply.

D. Funding

Availability of Funds

Approximately $1,100,000 may be available from CDC in FY 2003 to fund approximately 60 to 80 awards. It is expected that the average award will be $20,000. For FY 2003, awards will be made for one cycle with a 12-month budget period within a 12-month project period. Funding estimates may change.

Approximately $50,000 is available from ATSDR in FY 2003 to fund approximately six awards. It is expected that the average award will be $8,000, ranging from $5,000 to $10,000. It is expected that the awards will begin on or about sixty days before the date of the conference and will be made for a 12-month budget period within a 12-month project period. Funding estimates may change.

Use of Funds

1. Funds may be used for direct cost expenditures: Salaries; speaker fees (for services rendered); rental of necessary conference—related equipment; registration fees; and transportation costs (not to exceed economy class fare) for non-Federal individuals.

2. Funds may be used for only those parts of the conference specifically supported by CDC or ATSDR as documented in the grant award.

3. Funds may not be used for the purchase of equipment; payments of honoraria (for conferring distinction); alterations or renovations; organizational dues; support entertainment or personal expenses; food or snack breaks; cost of travel and payment of a Federal employee; per diem or expenses for local participants (other than local mileage). Travel for Federal employees will be supported by CDC/ATSDR. Travel for other Federal employees will be supported by the employees' Federal agency.

4. Funds may not be used for reimbursement of indirect costs.

5. CDC and ATSDR will not fund 100 percent of any conference proposed under this announcement. Part of the cost of the proposed conference must be supported with other than Federal funds.

6. CDC and ATSDR will not fund a conference after it has taken place.

7. Federal funds may not be used to fund novelty items or souvenirs.

E. Program Requirements

CDC and Recipient Activities

Grantees must meet the following requirements:

1. The conference organizer(s) may use CDC's/ATSDR's name only in factual publicity for the conference. CDC/ATSDR involvement in the conference does not necessarily indicate support for the organizer's general policies, activities, products, or the content of speakers' presentations.

2. Any conference co-sponsored under this announcement shall be held in facilities that are fully accessible to the public as required by the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Accessibility under ADAAG addresses accommodations for persons with sensory impairments as well as persons with physical disabilities or mobility limitations.

3. Manage all activities related to program content (*e.g.*, objectives, topics, attendees, session design, workshops, special exhibits, speaker's fees, agenda composition, and printing). Many of these items may be developed in concert with assigned CDC or ATSDR project personnel.

4. Provide draft copies of the agenda and proposed ancillary activities to CDC or ATSDR for approval. All but 10 percent of the total funds awarded for the proposed conference will be initially restricted pending approval of a full,

final agenda by CDC or ATSDR. The remaining 90 percent of funds will be released by letter to the grantee upon the approval of the final agenda. CDC and ATSDR reserve the right to terminate co-sponsorship at any time.

5. Determine and manage all promotional activities (*e.g.*, title, logo, announcements, mailers, press, etc.). CDC or ATSDR must review and approve any materials with reference to CDC or ATSDR involvement or support.

6. Manage all registration processes with participants, invitees, and registrants (*e.g.*, travel, reservations, correspondence, conference materials and handouts, badges, registration procedures, etc.).

7. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

8. Analyze data from conference activities that pertain to the impact of prevention.

9. Adequately assess the increase of knowledge, and change in attitudes, and behaviors of the target audience.

F. Content

Letter of Intent (LOI)

A letter of intent (LOI) is required for this Program Announcement.

Letter of Intent (LOI) instructions: Interested applicants are required to submit an original and two copies of a two to three-page in-depth, typewritten Letter of Intent (LOI). Use English only and avoid jargon and unusual abbreviations. Upon review of the LOIs, CDC or ATSDR will extend written invitations to perspective applicants to submit applications. CDC or ATSDR will accept applications by invitation only. Availability of funds may limit the number of applicants that receive funding. The LOI should specifically describe and will be evaluated on the following criteria:

1. Summary of conference format—projected agenda (including list of principal areas or topics to be addressed), including speakers or facilitator. Information should also be provided about all other national, regional, and local conferences held on the same or similar subject during the last three years. Include the following requirements on the first page:

a. The name of the organization
b. Primary contact person's name
c. Mailing address
d. Telephone number and
e. If available, fax number and e-mail address (30 points)

2. Justification for the conference, including the problems it intends to clarify and the developments it may stimulate, and a full description of your organization's purpose, experience and mission. (25 Points)

3. Expected registration '' the intended audience, approximate number, and profession of persons expected to attend. (15 points)

4. Date(s) of conference—inclusive dates (not a series) of conference (LOIs without date of conference will be considered non-responsive to this program announcement and returned to the applicant without review). (15 points)

5. Location of city, state, and physical facilities required for the conduct of the meeting. (10 points)

6. Title of the proposed conference—include the term ''conference,'' ''symposium,'' ''workshop,'' or similar designation. (5 points)

The LOI must include the estimated total cost of the conference and the percentage of the total cost (which must be less than 100 percent) being requested from CDC or ATSDR. Requests for 100 percent funding will be considered non-responsive to this program announcement and will be returned to the applicant without review. No appendices, booklets, or other documents accompanying the LOI will be considered.

An invitation to submit an application will be made on the basis of the proposed conference's relationship, as outlined in the LOI, to the CDC or ATSDR funding priorities and the availability of funds. LOIs should be sent using overnight mail service, or U.S. postal service.

The three-page limitation, (inclusive of letterhead and Signatures) must be observed or the LOI will be returned without review.

Applications

Applicants may apply to CDC or ATSDR for conference support only after their LOI has been reviewed by CDC, ATSDR, and a written invitation, including an application form, has been received by the prospective applicant.

An invitation to submit an application does not constitute a commitment on the part of CDC or ATSDR to fund the application.

In addition to the following required information, use the information in the Program Requirements and Evaluation Criteria sections to develop the application content:

1. A project summary cover sheet that includes:

a. Name of organization
b. Name of conference
c. Location of conference
d. Date(s) of conference
e. Intended audience and number
f. Dollar amount requested
g. Total conference budget amount

2. A brief background of the organization—include the organizational history, purpose, and previous experience related to the proposed conference topic.

3. A clear statement of the need for and purpose of the conference. This statement should also describe any problems the conference will address or seek to solve, and the action items or resolutions it may stimulate.

4. An elaboration on the conference objectives and target audience. A list should be included of the principal areas or topics to be addressed. A proposed or final agenda must be included.

5. A clear description of the evaluation plan and how it will assess the accomplishments of the conference objectives. A sample of the evaluation instrument that will be used must be included and a step-by-step schedule and detailed operation plan of major conference planning activities necessary to attain specified objectives.

6. Biographical sketches are required for the individuals responsible for planning and implementing the conference. Experience and training related to conference planning and implementation as it relates to the proposed topic should be noted.

7. Letters of endorsement or support—Letters of endorsement or support for the sponsoring organization and its capability to perform the proposed conference activity.

8. Budget plan and justification—A clearly justified budget narrative that is consistent with the purpose, objectives, and operation plan of the conference. The narrative will consist of a budget that includes the share requested from this grant as well as those funds from other sources, including organizations, institutions, conference income, and/or registration fees.

General Instructions

The narrative should be longer than 12 double-spaced pages, printed on one side, with one-inch margins, and 12-point font. Use English only and avoid jargon and unusual abbreviations. Pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and two required copies of the application must be submitted unstapled and unbound. Materials that are part of the basic plan should not be in the appendices.

Send LOIs and Applications to: Technical Information Management Section, PA03012, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920

Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146.

G. Submission and Deadline

For conferences July 1, 2003–Sept. 30, 2004

Letter of Intent (LOI) due date: March 1, 2003.

Application due date: May 1, 2003.

Expected Award date: July 1, 2003.

Submit an original and two signed copies of the LOI to the: Technical Information Section PA03012, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Application Forms

Applicants invited to apply should also submit the original and two copies of PHS form 5161–1, (OMB Number 0937–0189). Forms are in the application kit. Forms are also available at: *http://forms.psc.gov/forms/PHS/PHS–5161–1.pdf.*

Deadline

Filing deadlines have now been imposed for all conference support grants, and dates should be strictly followed by applicants to ensure that their LOI's are received in a timely manner.

There will be one conference support review this year and awards will be made in the month of July, 2003.

If your conference dates fall between Oct 1, 2002 and June 30, 2003, you should have applied under the previous Program Announcement 02004, otherwise your LOI will be considered unresponsive to Program Announcement 03012.

If your conference dates fall between July 1, 2003 to September 30, 2004, you should apply under this program announcement.

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Letter of Intent

A conference is a symposium, seminar, workshop, or any other organized and formal meeting lasting one day or more (not a series), where persons assemble to exchange information and views, explore, or clarify a defined subject, problem, or area of knowledge, whether or not a published report results from such meeting. The conference should support CDC or ATSDR's public health principles in furtherance of CDC's mission or ATSDR's mission. CDC will review the LOIs and compare conference objectives with our respective missions and funding priorities to determine if a full application will be invited. Less than 33 percent of LOI applicants are invited to submit full applications.

Application

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

Section 1.a., is ATSDR specific.

Section 1.b., is CDC specific.

Section 1.c., and all other sections in these criteria are applicable to both CDC and ATSDR. Each application will be given a pass of fail based on the following criteria:

1. Proposed Program and Technical Approach

a. The public health significance of the proposed conference, including the degree to which the conference can be expected to influence the prevention of exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases and other sources of pollution present in the environment. (Applicable to ATSDR applications only)

b. The applicant's description of the proposed conference as it relates to specific non-Federal conferences in the areas of health promotion and disease prevention information/education programs (except mental health, and substance abuse), including the public health need of the proposed conference and the degree to which the conference can be expected to influence public health practices. Evaluation will also be based on the extent of the applicant's collaboration with other organizations serving the intended audience (Applicable to all CDC applications except ATSDR). The applicant's description of conference objectives in terms of quality, specificity, and the feasibility of the conference based on the operational plan will also be evaluated.

2. Applicant's Capability

The applicant's capability includes the adequacy of the applicant's resources (additional sources of funding, organization's strengths, staff time, proposed physical facilities, etc.) available for conducting conference activities.

3. The Qualifications of Program Personnel

Evaluation will be based on the extent to which the application has described:

a. The qualifications, experience, and commitment of the principal staff person, and their ability to devote adequate time and effort to provide effective leadership.

b. The competence of associate staff persons, discussion leaders, speakers, and presenters to accomplish conference objectives.

c. The degree to which the applicant demonstrates the knowledge of nationwide and educational efforts currently underway which may affect, and be affected by, the proposed conference.

4. Conference Objectives

a. The overall quality, reasonableness, feasibility, and logic of the designed conference objectives, including the overall work plan and timetable for accomplishment.

b. The likelihood of accomplishing conference objectives as they relate to disease prevention and health promotion goals, and the feasibility of the project in terms of the operational plan.

5. Evaluation Methods

Evaluation instrument(s) for the conference should adequately assess increased knowledge, attitudes, and behaviors of the target audience.

6. Budget Justification and Adequacy of Facilities

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, and consistency with the intended use of grant funds. The application will also be reviewed as to the adequacy of existing or proposed facilities and resources for conducting conference activities.

I. Other Requirements

Technical Reporting Requirements

Provide the CDC with original plus two copies of:

1. A performance report, or in lieu of a performance report, proceedings of the conference, no later than 90 days after the end of the budget/project period.

2. Financial status report, no later than 90 days after the end of the budget/project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

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–15 Proof of Non-Profit Status
AR–20 Conference Support

J. Where To Obtain Additional Information

To receive additional written information, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. See also the CDC home page on the Internet: *http://www.cdc.gov/od/pgo/funding/03012.htm.*

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Rick Jaeger, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146, Telephone: (770) 488–2727, Email address: *rjaeger@cdc.gov.*

For program technical assistance, contact: Janet Telman, Funding Resource Specialist, Office of the Director Extramural Services Activity, Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, MS K38, Atlanta, Georgia 30341–3714, Telephone: (770) 488–2834, Email address: *jtelman@cdc.gov.*

Dated: January 6, 2003.

Sandra R. Manning, CGFM,

Director, Program and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–486 Filed 1–9–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–10080, CMS–R–262, CMS–R–13, and CMS–484]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* New collection; *Title of Information Collection:* Publications Use Study; *Form No.:* CMS–10080 (OMB# 0938–NEW); *Use:* CMS/CBC needs to conduct this research to evaluate how CMS meets beneficiaries' informational needs about health care benefits and choices, as directed by the Balanced Budget Act of 1997. This telephone survey will gather data on publications users' demographics, usage patterns, and attitudes toward Medicare publications. Research findings will support the improvement of an dissemination of Medicare publications; *Frequency:* Quarterly; *Affected Public:* Individuals or households; *Number of Respondents:* 3,000; *Total Annual Responses:* 3,000; *Total Annual Hours:* 850.

(2) *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* The Adjusted Community Rate (ACRP) Medicare+Choice (M+C) Plan Benefit Package (PBP) and Supporting Regulations in 42 CFR 417.401, 422.1–422.10, 422.50–422.80, 422.100–422.132, and 422.300–422.312. *Form No.:* CMS–R–262 (OMB# 0938–0763); *Use:* Under part C of the Social Security Act, a Medicare+Choice (M+C) organization is required to offer at least one plan benefit package that is approved and prices properly to all Medicare beneficiaries residing in the plan service area. This software is used by M+C organizations to describe their plan benefit package(s); *Frequency:* On occasion, annually, and as required by new legislation; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 200; *Total Annual Responses:* 200; *Total Annual Hours:* 600.

(3) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Conditions of Coverage for Organ Procurement Organizations (OPOs) and Supporting Regulations in 42 CFR, Section 486.301–.325. *Form No.:* CMS–R–13 (OMB# 0938–0688); *Use:* OPOs are required to submit accurate data to CMS concerning population and information on donors and organs on an annual basis in order to assure maximum effectiveness in the procurement and distribution of organs; *Frequency:* Annually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 59; *Total Annual Responses:* 59; *Total Annual Hours:* 1.

(4) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Attending Physician's Certification of Medical Necessity for Home Oxygen Therapy and Supporting Regulations 42 CFR 410.38 and 42 CFR 424.5; *Form No.:* 0938–0534 (CMS–484); *Use:* This form is used to determine if oxygen is reasonable and necessary pursuant to Medicare Statute; Medicare claims for home oxygen therapy must be supported by the treating physician's statement and other information including estimate length of need (# of months), diagnosis codes (ICD–9) etc.; *Frequency:* As needed; *Affected Public:* Business or other for-profit; *Number of Respondents:* 175,000; *Total Annual Responses:* 500,000; *Total Annual Hours:* 50,000.

To obtain copies of the supporting statement and any related forms for the

proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 2, 2003.

John P. Burke, III,

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–482 Filed 1–9–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–10024, CMS–10041, CMS–377/378 and CMS–R–54]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Health Survey (MHS); *Form No.:* CMS–10024 (OMB# 0938–0844)

(Note: This collection was published under CMS–10074/0938–NEW during the 60-day **Federal Register** notice comment period).

Use: The Centers for Medicare & Medicaid Services has developed a survey, the PHS, that is similar to the Health Outcomes Survey (HOS). The main purpose of the PHS is to collect health status information that may be used to adjust Medicare payments to PACE organizations. It has been successfully pilot-tested to assess response rates and accuracy of responses under different distribution approaches. The pilot test enabled CMS to select an approach whereby PACE enrollees will be sent surveys to fill out and can request assistance from family or professionals.; *Frequency:* Annually; *Affected Public:* Individuals or households, not-for-profit institutions; *Number of Respondents:* 8,550; *Total Annual Responses:* 5,814; *Total Annual Hours:* 1082.

(2) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Long Term Care Awareness Project; *Form No.:* CMS–10041 (OMB# 0938–0825); *Use:* CMS–CBC needs to collect these data to pilot test a national campaign to educate current and future Medicare beneficiaries and their families about long term health care needs, as requested in the Presidential Initiative for Fiscal Year 2000 Budget. Project findings will be used to design and implement a nationwide campaign. Respondents will be from two groups: 55–70 year-olds and persons with disability who are 18–64 years of age; *Frequency:* Quarterly; *Affected Public:* Individuals or households; *Number of Respondents:* 2000; *Total Annual Responses:* 2000; *Total Annual Hours:* 667.

(3) Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Request for Certification, CMS–377 and the Ambulatory Surgical Center Survey Report Form, CMS–378 and CMS-R–0054 Supporting Regulations Contained in 42 CFR 416.1 thru 416.49; *Form No.:* CMS–0377/0378/R–0054 (OMB# 0938–0200); *Use:* The ASC request for certification form is utilized as an application for facilities wishing to participate in the Medicare program as an ASC. This form initiates the process of obtaining a decision as to whether the conditions of coverage are met. It also promotes data retrieval from the Online Data Input Edit (ODIE system, a subsystem of the Online Survey Certification and Report (OSCAR) system by CMS Regional Offices (RO)). The ASC report form is an instrument used by the State survey agency to record data collection in order to determine supplier compliance with individual conditions of coverage and to report it to the Federal government. The form is primarily a coding worksheet designed to facilitate data reduction and retrieval into the ODIE/OSCAR system at the HCFA ROs. This form includes basic information on compliance (*i.e.*, met, not met and explanatory statements) and does not require any descriptive information regarding the survey activity itself.; *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 3,600; *Total Annual Responses:* 3,675; *Total Annual Hours:* 1,875. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 2, 2003.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–483 Filed 1–9–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0529]

Pfizer, Inc.; Withdrawal of Approval of a New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new drug application (NDA) for REZULIN (troglitazone) Tablets held by Pfizer, Inc., 235 East 42d Street, New York, NY 10017. Pfizer has voluntarily withdrawn this NDA because the product is no longer marketed, thereby waiving its opportunity for a hearing.

DATES: Effective January 10, 2003.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In a letter dated May 1, 2002, Pfizer, Inc., requested that FDA withdraw under § 314.150(d) (21 CFR 314.150(d)), NDA 20–720 for REZULIN (troglitazone) Tablets, stating that The Warner-Lambert Co., which Pfizer acquired in June 2000, discontinued marketing the product in March 2000. REZULIN (troglitazone) Tablets, a treatment for type 2 diabetes, was voluntarily withdrawn after review of safety data showed that the drug is more toxic to the liver than two other more recently approved drugs that offer a similar benefit. Pfizer waived its opportunity for a hearing, provided under § 314.150(a) and (b).

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.105(a)), approval of the NDA 20–720, and all amendments and supplements thereto, is withdrawn. Distribution of this product in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the act (21 U.S.C. 355(a) and 331(d)).

Dated: December 16, 2002.

Jane Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 03–493 Filed 1–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Medical Device User Fee Rates for Fiscal Year 2003 and Interim Procedures; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of November 21, 2002 (67 FR 70228). The document announced the rates and interim procedures for medical device user fees for fiscal year (FY) 2003. The document was inadvertently published with confusing language regarding the fee that must be paid by a small business that submits a 510(k) premarket notification for FDA review during FY 2003. The document intended to state that all 510(k)s submitted for FDA review during FY 2003 are subject to a standard fee of $2,187, and that all submitters who are subject to a fee, including a small business, are required to pay this fee. This document corrects that error.

ADDRESSES: Persons with access to the Internet may obtain further information on the Medical Device User Fee and Modernization Act of 2002 at http://www.fda.gov/cdrh/mdufma or http://www.fda.gov/cber/mdufma/mdufma.htm.

FOR FURTHER INFORMATION CONTACT: Frank Claunts, Office of Management and Systems (HFA–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–29572, appearing on page 70228 in the **Federal Register** of Thursday, November 21, 2002, the following corrections are made:

1. On page 70228, in the third column, under ''III. Fee Calculations for FY 2003,'' the fourth sentence is corrected to read ''Table 1 of this document summarizes the types of applications that are subject to a fee, the full fee amount expressed as a percent of the fee for a PMA, the full (standard) fee for FY 2003, and the fee that may be paid by a qualified small business.''

2. On page 70229, in the second column, the first full sentence is corrected to read ''For premarket notification submissions, a small business will pay the full (standard) fee of $2,187.''

3. On page 70229, in table 1, in the third column, in the last row, ''2,187'' is corrected to read ''2,187[1]''.

4. On page 70229, under table 1, add the following footnote to read as follows: ''[1]A small business will pay the full (standard) fee of $2,187 for a premarket notification submitted to FDA during FY 2003. A small business fee, set at 80 percent of the standard 510(k) fee, will be available beginning FY 2004.''

Dated: January 6, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–494 Filed 1–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; NIH Intramural Research Training Award, Program Application

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Director, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on Friday, October 4, 2002, page 62253 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: NIH Intramural Research Training Award, Program Application; Type of Information Collection Request: Revision of OMB No. 0925–0299; Expiration date 03/31/2003; Need and Use of Information Collection: The proposed information collection activity is for the purpose of collecting data related to the availability of Training Fellowships under the NIH Intramural Research Training Award Program. This information must be submitted in order to receive due consideration for an award and will be used to determine the eligibility and quality of potential awardees. Frequency of Response: On occasion. Affected Public: Individuals seeking Intramural Training award

opportunities. Type of Respondents: Postdoctoral, Predoctoral, Post-baccalaureate, Technical, and Student IRTA applicants.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Type of respondent	Estimated number for respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Postdoctoral IRTA	1,375	1.00	1.00	1,375
Predoctoral	306	1.00	1.00	306
Postbaccalaureate	793	1.00	1.00	793
Technical IRTA	83	1.00	1.00	83
Student IRTA	3,800	1.00	1.00	3,800
References for all IRTA categories	15,188	1.00	0.33	5,012
Total	21,545	1.00	0.5276862	11,369

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and the clarity of information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to

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 Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Edie Bishop, Personnel Management Specialist, Office of Human Resources, OD, NIH, Building 31, Room B3C07, 31 Center Drive MSC. 2203, Bethesda, MD, 20892–2203, or call non-toll-free number (301) 496–1443, or E-mail your request, including your address to: *Bishope@od.nih.gov*.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: January 3, 2003.

Frederick C. Walker,

Acting Director, Office of Human Resources.

[FR Doc. 03–439 Filed 1–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: January 28–30, 2003.

Time: January 28, 2003, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Time: January 29, 2003, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Time: January 30, 2003, 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW. Washington, DC 20007.

Contact Person: Nancy B. Saunders, PhD., Scientific Review Administrator, Division of Extramural Activities, NIAID, NIH, Scientific Review Program, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *ns120v@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 3, 2003.

Anna Snouffer.

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–440 Filed 1–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential

trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: February 5–6, 2003.

Closed: February 5, 2003, 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: February 6, 2003, 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate the Board of Scientific Counselors' Report.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1–E2, Bethesda, MD 20892.

Open: February 6, 2003, 9:30 a.m. to 3:30 p.m.

Agenda: Program documents.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1–E2, Bethesda, MD 20892.

Contact Person: Kenneth R. Warren, Phd, Director, Office of Scientific Affairs, National Institute on Alcohol Abuse, and Alcoholism, National Institutes of Health, Willco Building, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, (301) 443–4375, *kwarren@niaaa.nih.gov.*

Information is also available on the Institute's/Center's home page: *silk.nih.gov/silk/niaaa1/about/roster.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: January 3, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–441 Filed 1–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 personall privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ACISR & DCISR Center-Adult.

Date: February 7, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, Phd, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, (301) 443–7216, *hhaigler@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ACISR and DCISR Centers for Child Research.

Date: February 10, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PHD, Scientific Review Administrator, Division of Extramural Activities, national Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, (301) 443–7216, *hhaigler@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Services Research Review Committee.

Date: February 12–13, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Martha Ann Carey, PHD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1606, *mcarey@mail.nih.gov.*

[FR Doc. 03–442 Filed 1–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 Advisory Council on Aging.

Date: February 4–5, 2003.

Closed: February 4, 2003, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Conference Room 6, Bethesda, MD 20892.

Open: February 5, 2003, 8 a.m. to 12:15 p.m.

Agenda: Call to Order, Task Force on Minority Aging Research Report, and other presentations.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Conference Room 6, Bethesda, MD 20892.

Closed: February 5, 2003, 12:15 p.m. to 3 p.m.

Agenda: To review and evaluate program documents.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Conference Room 6, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, (301) 496–9322.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.nih.gov/nia/naca/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 3, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–443 Filed 1–9–03; 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, Cognitive Decline with Aging.

Date: January 29–30, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Plaza Hotel, 815 Main Street, Ft. Worth, TX.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, (301) 496–7705.

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, Role of Insulin Pathways in Aging.

Date: February 10–11, 2003.

Time: 7 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton Riverwalk North, 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, Immunology of Aged T Cells.

Date: February 17–18, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Empress Hotel, 7766 Fay Avenue, La Jolla, CA 92037.

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.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 3, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–444 Filed 1–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of the Project Rehabilitation and Restitution Program

—New—The Rehabilitation and Restitution initiative of SAMHSA's Center for Substance Abuse Treatment seeks to reduce recidivism and increase psychosocial functioning and pro-social lifestyle among substance abusing state correctional prisoners. Hypotheses of the study are that providing intensive, long-term case management services will facilitate a pro-social lifestyle leading to higher rates of sealing or expunging of criminal records and that the prospect of stigma reduction provided by a sealed criminal record will motivate offenders to remain crime and drug free for a least three years after completing judicial supervision.

The project consists of (1) providing technical assistance to develop and implement intensive case management services, and (2) an evaluation of the effectiveness of the intensive case management services in increasing the number of people eligible to have their records sealed. The study is confined to jurisdictions with statutes permitting records to be sealed. Two counties in Ohio involving an urban setting (Cuyahoga county which includes the city of Cleveland) and a rural setting (Clermont county adjacent to Kentucky) were selected based on responses to an RFA. Subjects in each county will be drawn from referrals by parole and probation to Treatment Accountability for Safer Communities (TASC) case management programs in the two counties.

The target population consists of individuals entering parole or probation who are first time nonviolent felons with a history of substance abuse and are eligible to have their records sealed. Technical assistance to participating counties will be provided to (1) develop, an intensive case management treatment model designed to increase the proportion of offenders eligible to have records sealed, and (2) involve the various stake holders, such as case managers, parole officers, district attorney's office, public defender, and judges in the implementation of the case management model. A formative evaluation will provide feedback on the implementation of the program. A systems evaluation will examine the number of services offered to the felons, and changes in attitudes towards sealing records on the part of critical stakeholders, such as district attorney offices, judges and service providers. An outcomes evaluation will examine the effect of the intensive case management model on the eligibility to have records sealed, social, psychological and health status, HIV risk behavior, and the actual proportion of subjects who have their records sealed.

The experimental study consists of two groups of randomly assigned

subjects. An intent-to-treat group is scheduled to receive intensive case management consisting of an intensive TASC case management model during the one-year period of supervision followed by an additional three years of less intensive case management services. A control group will receive treatment as usual, consisting of the TASC case management model now in place. The evaluation procedures will consist of a baseline interview and follow-up interviews over a 4-year period that tracks outcomes to the point at which subjects are eligible for sealing of records. Follow-up interviews and file studies will test for a wide array of possible effects, including recidivism, employment, education, drug use, family relationships, support of children, mental and physical health, HIV/AIDS risk factors, assumption of personal responsibility and life adjustment factors.

The evaluation will involve 880 projected participants over a four-year period. Evaluation interviews will take place at baseline, 6 months, 12 months, and 42 months. Each interview will last 1½ to 2 hours depending on the memory and speed of the respondents. The interview goal is a minimum 80% completion rate. Interview data will be supplemented by a file study of arrest records and the number of criminal records expunged. Additionally, two focus groups of clients in the intent to treat group will be conducted in each county at 3, 6, 12, 18, 24, and 30 months to provide feedback on client perceptions of the case management programs. One group at each site will consist of clients in compliance with the program and one group will consist of clients not in compliance. Groups will consist of 8 to 10 participants chosen at random from the compliant and noncompliant clients. Additional file study data will be gathered on the number of case management sessions and the number and frequency of other interventions in the intent-to-treat and control groups.

Data collection	Number of respondents	Responses/ respondent	Hours per response	Total hr. burden
Baseline Interview	880	1	1.37	1,206
Follow-up Battery: 6-, 12-, & 42-month	880	3	1.85	4,884
Client Focus Groups: 3-, 6-, 12-, 18-, 24- & 30-month	120	1	1.50	180
File Data Collection (Staff Time) MCSIS, Ohio DRC, TASC	3	3	2.00	18
Quality Assurance (Treatment Program Staff) Multimodality Quality Assurance (MQA)	6	1	.75	5
Stake Holders:				
Workshops/meetings evaluation form	18	10	.08	14
Attitudes Towards Sealing Records	18	3	.08	4
Stakeholders Focus Group	12	1	1.50	18
Total Burden	925			6,329
4-Year Annual Average	925			1,582

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 6, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–490 Filed 1–9–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Evaluation of Mentoring and Family Strengthening Youth Substance Abuse Prevention Initiatives—New—The basis for the current cross-site evaluation originates from two previous efforts funded by SAMHSA's Center for Substance Abuse Prevention (CSAP) aimed at providing prevention services for high-risk youth: (1) Project Youth Connect—Mentoring and (2) Parent and Family Strengthening. The Project Youth Connect Program, funded in 1998, was designed to determine the effectiveness of a paid mentor/advocate model in improving life achievement outcomes for youth 9 to 15 years of age and their families. The Parent/Family Strengthening Program was designed to present science-based program models that would be selected for implementation within local communities. Funding for the parent/family strengthening program was distributed in two cohorts, with Cohort 1 receiving funding in 1998 and Cohort 2 receiving funding in 1999. Both cohorts were funded for a period of 24 months to address the gap between effective family-based prevention interventions and their availability in States, communities and other organizations.

The goal of the current cross-site evaluation seeks to build upon these previous efforts by evaluating the impact of a three-year Mentoring and Family Strengthening prevention program targeting high-risk youth and their caregivers on reducing risk factors related to, and enhancing protective factors against, substance abuse. Seven mentoring and nine family strengthening study sites were funded by SAMHSA/CSAP as of September 2001 to participate in this cross-site study. The primary objectives of the cross-site evaluation are to: (1) Assess the process of implementing program models with diverse target groups, (2) measure the effectiveness of specified intervention strategies such as cultural enrichment activities, educational and vocational resources, or computer-based curricula, and (3) determine the success of the Mentoring and Family Strengthening Programs in delaying, preventing, and/or reducing the use of alcohol, tobacco, and other drugs (ATOD) among youth and caregivers at risk for such behaviors. Conducting this evaluation will assist SAMHSA/CSAP in promoting and disseminating optimally effective prevention programs.

The CSAP GPRA Adult and Youth questionnaires, which have been approved by OMB (OMB No. 0930–0208) for use in all CSAP prevention services programs, will be used to measure ATOD use and risk factors associated with ATOD abuse among program participants and comparison subjects. Scales from the CSAP Core Measures list (OMB No. 0930–0230) and the CSAP National Youth Survey (OMB No. 0930–0178) will be used to measure other important risk and protective factors. The cross-site instrument (containing CSAP GPRA, scales from the CSAP Core Measures list, and scales from the CSAP National Youth Survey) is augmented with additional scales in order to measure other important risk factors such as family conflict and parental stress. Protective factors that serve to guard against ATOD abuse include educational aspirations, school connectedness, and family cohesion. Data will also be gathered from program reports using a ''dosage form'' that will document services provided to youth and their adult caregivers.

The evaluation data will be collected through self-report questionnaires administered to program and comparison youth and adults, and to Mentors at the Mentoring Study Sites. Each youth and adult in the intervention and comparison group will complete questionnaires at three different times: (1) Baseline, (2) program exit and (3) 6-month follow up. Each Mentor will complete a background information form at baseline; mentees will complete a questionnaire about their mentor at program exit and at 6-month follow up. The dosage form will be completed by Mentors and Family Strengthening program staff on a weekly basis for program youth and adults.

Sample size, respondent burden, and intrusiveness have been minimized to be consistent with the cross-site evaluation objectives. Procedures are employed to safeguard the privacy and confidentiality of participants. Every effort has been made to coordinate cross-site data collection with local data collection efforts in order to minimize respondent burden. Pilot tests assisted in controlling burden and ensuring the user-relevance of questions.

Evaluation results will have significant implications for the substance abuse prevention field, the allocation of grant funds, and evaluation activities conducted by multiple Federal, state, and local government agencies. Results will be used to develop federal policy in support of SAMHSA/CSAP program initiatives, inform the public of lessons learned and findings, improve existing programs, and promote replication and dissemination of effective prevention strategies.

The following table shows the estimated annualized burden for data collection.

Response type	Number of respondents	Responses/ respondent	Average burden/ response (hrs.)	Total burden hours
*Youth (intervention and comparison)	2,500	3	.50	3,750
*Adult Family Strengthening (intervention and comparison)	1,250	3	.50	1,875
**Adult Mentoring	1,250	3	.667	2,501
Mentor Information Form	121	1	.167	20
Mentee Measure Form	692	2	.250	346
Weekly Dosage Form—Family Strengthening Staff	46	4,000	.083	15,272
Weekly Dosage Form—paid mentors	21	18,900	.083	32,943
Weekly Dosage Form—volunteer mentors	100	200	.083	1,660
Total	5,167			58,367
3-Yr. Average Annual	1,722			19,456

*Average response burden does not include the 20 minutes for completing the CSAP GPRA Tool (OMB No. 0930–0208) or 10 minutes for completing questions that are part of the Core Measures (OMB No. 0930–0230) for the Youth Questionnaires and the Adult Family Strengthening Questionnaire.

**The Adult Mentoring Questionnaire does not include CSAP GPRA Tool.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 2, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–489 Filed 1–9–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–02]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 10, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration.* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 3, 2003.

Mark R. Johnston,

Deputy Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–358 Filed 1–9–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Jamul Indian Village 101 Acre Fee-to-Trust Transfer and Casino Project, San Diego County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), in cooperation with the Jamul Indian Village and the National Indian Gaming Commission (NIGC), intends to file a draft Environmental Impact Statement (DEIS) with the U.S. Environmental Protection Agency for the proposed approval of a 101-acre fee-to-trust transfer, a gaming management contract and the construction of associated casino and support facilities. Details on the proposed action, location and areas of environmental concern addressed in the DEIS are provided in the **SUPPLEMENTARY INFORMATION** section. This notice also announces a public hearing to receive comments on the DEIS.

DATES: Written comments on the DEIS must arrive by March 2, 2003. The public hearing will be held on February 6, 2003, from 6 p.m. to 10 p.m., or until the last public comment is received.

ADDRESSES: You may mail or hand carry written comments to Ronald Jaeger, Regional Director, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, California 95825–1846. Please include your name, return address and the caption, ''DEIS Comments, Jamul Indian Village 101 Acre Fee-to-Trust and Casino Project, San Diego County, California,'' on the first page of your written comments.

The public hearing will be at the El Cajon Community Center, 195 East Douglas, El Cajon, California 92020. This meeting will be co-hosted by the BIA and Jamul Indian Village.

To obtain a copy of the DEIS, please write or call William Allan, Environmental Protection Specialist, Pacific Region, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825–1846, telephone (916) 978–6043. Copies of the DEIS are also available for review at the Jamul Indian Village Tribal Administration Office, 14191 Highway 94, Jamul, California 91935, and at the following two public libraries: San Diego County Library—El Cajon Branch, 201 East Douglas Avenue, El Cajon, California 92020; and San Diego County Library—Fletcher Hills Branch, 576 Garfield Avenue, El Cajon, California 92020.

FOR FURTHER INFORMATION CONTACT: William Allan, (916) 978–6043.

SUPPLEMENTARY INFORMATION: The Jamul Indian Village is located in eastern San Diego County, California, approximately one mile south of the community of Jamul. The project area is bordered by Melody Road to the north, vacant and residentially developed land to the west, vacant land to the south and State Route 94 to the east. State Route 94 provides direct access to downtown San Diego, approximately 20 miles to the west, where it intersects with Interstate 5.

The Jamul Indian Village proposes that 101 acres of land be taken into trust and that a casino, parking, hotel and other facilities supporting the casino be constructed on the existing Jamul Indian Village site and the 101-acre trust acquisition. The gaming facility will be managed by Lakes Kean Argovitz Resorts-California, LLC, (LKAR–CA) on behalf of the Tribal Government, pursuant to the terms of the management agreement between the Tribal Government and LKAR–CA. The BIA serves as the Lead Agency for National Environmental Policy Act (NEPA) compliance, with the NIGC, which is responsible for approval of the gaming management contract, acting as a Cooperating Agency.

Alternatives to the proposed project that are considered in the DEIS include: (1) Trust acquisition and casino and hotel construction (the proposed action); (2) trust acquisition, casino and retail development; (3) trust acquisition and retail development; (4) trust acquisition, hotel/casino north of Melody Road; and (5) no action.

Environmental issues addressed in the DEIS include land and water resources, air quality, biological resources, cultural resources, socioeconomic conditions, resource use patterns, public services, environmental justice, growth inducing effects, and cumulative impacts.

Public Comment Solicitation

Comments, including names and addresses of respondents, will be available for public review at the BIA mailing address shown in the **ADDRESSES** section, during regular business hours, 9 a.m. to 4 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by the law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR part 1500 through1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: January 2, 2003.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–517 Filed 1–9–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–03–1430–ER]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Flood Control Master Plan, Clark County Regional Flood Control District

AGENCY: Bureau of Land Management, Las Vegas Field Office.

COOPERATING AGENCY: U.S. Army Corps of Engineers, Sacramento District.

ACTION: Notice of intent to prepare a supplemental Environmental Impact Statement (SEIS) for the Flood Control Master Plan, Clark County Regional Flood Control District (CCRFCD).

SUMMARY: This document provides notice that the BLM intends to prepare an SEIS of the Final Environmental Impact Statement for the Flood Control Master Plan, Clark County Regional Flood Control District, approved on June 4, 1991, by record of decision. The project area is located in Clark County,

Nevada, hydrographic basins 212 and 167. This activity encompasses private and public lands within the Las Vegas Valley and Boulder City, Nevada. The SEIS will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with the U.S. Army Corps of Engineers (USACE), Sacramento District and interested parties to identify any local concerns. The public scoping process will help identify issues and concerns including an evaluation of the existing Final Environmental Impact Statement (FEIS) for the Flood Control Master Plan in the context of the needs and interests of the public.

DATES: This notice initiates the public scoping process. Comments and concerns on issues can be submitted in writing to the address listed below and will be accepted throughout the 30-day scoping period. All public meetings will be announced through the local news media, newsletters, and the BLM web site at *www.blm.nv.gov* at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

Public Participation: Public meetings will be held throughout the SEIS scoping and preparation period. Public scoping meetings will be held from 6–8 p.m. Pacific standard time on January 22, 2003, at the CCRFCD, RTC Building, Room 108, 600 S. Grand Central Parkway, Las Vegas, Nevada 89106; and on January 23, 2003, from 6–8 p.m. Pacific standard time at the Henderson Convention Center and Visitors Bureau, 200 Water Street, Henderson, Nevada 89015. Early participation is encouraged and will provide guidance and suggestions for the future management of flood control facilities within the Las Vegas Valley. In addition to the ongoing public participation process, formal opportunities for public participation will be provided upon publication of the BLM draft SEIS.

ADDRESSES: Written comments should be sent to the Bureau of Land Management, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130–2301; Fax (702) 515–5023. Documents pertinent to this proposal may be examined at the Las Vegas Field Office or the CCRFCD. The CCRFCD is located at 600 S. Grand Parkway, Suite 300, Las Vegas, NV 89106–4511.

Comments, including names and street addresses of respondents, will be available for public review at the Las Vegas Field Office during regular business hours (7:30 a.m. through 4:15 p.m.), Monday through Friday, except holidays, and may be published as part of the SEIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Jeffrey Steinmetz, BLM, Las Vegas Field Office, Telephone (702) 515–5097; e-mail *jsteinme@blm.gov*, or Anna Wharton, at (702) 515–5095: e-mail *awharton@blm.gov.*

SUPPLEMENTARY INFORMATION: The changing needs and interests of the public and the growth within the Las Vegas Valley necessitates a revision to the Flood Control Master Plan FEIS published in 1991 for the Las Vegas Field Office and CCRFCD. Preliminary issues and management concerns have been identified by BLM and CCRFCD personnel, their consultant, and other agencies. They represent the BLM's knowledge to date on the existing issues and concerns with current management. The major issue themes that will be addressed in the SEIS include: Impacts to surface water hydrology and water quality; protection of federally-listed species, state-listed species, and BLM sensitive species; minimizing impacts to air quality; minimizing visibility impacts; balancing conflicting and compatible land uses; protection of cultural and paleontological resources; cumulative impacts of the project; and the creation of a new project-specific analysis procedure for future flood control facilities.

After gathering public comments on what issues the SEIS should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the SEIS;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of the SEIS.

Rationale will be provided in the SEIS for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the SEIS. The public is encouraged to help identify these questions and concerns during the scoping phase. An interdisciplinary approach will be used to develop the SEIS in order to consider the variety of resource issues and concerns identified. Disciplines involved in the SEIS process will include specialists with expertise in soils, minerals and geology; hydrology; botany; wildlife and fisheries; transportation; visual resources; air quality; lands and realty; outdoor recreation; archaeology; paleontology; and sociology and economics.

Mark T. Morse,

Field Manager.

[FR Doc. 03–594 Filed 1–9–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Lake Management Plan/Final Environmental Impact Statement, Lake Mead National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality regulations (40 CFR part 1500–1508), the National Park Service, Department of the Interior, has prepared a Lake Management Plan and Final Environmental Impact Statement identifying and evaluating four alternatives for Lakes Mead and Mohave within Lake Mead National Recreation Area. The foreseeable potential for environmental impacts, and appropriate mitigation, are identified and assessed for each alternative. When approved, the plan is intended to guide management actions during the next 15–20 years.

DATES: Notice of an approved record of decision will be published in the **Federal Register** not sooner than 30 days after the final document has been distributed.

ADDRESSES: Copies of the Final Environmental Impact Statement/Lake Management Plan may be obtained by writing to Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada, 89005, or it may be viewed on the Internet at *www.nps.gov/lame/planning.*

FOR FURTHER INFORMATION CONTACT: Jim Holland, Management Assistant, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada, 89005. e-mail: *Jim_Holland@nps.gov.* Phone: (702) 293–8986.

SUPPLEMENTARY INFORMATION: The Lake Mead NRA General Management Plan completed in 1986 establishes land based management zones and strategies for meeting those goals. Since that time, management issues have surfaced that have not been adequately addressed or resolved in the previous planning efforts. These issues relate to the increase in recreational use of the lakes, visitor conflicts and safety, potential impacts on park resources from water-related recreation and personal watercraft use. The overall objective of this lake management plan is to improve the management of Lakes Mead and Mohave, while providing for the long-term protection of park resources and allowing a range of recreational opportunities to support visitor needs.

Proposal: The preferred alternative has been modified in the Lake Management Plan/Final Environmental Impact Statement. There have been modifications made to the lake zoning and carrying capacity sections and the uses allowed in the primitive and semiprimitive zones. The temporal zoning in Black Canyon and the boating in proximity sections of the plan have also been revised.

The Lake Management Plan (Alternative C—Preferred) would allow for a slight increase in boating levels (5,055 boats at any one time). Facility expansion could occur at Cottonwood Cove on Lake Mohave and at Callville Bay, Echo Bay, Overton Beach and Temple Bar on Lake Mead. Additional public launch facilities could be constructed at Eldorado Canyon along Lake Mohave and at Stewarts Point on Lake Mead. A new road could be constructed to provide improved access to the north shore of the Boulder Basin on Lake Mead.

The park waters would be managed for a range of recreational settings from primitive to urban. Five percent of the park waters would be managed for primitive and semiprimitive settings, 39% for rural natural, 21% for urban natural and 35% as urban park. The primitive areas would be managed for non-motorized use but would allow electric trolling motors and semiprimitive areas would be managed for flat wake speed or with a horsepower restriction. Personal watercraft would be prohibited from operating in primitive and semiprimitive settings but authorized to operate in rural natural, urban natural and urban park settings.

Black Canyon would be managed for temporal recreational settings with two days per week being primitive (no motors) and five days per week between Labor Day and Memorial Day as semiprimitive. In Black Canyon where there is a constant river current, the semiprimitive zone flat wake restriction is replaced with an engine size restriction of 65-horsepower or less. Between Memorial Day and Labor Day, Black Canyon would be managed as rural natural allowing generally unrestricted boating access five days per week (due to the narrow canyon environment, houseboats, wake boarding and water skiing are prohibited).

In consultation with the States of Arizona and Nevada, a 200-foot flat wake zone would be established around beaches frequented by bathers, boats at the shoreline and persons in the water or at the shoreline. This is to establish a safe shoreline environment for shoreline users. The National Park Service will work with the respective states to develop uniform boating laws on Lakes Mead and Mohave and pursue mandatory boating education programs. Alcohol consumption while operating a boat would be prohibited.

Sanitation and public education requirements would be implemented and a clean-up program initiated. Glass beverage containers and styrofoam would be prohibited within the park. Water quality would be enhanced by requiring all boaters camping overnight to possess a marine head or portable toilet.

The Environmental Protection Agency regulation requiring the marine industry to improve the efficiency of engines by the year 2006 would be accelerated at Lake Mead NRA; requiring exclusive use of the new direct injection two-stroke engines, or equivalent, for motorized vessels starting 2012.

This alternative was identified at the environmentally preferred alternative as it best meets the requirement of section 101 of the National Environmental Policy Act. It would help provide a wide range of beneficial uses without degradation and would improve the safety of the recreation area. This alternative would preserve important aspects of our natural heritage while providing an environment that supports diversity and a variety of individual choices.

Alternatives: Alternative A maintains the status quo Lake Mead NRA, as described in chapter 3, Affected Environment. It provides a baseline from which to compare other alternatives, to evaluate the magnitude of proposed changes, and to measure the environmental effects of those changes. Under this alternative, management would continue to follow the 1986 General Management Plan zoning and capacities. By taking no new management actions including the promulgation of a personal watercraft rule, this alternative results in a permanent ban of personal watercraft use.

Alternative B would cap the number of boats at any one time at the current level (4,393 boats at any one time). No facilities would be expanded and no new launch ramps would be constructed. Ten percent of the park waters would be managed for primitive and semi-primitive settings. Personal watercraft would be authorized to operate in the rural natural, urban natural and urban park settings. A 100-foot flat wake zone would be established around the shoreline of both Lakes Mead and Mohave. Sanitation and litter initiatives would be improved but boats camping overnight would not be required to possess a porta-potty or marine toilet. All boat engines including personal watercraft would be required to meet the 2006 EPA manufacturer standards. Upon the approval of the plan, all engines not meeting these standards would be prohibited from operating on the waters of Lake Mead NRA.

Alternative D would provide for a greater increase in boating activity (5,800 boats at any one time). Facility expansion would be similar to *Alternative C* but allow larger increases in the marina slip and rental craft numbers. None of the park waters would be zoned for primitive or semiprimitve settings and there would be no restriction on personal watercraft use. A 300-foot flat wake zones would be established around the shoreline of both Lakes Mead and Mohave. Alcohol consumption while operating a boat would be prohibited and glass and Styrofoam containers would be prohibited. The National Park Service would require all Lake Mead and Mohave boaters to take a boater education course. Boaters camping overnight would be required to possess a porta-potty or marine head. There would be no restriction on the use on carburated two-stroke engines.

Planning Background: The Lake Management Plan and Draft Environmental Impact Statement (DEIS) were prepared by the National Park Service (NPS) pursuant to the National Environmental Policy Act. A scoping notice was published in the **Federal Register** on May 3, 1993. General issues

and specific concerns already raised during previous relevant planning processes were provided to the public. Over a five-year period a series of public scoping and public informational meetings were held. Public scoping comments were received through this entire process. During this scoping period, the NPS facilitated over 100 discussions and briefings to interested members of the public, congressional delegations, Indian tribes, elected officials, other agencies, public service organizations, educational institutions, and other entities. Over 1,000 letters were received concerning the management of recreational use of the waters of Lake Mead NRA.

The Lake Management Plan/DEIS—formally announced for public review per notice of availability published in the **Federal Register** on April 19, 2002—was sent directly to all individuals, organizations, and agencies which had previously contacted the park; copies could also be obtained in the park, by mail, at public meetings, and were available for review at local and regional libraries (*i.e.*, Las Vegas, Henderson, Boulder City, Laughlin, Bullhead City, Kingman, Overton, Mesquite and St. George). Additional copies were sent to public libraries in Southern California including Needles, San Bernardino, Victorville, Barstow, Irvine, Long Beach, Northridge and Los Angeles. Finally, the complete document was posted on the Lake Mead National Recreation Area Webpage (*http://www.nps.gov/lame/planning*). Written comments were accepted through June 26, 2002. Approximately 10,000 comments were received; of these 6,000 were electronic form letters and 1,000 were printed post cards; all were duly considered and adjustments were made to the draft plan. The issues focused on boating access, zoning, carrying capacity, shoreline wakeless zones and personal watercraft use. All written comments have been logged, archived and are available for public review in the park's research library.

In order to further foster public review and comment, six public meetings were held throughout the region—all were conducted in communities, cities and towns neighboring Lake Mead National Recreation Area. All meetings were conducted in an open house format (where participants could view displays and talk with park management and planning staff). At each of these meetings, written comment forms could be submitted or oral testimony was documented by a court reporter. Approximately 750 persons attended these meetings and the majority submitted written or oral comments. In addition, presentations were made before the Laughlin Town Board and the Searchlight Town Board.

Decision Process: Subsequent to release of the Lake Management Plan/Final Environmental Impact Statement, notice of an approved record of decision shall be published in the **Federal Register** not sooner than 30 days after the final document has been distributed. This is expected to occur by the end of December 2002. The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation is the Superintendent, Lake Mead National Recreation Area.

Dated: November 25, 2002.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 03–118 Filed 1–9–03; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[USITC SE-03-001]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: January 27, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. TA–421–2 (Market Disruption)(Certain Steel Wire Garment Hangers from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination on market disruption to the President on January 27, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: January 8, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–659 Filed 1–8–03; 3:00 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Mountain Health Care Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment and Competitive Impact Statement have been filed in a civil antitrust case, *United States of America* v. *Mountain Health Care, Civil* Action No. 1:02CV288–T, in the United States District Court for the District of Western North Carolina. The Complaint alleges that Mountain Health Care (''MHC'') and its participating physicians developed a uniform fee schedule and used that fee schedule in negotiations with managed care purchasers in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. In order to restore competition, the proposed Final Judgment requires that MHC be dissolved. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 7th Street, NW., and at the Office of the Clerk of the United States District Court for the District of Western North Carolina. The documents may also be found on the Antitrust Division's Web site, *ltte://www.usdoj.gov/atr.*

Public comment on the proposed Final Judgement is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mark J. Botti, Chief; Litigation I; Antitrust Division; United States Department of Justice; 1401 H Street., NW.; Room 4000; Washington, DC 20530 (Tel.: (202) 307–0001).

Constance K. Robinson,

Director of Operations.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Western District of North Carolina.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not

withdrawn its consent, which it may do at any time before the entry of the proposed final Judgment by serving notice thereof on the defendants and by filing that notice with the Court.

3. Defendant shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof s though the same were in full force and effect as an order of the Court.

4. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: October 2, 2002.

For Plaintiff United States of America:

Weun Wang,

Litigation II Section, Antitrust Division, U.S. Department of Justice.

September 26, 2002.

For Defendant Mountain Health Care, P.A.:

John J. Miles,

Ober, Kaler, Grimes & Shriver, Counsel for Defendant Mountain Health Care, P.A.

Final Judgment

Whereas, defendant has represented to the United States that its dissolution as ordered herein can and will be made promptly and that defendant later will raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now, therefore, before taking any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, *it is hereby ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II. Definitions

As used in this Final Judgment:

A. ''Mountain Health Care'' means defendant Mountain Health Care P.A., a North Carolina corporation, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, shareholders, participating members, and its directors, officers, managers, agents, and employees.

B. ''Participate'' in an entity means to be a partner, shareholder, owner, member, or employee of such entity, or to provide services, agree to provide services, or offer to provide services, to a payer through such entity.

C. ''Payer'' means any person that pays, or arranges for payment, for all or any part of any provider services for itself or for any other person.

D. ''Person'' means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

E. ''Preexisting contract'' means a contract that was in effect prior to the date of the filing of the Complaint in this matter.

F. ''Provider'' means a doctor of allopathic medicine, a doctor of osteopathic medicine, or any other person licensed by the state to provide ancillary health care services.

III. Applicability

This Final Judgment applies to defendant Mountain health Care and all other persons in active concert or participation with Mountain Health Care who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Dissolution of Mountain Health Care

A. Defendant will cause the complete and permanent dissolution of Mountain Health Care as an on-going business entity by no later than 120 calendar days after the filing of the Complaint in this matter, or 10 days after notice of the entry of this Final Judgment by this Court, whichever is later.

B. Beginning immediately after filing of the Complaint in this matter:

1. defendant will not enter into any new contracts with any payers for the provision of provider services or renew any terms of any preexisting contract with any payer for the provision of provider services;

2. defendant will terminate all preexisting contracts with payers by no later than 120 calendar days after the filing of the Complaint in this matter, or 10 days after notice of the entry of this Final Judgment by this Court, whichever is later.

C. Defendant will cease doing business of any kind or manner at the expiration of 120 calendar days after the filing of the Complaint in this matter, or 10 days after notice of the entry of this Final Judgment by this Court, whichever is later.

D. Within 14 calendar days after the date of filing of the Complaint in this matter, defendant will distribute by first-class mail:

1. to the chief executive officer of each payer then under contract with Mountain Health Care, a copy of the Complaint, this Final Judgment, a notice of the dissolution required under § IV, and a notice of contract termination pursuant § IV.B.2;

2. to each provider then participating in Mountain Health Care, a copy of the Complaint, this Final Judgment, and a notice of the dissolution required under section IV.

V. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether this Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time, duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal offices, shall be permitted:

1. Access during office hours of defendant to inspect and copy, or at plaintiff's option, to require defendant to provide copies of, all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the custody or possession or under the control of defendant relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, defendant's officers, employees, and agents, who may have their individual counsel present, regarding any such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendant.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, made to defendant's principal offices, defendant shall submit written reports, under oath if requested, relating to any matter contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to the United States, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then 10 calendar days notice shall be given defendant by the United States prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

VI. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

VII. Public Interest

Entry of this Final Judgment is in the public interest.

VIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

Dated: _____, 2003.

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2 of the Antitrust Procedures and Penalties Act

(''APPA''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The plaintiff filed a civil antitrust Complaint on December 13, 2002, in the United States District Court for the Western District of North Carolina, alleging that Mountain Health Care and its participating physicians have participated in an agreement which has unreasonable restrained interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. As alleged in the Complaint, this agreement has artificially raised the reimbursements paid to physicians in Western North Carolina by managed care companies, health insurance companies, third party administrators and employers (collectively ''managed care purchasers'') who provide health care benefits directly to their employees and enrollees. The Complaint requests that Mountain Health Care be ordered to promptly dissolve.

The proposed Final Judgment requires Mountain Health Care to dissolve within one hundred twenty (120) calendar days after the filing of the Final Judgment, or within ten (10) days after notice of entry of the Final Judgment by the Court, whichever is later, unless the United States grants an extension of time.

The plaintiff and the defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment, and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

A. Background

Mountain Health Care, a physician network joint venture, is a professional corporation that incorporated in 1994 under the laws of North Carolina, and which is located in Asheville, North Carolina. Mountain Health Care is comprised of more than 1,200 participating physicians practicing in Western North Carolina, consisting of Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey counties. It is entirely owned by its participating physicians, although not all participating physicians are owners; the shareholders and the majority of its board are physicians. Mountain Health Care sells its physician network to managed care purchasers, and its member physicians and medical practices offer health care services to consumers located in North Carolina.

Mountain Health Care's members constitute the vast majority of the physicians in private practice in Asheville, North Carolina, and surrounding Buncombe County, representing virtually every medical specialty. In certain practice specialities, 100 percent of the Asheville area physicians are Mountain Health Care members. The group includes the majority of physicians with admitting privileges at Mission St. Joseph's Hospital, the only hospital available to the general public in Asheville, North Carolina, and surrounding Buncombe County.

Physicians frequently contract with managed care purchasers who provide health care benefits directly to their employees and enrollees. These contracts establish the terms and conditions, including price, under which physicians will provide care to the employees and enrollees of the health care plans offered by managed care purchasers. In order to gain access to managed care purchasers' enrollees, physicians often negotiate rates below their customary fees. As a result of these lower rates, contracts with managed care purchasers may lower the costs of health care for their enrollees. Independent physicians and medical practices compete against each other to offer health care services to managed care purchasers. Each physician or medical group decides whether or not to enter into a contract with a particular managed care purchaser, and independently negotiates the terms of such an agreement. Managed care purchasers are representatives of the ultimate consumers, and higher rates to managed care purchasers lead to higher health care costs for the ultimate consumers.

B. The Violation

The Mountain Health Care joint venture brought together a large group of physicians with the objective of increasing their bargaining power with managed care purchasers; indeed, Mountain Health Care was created by its participating physicians to maximize physician reimbursement in Western North Carolina. The participating physicians authorized Mountain Health Care to represent them in negotiations with managed care purchasers, even though many of the independent physicians and medical practices that make up Mountain Health Care would have competed against each other. To facilitate such negotiations, Mountain Health Care and its participating physicians developed a uniform fee schedule for use in negotiations with managed care purchasers. The fee schedule was developed, in part, by comparing and blending the rates of multiple physicians. Mountain Health Care then adopted the uniform fee schedule that applied to all its members—nearly every physician in Asheville and the surrounding area.

For several years, using the uniform fee schedule, Mountain Health Care has negotiated for its participating physicians with managed care purchasers. Thus, it has acted as a vehicle for collective decisions by its participating physicians on price and other significant terms of dealing. Mountain Health Care has incorporated the fee schedule into contracts with health plans, thereby setting reimbursement rates its various participating physicians would receive from managed care purchasers. Under such contracts that provide access to the Mountain Health Care network of physicians, each competing physician is paid the same amount for the same service.

Mountain Health Care did not engage in any activity that might justify collective agreements on the prices its members would charge for their services. Its participating physicians have not clinically or financially integrated their practices to create significant efficiencies to the benefit of managed care purchasers and their employees and enrollees.

C. The Competitive Effects of the Violation

The agreement on a uniform fee schedule has had anticompetitive results. Through use of the uniform fee schedule, Mountain Health Care has operated as a price-setting organization. Without Mountain Health Care, the participating physicians normally would have competed against each other for managed care purchasers. Instead, the participating physicians authorized Mountain Health Care to negotiate and set common prices and other competitively significant terms with managed care purchasers. Through Mountain Health Care, its participating physicians collectively agreed on prices for services rendered under Mountain Health Care contracts, an agreement in violation of Section 1 of the Sherman Act.

Mountain Health Care's imposition of a uniform fee schedule increased physician reimbursement fees to managed care purchasers throughout Western North Carolina. The physician reimbursement rates that have resulted from Mountain Health Care's negotiations with managed care purchasers are higher than those which would have resulted from individual negotiations with each competing independent physician or medical practice that participates in Mountain Health Care. With the large majority of physicians in Asheville and the surround area as members of Mountain Health Care and adhering to its uniform fee schedule, few, if any, competitive alternatives remained for managed care purchasers. The agreement on a uniform fee schedule, implemented through Mountain Health Care, eliminated meaningful competition for health care services in Asheville and the surrounding area.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is designed to end the illegal concerted action alleged in the Complaint by requiring the defendant to dissolve within 120 days. This time period will allow the defendant's customers adequate time to seek alternative means of procuring physician services. This dissolution will reestablish competition below many of the independent participating physicians and medical practices of Mountain Health Care. This competition will benefit the purchasers of physician services by enabling them to negotiate with independent physicians and practice groups and enabling them to negotiate price independently, instead of being forced to pay the fees outlined in Mountain Health Care's uniform fee schedule.

Unless the United States grants an extension of time, Mountain Health Care's dissolution must be completed within one hundred twenty (120) calendar days after the filing of the Final Judgment, or ten (10) days

after notice of entry of the Final Judgment by the Court, whichever is later. The Final Judgment imposes certain obligations on Mountain Health care with respect to facilitating its dissolution, including providing notice to its members and customers.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with this Court and published in the **Federal Register**. Written comments should be submitted to: Mark J. Botti, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendant Mountain Health Care. The United States is satisfied, however, that the dissolution of Mountain Health Care proposed in the Final Judgment will more quickly achieve the primary objective of a trial on the merits—reestablishing competition in the relevant market.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment is ''in the public interest.'' In making that determination, the court *may* consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C 16(e) (emphasis added). As the Court of Appeals for the District of Columbia has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (DC Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather, absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[2]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462–63 (9th Cir. 1988), quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d at 1458. Predecent requires that

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. A ''proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interests.' '' [4]

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459. Since the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' if follows that the court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. Id.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 18, 2002. Washington, DC

Respectfully submitted,

[1] 119 Cong. Rec. 24,598 (1973). See *United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, those procedures are discretionary (15 U.S.C. 16(f)). A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H. R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538.

[2] *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH ¶61,508, at 71,980 (W.D. Mo. 1977); see also *United States* v. *Loew's Inc.*, 783 F. Supp. 211, 214 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Mgmt., Inc.*, 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

[3] *United States* v. *Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. See also *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

[4] *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (quoting Gillette, 406 F. Supp. at 716), aff'd sub nom. *Maryland* v. *United States*, 460 U.S. 1001 (1983); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985); *United States* v. *Carrols Dev. Corp.*, 454 F. Supp. 1215, 1222 (N.D.N.Y. 1978).

Mark J. Botti,
Weeun Wang,
David C. Kelly,
Steven R. Brodsky,
Barry L. Creech,
Karl D. Knutsen.
U.S. Department of Justice, Antitrust Division, Litigation I Section, 1401 H Street, NW., Suite 4000, Washington, DC 20530, 202–307–0001.

Certificate of Service

I hereby certify that I served a copy of the foregoing Competitive Impact Statement via First Class United States Mail, this 18th day of December, 2002, on:

For Defendant Mountain Health Care.

Jeri Kumar, Esq.,
D.B & T. Building, Suite 510, Asheville, NC 28801.

I hereby certify that I personally served a copy of the foregoing Competitive Impact Statement, this 18th day of December, 2002, on:

For Defendant Mountain Health Care.

Jeff Miles,
Ober, Kaler, Grimes & Shriver, Suite 5000, 1401 H Street, NW, Washington, DC 20005, (202) 326–5008.

David C. Kelly.

[FR Doc. 03–503 Filed 1–9–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to insure that requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed new collection of administrative and survey data on the Individual Training Account (ITA) experiment. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before March 11, 2003.

ADDRESSES: Janet Javar, U.S. Department of Labor, Employment and Training Administration/Office of Policy and Research, Rm. N–5637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–3677 (this is not a toll-free number); *jjavar@doleta.gov;* Fax: (202) 693–2766 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION

I. Background

The Individual Training Account (ITA) experiment is designed to test different approaches to managing customer choice in the administration of Individual Training Accounts (ITAs). Established under the Workforce Investment Act (WIA) of 1998, ITAs are intended to empower U.S. Department of Labor (DOL) customers to choose the training services they need.

WIA allows state and local offices a great deal of flexibility in deciding how much guidance and financial support they will provide to ITA recipients. The ITA experiment will test three approaches that differ widely in both the resources made available to customers and the involvement of local counselors to guide customer choice. The three ITA approaches range from a highly structured model to a pure voucher model:

- In Approach 1, local counselors steer their customers to training that is expected to yield a high return (in the form of increased earnings) relative to the resources invested in training. Moreover, counselors can approve or disapprove customers' program selections and set the value of the ITA to fund approved selections.
- In Approach 2, customers receive a fixed ITA award. Local counselors then help customers select training that seems appropriate and feasible, given customers' skills and their fixed ITA awards and other financial resources they have available to pay for training.
- In Approach 3, customers are offered a fixed ITA award, but they are allowed to choose any state-approved training option and to formulate their program selections independently if they so desire.

Each of the local sites that participates in the study will operate all three of these ITA approaches. Local customers that need training and are determined eligible for an ITA will be randomly assigned to one of the approaches.

The evaluation of the ITA experiment will include two parts. The first part will be an analysis of the implementation and operation of the three ITA approaches. This analysis will be based on data collected during three rounds of visits to the six sites participating in the experiment. During these visits, researchers will examine the implementation and operation of the three ITA approaches from various perspectives, including those of state and local administrators, one-stop counselors, customers, and training providers. The experiment is being conducted in Des Plaines, IL; Charlotte, NC; Atlanta, GA; Phoenix, AZ; Bridgeport, CT; and Jacksonville, FL.

The second component of the evaluation will be an analysis of customer outcomes and the returns on the investment in training.

This analysis will focus on the differences in customer outcomes, such as training choices, employment, and earnings, generated by the three ITA approaches. Data for this analysis will be drawn from Unemployment Insurance (UI) wage records and other administrative records, a computer-based Study Tracking System (STS) developed specifically for the experiment, and a follow-up survey of customers approximately 15 months after random assignment.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The data for the analysis of customer outcomes and the returns on the investment in training will come from three primary sources: (1) UI wage

records, (2) UI program data, and (3) the 15-month follow-up survey of customers. UI wage records will be the primary source of employment and earnings data. The UI program data system will provide information on UI eligibility and receipt. The UI wage records and program data will be collected from the six states in which the study sites are located and up to two neighboring states in which participants in the experiment are likely to file for UI benefits or jobs.

The follow-up survey will collect data items unavailable from administrative records. It will provide more detailed information on employment outcomes—such as wage rates and fringe benefits—than UI wage records and more detailed information on household composition and other demographic characteristics. The follow-up survey will be the only source for data on: Perceptions of and attitudes toward the services and levels of customer choice provided by each ITA approach, job search behavior after random assignment, and characteristics of post-training jobs.

Type of Review: New.

Agency: Employment and Training Administration.

Title: The Evaluation of the Individual Training Account Experiment.

Agency Number: 1205–0NEW.

Affected Public: Individuals, state government.

Cite/Reference:

Cite/reference	Total respondents	Frequency	Average time per response	Burden (hours)
State administrative data request	8	Two times	8 hours	128
ITA Follow-up survey	3,762	One time	30 min.	1,881
Totals	3,770			2,009

Total Burden Cost: $1,167,183.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information request; they will also become a matter of public record.

Dated: January 3, 2003.

Gerard F. Fiala,

Administrator.

[FR Doc. 03–527 Filed 1–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY020003 (Mar. 1, 2002)

Volume II

Maryland
MD020002 (Mar. 1, 2002)
MD020055 (Mar. 1, 2002)

Volume III

Kentucky
KY020001 (Mar. 1, 2002)
KY020002 (Mar. 1, 2002)
KY020003 (Mar. 1, 2002)
KY020004 (Mar. 1, 2002)
KY020006 (Mar. 1, 2002)
KY020007 (Mar. 1, 2002)
KY020025 (Mar. 1, 2002)
KY020027 (Mar. 1, 2002)
KY020028 (Mar. 1, 2002)
KY020029 (Mar. 1, 2002)
KY020032 (Mar. 1, 2002)
KY020035 (Mar. 1, 2002)
KY020039 (Mar. 1, 2002)
KY020044 (Mar. 1, 2002)
Mississippi
MS020001 (Mar. 1, 2002)
MS020003 (Mar. 1, 2002)
MS020050 (Mar. 1, 2002)
MS020055 (Mar. 1, 2002)

Volume IV

Illinois
IL020016 (Mar. 1, 2002)
IL020018 (Mar. 1, 2002)
Ohio
OH020001 (Mar. 1, 2002)
OH020002 (Mar. 1, 2002)
OH020003 (Mar. 1, 2002)
OH020006 (Mar. 1, 2002)
OH020007 (Mar. 1, 2002)
OH020008 (Mar. 1, 2002)
OH020009 (Mar. 1, 2002)
OH020013 (Mar. 1, 2002)
OH020014 (Mar. 1, 2002)
OH020020 (Mar. 1, 2002)
OH020023 (Mar. 1, 2002)
OH020024 (Mar. 1, 2002)
OH020026 (Mar. 1, 2002)
OH020028 (Mar. 1, 2002)
OH020029 (Mar. 1, 2002)
OH020032 (Mar. 1, 2002)
OH020033 (Mar. 1, 2002)
OH020035 (Mar. 1, 2002)
OH020036 (Mar. 1, 2002)
OH020037 (Mar. 1, 2002)
OH020038 (Mar. 1, 2002)

Volume V

Arkansas
AR020001 (Mar. 1, 2002)
AR020003 (Mar. 1, 2002)
AR020008 (Mar. 1, 2002)
AR020023 (Mar. 1, 2002)
AR020027 (Mar. 1, 2002)
Louisiana
LA020005 (Mar. 1, 2002)
LA020009 (Mar. 1, 2002)
LA020012 (Mar. 1, 2002)
LA020014 (Mar. 1, 2002)
LA020015 (Mar. 1, 2002)
LA020018 (Mar. 1, 2002)
LA020052 (Mar. 1, 2002)
LA020053 (Mar. 1, 2002)
New Mexico
NM020001 (Mar. 1, 2002)
NM020005 (Mar. 1, 2002)

Volume VI

Colorado
CO020001 (Mar. 1, 2002)
CO020002 (Mar. 1, 2002)
CO020003 (Mar. 1, 2002)
CO020004 (Mar. 1, 2002)
CO020005 (Mar. 1, 2002)
CO020006 (Mar. 1, 2002)
CO020007 (Mar. 1, 2002)
CO020008 (Mar. 1, 2002)
CO020009 (Mar. 1, 2002)
CO020010 (Mar. 1, 2002)
CO02011 (Mar. 1, 2002)
CO02012 (Mar. 1, 2002)
CO02013 (Mar. 1, 2002)
CO02014 (Mar. 1, 2002)
CO02015 (Mar. 1, 2002)
CO02016 (Mar. 1, 2002)
CO02017 (Mar. 1, 2002)
Oregon
OR020001 (Mar. 1, 2002)
OR020004 (Mar. 1, 2002)
OR020007 (Mar. 1, 2002)
OR020017 (Mar. 1, 2002)
Wyoming
WY020004 (Mar. 1, 2002)
WY020008 (Mar. 1, 2002)
WY020009 (Mar. 1, 2002)
WY020023 (Mar. 1, 2002)

Volume VII

California
CA020001 (Mar. 1, 2002)
CA020002 (Mar. 1, 2002)
CA020009 (Mar. 1, 2002)
CA020013 (Mar. 1, 2002)
CA020027 (Mar. 1, 2002)
CA020028 (Mar. 1, 2002)
CA020029 (Mar. 1, 2002)
CA020030 (Mar. 1, 2002)
Hawaii
HI020001 (Mar. 1, 2002)
Nevada
NV020002 (Mar. 1, 2002)
NV020005 (Mar. 1, 2002)
NV020009 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)of* the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly tot he user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s) be sure to specify the State(s) of interest, since subscriptions may be ordered for any of all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 31st day of December 2002.

Carl J. Poleskey

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–280 Filed 1–9–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Monterey Coal Company

[Docket No. M–2002–113–C]

Monterey Coal Company, 14300 Brushy Mound Road, Carlinville, Illinois 62626 has filed a petition to modify the application of 30 CFR 75.350 (Air courses and belt haulage entries) at its No. 1 Mine (MSHA I.D. No. 11–00726) located in Macoupin County, Illinois. The petitioner requests a modification of the existing standard to allow belt air to be used to ventilate working places from a location inby the furthest inby conveyor drive for the remaining length of the panels. The petitioner states that during panel development, the location is inby the main conveyor drive near the belt head, and during longwall mining, the location is inby the tripper/booster drive, usually positioned not greater than 8,000 feet inby the belt head. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. PC Contracting, Inc.

[Docket No. M–2002–114–C]

PC Contracting, Inc., P.O. Box 1630, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i) (Escapeways; bituminous and lignite mines) at its PC #2 Mine (MSHA I.D. No. 15–18304) located in Knox County, Kentucky. The petitioner proposes to use two ten-pound portable chemical fire extinguishers in the operator's deck of each Mescher tractor operated at the PC #2 mine. The petitioner states that the equipment operator will inspect each fire extinguisher on a daily basis prior to entering the primary escapeway. The petitioner further states that a record of the daily inspection will be kept at the mine, and a sufficient number of spare fire extinguishers will be maintained at the mine in case a defective fire extinguisher is detected. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. PC Contracting, Inc.

[Docket No. M–2002–115–C]

PC Contracting, Inc., P.O. Box 1630, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.342 (Methane monitors) at its PC #2 Mine (MSHA I.D. No. 15–18304) located in Knox County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen indicators in lieu of machine mounted methane monitors on three-wheel tractors with drag bottom buckets. The petitioner has listed specific terms and conditions that would be followed when implementing its proposed alternative method at the PC #2 Mine. The petitioner asserts that this petition is based on the safety of the miners and not primarily from an economic standpoint and that the proposed alternative method provides no less than the same measure of protection as the existing standard.

4. Energy West Mining Company

[Docket No. M–2002–116–C]

Energy West Mining Company, Box 310, 15 North Main, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.701 (Grounding metallic frames, casings, and other enclosures of electric equipment) at its Deer Creek Mine (MSHA I.D. No. 42–00121) located in Emery County, Utah. This standard requires frames of electric equipment to be grounded using approved methods. The petitioner requests a modification of the standard to allow the electrical grounding requirements for portable diesel-driven electric generators to be waived based on the use of ground fault detection, ground wire monitoring and other circuit protection means, such as short circuit, overcurrent and undervoltage protection. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Energy West Mining Company

[Docket No. M–2002–117–C]

Energy West Mining Company, Box 310, 15 North Main, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.901(a) (Protection of low- and medium-voltage three-phase circuits used underground) at its Deer Creek Mine (MSHA I.D. No. 42–00121) located in Emery County, Utah. This standard requires low- and medium-voltage three-phase alternating-current circuits to contain either a direct or a derived neutral which is grounded through a suitable resistor at the power center. The petitioner requests a modification of the standard to allow the electrical grounding requirements for portable diesel-driven electric generators to be waived based on the use of ground fault detection, ground wire monitoring, and other circuit protection means, such as short circuit, overcurrent and undervoltage protection. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Canyon Fuel Company, LLC

[Docket No. M–2002–118–C]

Canyon Fuel Company, LLC, HC 35 Box 380, Helper, Utah 84526–9804 has filed a petition to modify the application of 30 CFR 75.507 (Power connection points) at its Skyline Mine No. 3 (I.D. No. 42–01566) located in Carbon County, Utah. The petitioner requests a modification of the existing standard to allow the installation and use of a non-permissible, 4,160-volt AC power submersible pump in a cased borehole which penetrates an abandoned and sealed portion of the Skyline Mine No. 3, Level 2 workings. The petitioner states that the pump will be located above the roof horizon and the electrical components of the pump will be separated from the atmosphere of the sealed and abandoned area, and the pump will be under water continuously where water has accumulated above the level of the roof up into the borehole. The petitioner further states that the electrical equipment that provides power to the pump is located on the surface. The petitioner asserts that the use of a non-permissible pump will enhance the petitioner's ability to control water levels in abandoned and sealed sections of the mine; that application of the existing standard would result in a diminution of safety to the miners; and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. H & M Coal Company

[Docket No. M–2002–119–C]

H & M Coal Company, 48 Meadowview Road, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 49.2 (Availability of mine rescue teams) at its Rocky top Mine (MSHA I.D. No. 36–09072) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams of three members with one alternate for either team. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. H & M Coal Company

[Docket No. M–2002–120–C]

H & M Coal Company, 48 Meadowview Road, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (Quantity and location of firefighting equipment) at its Rocky Top Mine (MSHA I.D. No. 36–09072) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit use of portable fire extinguishers only to replace existing requirements where rock dust, water cars, and other water storage equipped with three (3) ten quart pails is not practical. The petitioner proposes to use two (2) portable fire extinguishers near the slope bottom, and an additional portable fire extinguisher within 500 feet of the working face for equivalent fire protection for the Rocky Top Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

9. H & M Coal Company

[Docket No. M–2002–121–C]

H & M Coal Company, 48 Meadowview Road, Pine Grove, Pennsylvania 17963 has filed a petition

to modify the application of 30 CFR 75.1200(d) & (i) (Mine map) to its Rocky Top Mine (MSHA I.D. No. 36–09072) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope. The petitioner also proposes to limit the required mapping of the mine workings above and below to those present within 100 feet of the vein being mined except those veins that are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible. The petitioner further asserts that use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings that fluctuate considerably. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

10. H & M Coal Company

[Docket No. M–2002–122–C]

H & M Coal Company, 48 Meadowview Road, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1202 and 30 CFR 75.1202–1(a) (Temporary notations, revisions, and supplements) to its Rocky Top Mine (MSHA I.D. No. 36–09072) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations. The petitioner also proposes to conduct surveys prior to commencing retreat mining and whenever either a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov,* or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before February 10, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 3rd day of January 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–446 Filed 1–9–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Federal Advisory Committee on International Exhibitions

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions (FACIE), will be held by teleconference from 2 p.m.–4 p.m. on Wednesday, January 29, 2003 in Room 709 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: January 6, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–519 Filed 1–9–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 3 p.m. Tuesday, January 7, 2003.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. section 552b(c)(2) (internal personnel rules and practices); and (9)(B) (disclosure would significantly frustrate implementation of a proposed agency action . . .).

MATTERS TO BE CONSIDERED: Internal Administrative Matters.

CONTACT PERSON FOR MORE INFORMATION: Lester A. Heltzer, Acting Executive Secretary, Washington, DC 20570, Telephone: (202) 273–1067.

Dated: Washington, DC, January 7, 2003.

By the Direction of the Board.

Lester A. Heltzer,

Acting Executive Secretary.

[FR Doc. 03–612 Filed 1–8–03; 12:20 pm]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by February 10, 2003. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement

the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The Applications Received are as Follows:

Permit Application No. 2003–017

1. *Applicant:* Bruce D. Sidell, School of Marine Sciences, University of Maine, 5751 Murray Hall, Orono, ME 04469–5751.

Activity for Which Permit Is Requested

Introduce Non-indigenous species into Antarctica. The applicant proposes use frozen fish tissues from species native to Patagonian Chile as bait (mixture of Macruronis magellanicus and Dissostichus eleginoides) in fishing traps/pots in the Antarctic Peninsula. The specimens collected, with particular emphasis upon Channichthyid ice fishes, will be taken to the Palmer Station aquarium facilities and used to study the physiology and biochemistry of Antarctic fishes. The applicant proposes to fish a maximum of 15 traps and estimates using a maximum of 15 blocks of frozen fish bait (10–15kg).

Location

Antarctic Peninsula area in the vicinities of Low, Brabant, Anvers, and Livingston Island, as well as Dellman Bay.

Dates

April 5, 2003 to August 30, 2005.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–450 Filed 1–9–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Dominion Nuclear Connecticut, Inc., Millstone Power Station, Unit 2; Establishment of Atomic Safety and Licensing Board

[Docket No. 50–336–OLA–2; ASLBP No. 03–808–02–OLA]

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding: Dominion Nuclear Connecticut, Inc., Millstone Power Station, Unit 2.

This Board is being established pursuant to a notice of consideration of issuance of an operating license amendment, proposed no significant hazards consideration determination, and opportunity for a hearing published in the **Federal Register** (67 FR 68731 (Nov. 12, 2002)). The proceeding involves a petition for intervention submitted December 12, 2002, by the Connecticut Coalition Against Millstone and the STAR Foundation challenging a request by Dominion Nuclear Connecticut, Inc., to amend the operating license for the Millstone Power Station, Unit 2. The amendment would change certain facility technical specifications relating to containment closure during activities in the spent fuel pool area.

The Board is comprised of the following administrative judges: Ann M. Young, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Dr. Thomas S. Elleman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 6th day of January 2003.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 03–496 Filed 1–9–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Office of Nuclear Material Safety and Safeguards Consolidated Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Nuclear Regulatory Commission's (NRC) Office of Nuclear Material Safety and Safeguards (NMSS) is announcing the availability of a draft document ''Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness'' (NUREG–1757, Vol. 3), for public comment. This document provides guidance for compliance with the financial assurance, recordkeeping, and timeliness criteria for decommissioning of 10 CFR parts 30, 40, 70, and 72. The guidance is intended for NRC staff, licensees, and the public. The guidance is being developed in response to the NMSS performance goals, in the NRC's Strategic Plan, of: (1) Making NRC activities and decisions more effective, efficient, and realistic; and (2) reducing unnecessary regulatory burden on stakeholders. NRC is seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing the document is available to the NRC staff. This draft document is being issued for comment only and is not intended for interim use. The NRC will review public comments received on the draft document. In response to those comments, suggested changes will be incorporated, where appropriate, and a final document will be issued for use.

DATES: Comments on this draft document should be submitted by March 11, 2003. Comments received after that date will be considered to the extent practicable.

ADDRESSES: NUREG–1757, Volume 3, is available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (First Floor), Rockville, Maryland. NUREG–1757, Volume 3, is also available electronically from the ADAMS Electronic Reading Room on the NRC Web site at: *http://www.nrc.gov/reading-rm/adams.html,* and on the NRC Web site at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff.*

A free single copy of NUREG–1757, Volume 3, will be available to interested parties until the supply is exhausted. Such copies may be requested by writing to the U.S. Nuclear Regulatory Commission, Distribution Services, Washington, DC 20555–0001 or submitting e-mail to *distribution@nrc.gov.*

Members of the public are invited and encouraged to submit written comments

to: Duane W. Schmidt, Project Manager, Office of Nuclear Material Safety and Safeguards, Mail Stop T–7F27, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays. Comments may also be sent electronically to *decomcomments@nrc.gov.* Copies of comments received may be examined at the ADAMS Electronic Reading Room on the NRC web site, and in the NRC Public Document Room, 11555 Rockville Pike, Room O–1F21, Rockville, MD 20852. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION, CONTACT: Duane W. Schmidt, Mail Stop T–7F27, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6919; Internet: *dws2@nrc.gov.*

SUPPLEMENTARY INFORMATION: As part of its redesign of the materials license program, NMSS is consolidating and updating numerous decommissioning guidance documents into a three-volume NUREG report. The three volumes are as follows: (1) Decommissioning Process for Materials Licensees; (2) Characterization, Survey, and Determination of Radiological Criteria; and (3) Financial Assurance, Recordkeeping, and Timeliness. Volume 3 of this NUREG series, entitled ''Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness,'' is the third of these three volumes and, when finalized, is intended for use by applicants, licensees, NRC license reviewers, other NRC personnel, and Agreement State staff.

The approaches to compliance with the financial assurance, recordkeeping, and timeliness requirements described in Volume 3 of NUREG–1757 will help to identify the information (subject matter and level of detail) needed for a wide range of radioactive materials users licensed by NRC. Volume 3 of the NUREG provides guidance for compliance with the requirements for (1) financial assurance for decommissioning, (2) recordkeeping for decommissioning, and (3) timeliness in decommissioning of materials facilities. Specifically, Volume 3 provides guidance relevant to demonstrating compliance with 10 CFR 30.35, 30.36, 40.36, 40.42, 70.25, 70.38, and 72.54. Volume 3 updates and builds upon the risk-informed approach used in the NMSS Decommissioning Standard Review Plan (NUREG–1727, September 2000), and, in whole or in part, incorporates the parts of NUREG–1727 that provide guidance for demonstrating compliance with the financial assurance, recordkeeping, and timeliness requirements. This draft Volume 3 describes and makes available to the public (1) issues related to demonstrating compliance with financial assurance and decommissioning recordkeeping and timeliness requirements that licensees may wish to consider, (2) guidance on addressing these issues, and (3) methods and approaches that are acceptable to NRC staff.

When published as a final report, the guidance in draft NUREG–1757, Volume 3, should be used by fuel cycle, fuel storage, and materials licensees in preparing financial assurance plans and instruments, recordkeeping plans, decommissioning license amendment requests, decommissioning plans, and related compliance documents. Other NRC licensees may find this information useful, but they are not the subject of this NUREG. When finalized, NRC staff will use the policies and procedures discussed in Volume 3 to evaluate a licensee's financial assurance for decommissioning, recordkeeping for decommissioning, and timeliness in decommissioning. This NUREG will not substitute for regulations, and compliance with it will not be required. Methods and solutions different from those in this NUREG will be acceptable, if they provide a basis for concluding that the decommissioning actions are in compliance with the Commission's regulations.

Further information on the overall decommissioning guidance consolidation and updating project can be found in the **Federal Register** notice publishing the plan for the project (66 *FR* 21793).

Commentors are encouraged to submit their written comments on NUREG–1757, Volume 3, to the addresses listed above. In particular, the NRC staff requests input on the application of decommissioning timeliness requirements to onsite disposals (burial grounds), discussed in Section 2.4 of the draft Volume 3. To ensure efficient and complete comment resolution, commentors are requested to reference the section, page, and line numbers of the document to which the comment applies, if possible.

Dated at Rockville, MD, this 2nd day of January, 2003.

For the Nuclear Regulatory Commission.

Claudia Craig,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–495 Filed 1–9–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27635]

Filings Under the Public Utility Holding Company Act of 1935, As Amended (''Act'')

January 6, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 27, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After January 27, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Dominion Resources, Inc. (70–9477)

Dominion Resources, Inc., (''DRI''), 120 Tredegar Street, Richmond, VA 23219, a registered holding company under the Act, has filed a post-effective amendment to its application-declaration in this file under section 10 of the Act.

DRI requests authorization to continue its process of divesting the holdings of its subsidiary Dominion Capital, Inc., (''DCI'') beyond the third anniversary of the effective date of the

merger (January 28, 2000) authorized in the Commission's order of December 15, 1999 (HCAR No. 27113) (''Merger Order''), authorizing DRI's proposed acquisition of Consolidated Natural Gas Company (''Merger'').

At the time of the Merger Order DCI was, through its subsidiaries, a diversified financial services company with its core operations in commercial finance, corporate finance, and consumer finance. Under the terms of the Merger Order, DCI and each of its subsidiaries were to be divested within three years of the Merger.[1] DRI states that in accordance with the Merger Order DRI has diligently undertaken to divest the businesses and assets of DCI. DRI states that it has succeeded in reducing the assets of DCI by a factor of two thirds, from a balance as of December 31, 1999, of $3,576,460,000 to a balance as of September 30, 2002, of $1,175,164,000. DRI states that its efforts to divest itself of DCI have been frustrated by the economic recession, low interest rates, and the diverse assets held by DCI. DRI therefore requests that the Commission issue an order authorizing an extension of the time to accomplish divestiture until January 28, 2006, and reserve jurisdiction over any further extension of time which may be required.

DRI states that it proposes to continue an expeditious and prudent program of divesting the assets and lines of business of DCI and to apply the resulting proceeds to reduce the debt portion of DRI's consolidated capitalization. DRI proposes to conduct an annual evaluation as of June 30th of each year of the feasibility of expediting the divestiture of DCI's remaining assets and lines of business in light of changing business and financial market conditions (including the relative feasibility of selling assets at that time or subsequently in order to recover fair value).

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–498 Filed 1–9–03; 8:45 am]

BILLING CODE 8010–01–P

[1] DRI was allowed to retain the owner-lessor interest held by DCI in a hydroelectric facility in Vidalia, Louisiana that is leased to Catalyst Old River Hydroelectric Limited Partnership.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25882; 812–12484]

Van Kampen Funds Inc., et al.; Notice of Application

January 3, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 26(a)(2)(D) of the Act.

Summary of Application: Applicants request an order to supercede a prior order (''Prior Order'')[1] to permit certain unit investment trusts (''UIT's'') to deposit trust assets in the custody of foreign banks and securities depositories.

Applicants: Van Kampen Funds Inc. (the ''Sponsor'') and Van Kampen Focus Portfolios (the ''Trust'').

Filing Dates: The application was filed on March 21, 2001 and amended on December 19, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 28, 2003 and should be accompanied by proof of service on the applicants in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 1 Parkview Plaza, P.O. Box 5555, Oakbrook Terrace, IL 60181–5555.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Sponsor is a broker-dealer registered under the Securities and Exchange Act of 1934. The Trust is registered under the Act and consists of several UITs registered or to be registered under the Securities Act of 1933 (''Trust Series''). Each Trust Series is created under the laws of the United States pursuant to a trust agreement that will contain information specific to that Trust Series and which will incorporate by reference a master trust indenture (the ''Indenture'') among the Sponsor, a bank (as defined in section 2(a)(5) of the Act), an evaluator and a supervisor. Applicants request that any order granted pursuant to the application extend to any future UIT sponsored by the Sponsor or an entity controlling, controlled by, or under common control with the Sponsor (together with the Trust, the ''Trusts'' and their series, ''Trust Series'') and any bank which acts as trustee (a ''Trustee'') for any Trust Series.

2. Several Trust Series have investment objectives that specify the investment of assets in non-United States securities. To date, the existing Trust Series which invest in foreign securities have been able to deposit such securities in the custody of foreign banks and securities depositories pursuant to the Prior Order. Applicants state that the Commission granted the Prior Order before the most recent amendments to rule 17f-5 under the Act and the adoption of rule 17f–7 under the Act[2] and seek to amend the Prior Order to reflect these changes. Applicants therefore request an order to supercede the Prior Order to permit the Trust Series to deposit investments, including foreign currencies, for which the primary market is outside the United States and such cash and cash equivalents as reasonably necessary to effect the Trust Series' transactions in those investments (collectively, ''Foreign Investments''), with any foreign bank or securities depository subject to the requirements described below.

Applicants' Legal Analysis

1. Under sections 2(a)(5) and 26(a)(1) of the Act, the trustee of a UIT must be a bank that is subject to regulation by the U.S. government or one of the states. Section 26(a)(2)(D) also requires that the

[1] Investment Company Act Release Nos. 23032 (Feb. 20, 1998) (notice) and 23069 (Mar. 18, 1998) (order).

[2] See Investment Company Act Rel. Nos. 23815 (April 29, 1999) (proposing release) and 24424 (April 27, 2000) (adopting release).

trust indenture provide that the trustee ''shall have possession of all securities and other property in which the funds of the trust are invested * * * and shall segregate and hold the same in trust * * * until distribution thereof to the security holders of the trust.'' Under these provisions, the only foreign entity that qualifies as a UIT custodian is an overseas branch of a U.S. bank.

2. Section 6(c) provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of person, securities, or transactions, from any provisions of the Act or any rule or regulation under the Act if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Rules 17f–5 and 17f–7 under the Act govern the custody of assets of registered management investment companies overseas. Applicants seek an order under section 6(c) exempting them and any U.S. bank that acts as Trustee for any Trust Series from section 26(a)(2)(D) of the Act to the extent necessary to permit a Trustee to deposit Foreign Investments with an eligible foreign custodian as that term is defined in Rule 17f–5 under the Act (''Eligible Foreign Custodian'') or with an eligible securities depository as that term is defined in Rule 17f–7 under the Act (''Eligible Securities Depository'').

4. Under the proposed arrangements, a Trust Series would comply with all of the requirements of rule 17f–5, except that the Trustee will perform the duties and responsibilities that are normally performed by the foreign custody manager as described in rule 17f–5(c) (''Foreign Custody Manager''). Applicants state that the Trustee will fulfill the duties of a Foreign Custody Manager under rule 17f–5 to select an Eligible Foreign Custodian and monitor the foreign custody arrangements. Applicants assert that the Trustee will have the expertise and generally be in the best position to make the determinations required by rule 17f–5. Under the proposed arrangements, a Trust Series also will comply with all of the requirements of rule 17f–7, with the Trustee providing the risk analysis to the Sponsor, monitoring the custody risks associated with maintaining Foreign Investments with an Eligible Securities Depositary on a continuing basis, and promptly notifying the Sponsor of any material change in the risks. Applicants also state that the Sponsor will be required to take appropriate action in response to a notification by the Trustee.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Indenture will contain provisions under which the Trustee agrees to indemnify the Trust Series against the risk of loss of Trust Series' Foreign Investments held with an Eligible Foreign Custodian in accordance with the foreign custody contract.

2. The Indenture will contain provisions under which the Trustee agrees to exercise reasonable care, prudence, and diligence such as a person having responsibility for the safekeeping of Trust Series assets would exercise, and to be liable to the Trust Series for any loss occurring as a result of the Trustee's failure to do so.

3. The Indenture will contain provisions under which the Trustee agrees to perform all the duties assigned by rule 17f–5, as now in effect, or as it may be amended in the future, to a Foreign Custody Manager. A Trustee's duties under this condition will not be delegated.

4. The Indenture will contain provisions under which the Trustee agrees that it (or the Trustee's agent) will (i) Provide the Sponsor with an analysis of the custody risks associated with maintaining assets with an Eligible Securities Depository; (ii) monitor the custody risks associated with maintaining assets with the Eligible Securities Depository on a continuing basis and promptly notify the Sponsor of any material change in these risks; and (iii) exercise reasonable care, prudence and diligence in performing the foregoing duties.

5. The Sponsor will be required to take appropriate action in response to a notification by the Trustee provided pursuant to condition 4 above.

6. The Trust Series' prospectus will contain such disclosure regarding foreign securities and foreign custody as is required for management investment companies by Forms N–1A and N–2. The prospectus also will contain disclosure concerning the Sponsor's responsibilities pursuant to condition 5 above.

7. The Trustee will maintain and keep current written records regarding the basis for the choice or continued use of each foreign custodian. These records will be preserved for a period of not less than six years from the end of the fiscal year in which the Trust Series was terminated, the first two years in an easily accessible place. The records will be available for inspection at the Trustee's main office during the Trustee's usual business hours, by unitholders and by the Commission or its staff.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–461 Filed 1–9–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25881; 812–12658]

Gladstone Capital Corporation; Notice of Application

January 3, 2003.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant, Gladstone Capital Corporation, requests an order approving a proposal to issue stock options to directors who are not officers or employees of the applicant (the ''Non-employee Directors'') pursuant to its Amended and Restated 2001 Equity Incentive Plan (the ''Plan'').

FILING DATES: The application was filed on October 11, 2001, and amended on October 2, 2002, and January 2, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 28, 2003, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicant, 1616 Anderson Road, Suite 208, McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at

(202) 942–0611, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Applicant, a Maryland corporation, is a business development company (''BDC'') within the meaning of section 2(a)(48) of the Act.[1] Applicant's primary business is making loans to small and medium-sized companies. Applicant states that its investment objective is to achieve a high level of current income. Applicant's investment decisions are made by its board of directors (the ''Board'') based on the recommendations of a credit committee comprised of senior management. Applicant does not have an external investment adviser within the meaning of section 2(a)(20) of the Act.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving the grant of nonstatutory stock options pursuant to the Plan to its Non-employee Directors.[2] Applicant has a six member Board. Three of the five current members are not ''interested persons'' (as defined in section 2(a)(19) of the Act) of the applicant (''Disinterested Directors'').[3] The Plan was approved by both the Board and applicant's stockholders on July 23, 2001. On August 8, 2001, the Board and applicant's stockholders amended the Plan to increase the number of options that may be granted under the Plan. On September 23, 2002, the Board amended the Plan to adjust the method for determining the exercise price of options granted pursuant to the Plan. The grant of options to current Non-employee Directors under the Plan will be made on the date the Commission issues an order on the application (the ''Order Date'').

3. Each Non-employee Director serving on the Order Date will be entitled to receive an option to purchase 10,000 shares of applicant's common stock (the ''Initial Grants''), which will vest in two equal installments of 5,000 shares on each of the first two anniversaries of August 23, 2001, the date of applicant's initial public offering of its common stock.[4] Each new Non-employee Director joining the Board after the Order Date will be entitled to receive an option to purchase 10,000 shares of applicant's common stock (the ''New Director Grants''), which will be awarded when such individual joins the Board. Additionally, at the time of each annual meeting of applicant's stockholders, beginning with the 2002 annual meeting of stockholders, applicant will grant each incumbent Non-employee Director an additional option to purchase 10,000 shares of its common stock (the ''Annual Grants''). The options granted under the New Director Grants and the Annual Grants will vest in two equal installments of 5,000 shares on each of the first two anniversaries of the date of grant.[5]

4. The exercise price of the options will not be less than the current market value of, or if no market value exists, the current net asset value per share of, applicant's common stock on the date of the grant.[6] Under the Plan, ''current market value'' is defined as the closing sales price of the shares as quoted on the NASDAQ National Market, or alternatively, on the exchange where applicant's shares are traded, on the day the option is granted.

5. Options granted under the Plan will expire within 10 years from the date of grant. In the event of death or disability of a Non-employee Director during the director's service, unexercised options immediately become exercisable and may be exercised only during the period of eighteen months following the date of death or twelve months following the date of disability, but in no event after the respective expiration date of such options. In the event of the termination of a Non-employee Director's directorship for a reason other than by death or disability, an option, to the extent then exercisable, may be exercised only during a period of three months following the date of termination, but in no event after the respective expiration date of such options. The options may not be transferred except for disposition by will or the laws of descent and distribution.

6. Applicant's officers and employees, including any employee directors, also are eligible to receive stock options under the Plan. The total number of shares of common stock currently issuable under the Plan is 1,500,000 shares, representing approximately 13.7% of the 10,071,844 shares of applicant's common stock outstanding as of December 31, 2002. As of December 31, 2002, applicant had issued options to purchase 1,410,000 shares to its officers and employees (including officer-directors) under the Plan. After the Initial Grants and the Annual Grants for 2002 are granted to the three current Non-employee Directors, 40,000 shares of applicant's common stock would remain eligible for awards under the Plan.

7. On December 5, 2002, the Board approved a proposal to amend the Plan to increase the number of shares authorized for issuance under the Plan to 2,000,000 shares (the ''Pool Increase Proposal''). Applicant will present the Pool Increase Proposal to its stockholders at its 2003 annual stockholders meeting, which is expected to be held on February 24, 2003. The Pool Increase Proposal, if approved, would represent approximately 17.4% of the shares of applicant's common stock outstanding as of December 31, 2002. Applicant will not issue any options to its officers, employees (including officer-directors) and Non-employee Directors beyond those currently remaining available for grant under the Plan unless and until its stockholders approve the Pool Increase Proposal.

8. Applicant has no warrants, options or rights to purchase its outstanding voting securities other than those granted to its officers and employees pursuant to the Plan. The Plan as it relates to the Non-Employee Directors will not be modified materially from the description in the application without obtaining an order of the Commission or approval of the Commission staff.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] Each Non-employee Director receives an annual director's fee of $10,000, a fee of $1,000 for each Board meeting attended (with no additional compensation payable in connection with committee meetings), and reimbursement for related expenses.

[3] The applicant's Board presently has one vacancy. All of applicant's Non-employee Directors are Disinterested Directors.

[4] In the case of one Non-employee Director, the options will vest on each of the first two anniversaries of June 5, 2002, the date that such Non-employee Director joined the Board.

[5] The options granted under the Annual Grants for 2002 will vest on each of the first two anniversaries of March 26, 2002, the date of applicant's 2002 annual meeting of stockholders.

[6] The exercise price of the Initial Grants and the Annual Grants for 2002 will be the current market value of, or if no market value exists, the current net asset value per share of, applicant's common stock on the Order Date.

Act. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (i) The options expire by their terms within ten years; (ii) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (iii) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (iv) the options are not transferable except for disposition by gift, will or intestacy; (v) no investment adviser of the BDC receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (vi) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that the terms of the Plan meet all the requirements of section 61(a)(3)(B) of the Act. Applicant states in support of the application that the Non-employee Directors are actively involved in the oversight of applicant's affairs and that it relies on the judgment and experience of the Board. Applicant also states that the Non-employee Directors provide guidance and advice on operational issues, underwriting policies, credit policies, asset valuation, and strategic direction, as well as serving on committees. Applicant believes that the options to be granted to the Non-employee Directors provide significant incentives for the Non-employee Directors to remain on the Board and to devote their best efforts to the success of applicant's business. Applicant also states that the options will provide a means for the Non-employee Directors to increase their ownership interests in applicant, thereby ensuring close identification of their interests with the interests of applicant's stockholders.

4. Applicant submits that the granting of options to the Non-employee Directors to purchase shares of applicant's common stock is fair and reasonable and does not involve overreaching of applicant or its stockholders. Applicant states that the number of voting securities that would result from the exercise of all options issued or issuable to officers, employees, and Non-employee Directors under the Plan, assuming approval of the Pool Increase Proposal, is 2,000,000 shares, or approximately 17.4% of applicant's outstanding common stock, which is below the percentage limitations in the Act. The total number of options issuable under the Plan that may be granted in any one year to Non-employee Directors represents about 0.4% of applicant's outstanding common stock. Applicant asserts that, given the small amount of common stock issuable upon exercise of the options, the exercise of options pursuant to the Plan would not have a substantial dilutive effect on the net asset value of applicant's stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–462 Filed 1–9–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [68 FR 395, January 3, 2003]

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF CLOSED MEETING: Additional Meeting.

The Securities and Exchange Commission held an additional Closed Meeting during the week of January 6, 2003.

An additional Closed Meeting was held on Monday, January 6, 2003 at 1:30 p.m.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the Closed Meeting. Certain staff members who have an interest in the matters were also present.

The subject matter of the Closed Meeting held on Monday, January 6, 2003 was:

Regulatory matter bearing enforcement implication.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 8, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–667 Filed 1–8–03; 3:59 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 13, 2003: A Closed Meeting will be held on Tuesday, January 14, 2003, at 10 a.m., and an Open Meeting will be held on Wednesday, January 15, 2003, at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, January 14, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Amicus participation.

The subject matter of the Open Meeting scheduled for Wednesday, January 15, 2003 will be:

1. The Commission will consider adopting new rules and amendments regarding the use of pro forma financial information in order to implement Section 401(b) of the Sarbanes-Oxley Act of 2002. In addition, the Commission will consider an amendment to Form 8-K requiring the submission of earnings announcements and releases.

2. The Commission will consider whether to adopt new rules to prohibit an issuer's directors and executive officers from purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants or beneficiaries from engaging in equity securities transactions, if the equity security was acquired in connection with the director or executive officer's service or employment as a director or executive officer. These rules implement Section 306(a) of the Sarbanes-Oxley Act of 2002. In addition, the rules will require issuers to provide advance notice to their directors and executive officers and the Commission of the imposition of a pension plan blackout period.

3. The Commission will consider whether to adopt new disclosure requirements mandated by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002. The new rules require a company subject to the reporting requirements of the Securities Exchange Act of 1934 to disclose: (1) Whether it has adopted a code of ethics that applies to certain of its senior officers; and (2) whether a financial expert serves on the company's audit committee. The Commission will consider whether to adopt rules under Section 404 of the Sarbanes-Oxley Act relating to internal control reports by management in a separate release at a later date—these rules were proposed in the same release as the rules under Sections 406 and 407.

4. The Commission will consider whether to adopt Regulation Analyst Certification, a new rule that would require research analysts to provide certifications regarding the views they express in research reports and public appearances and to provide disclosures regarding any compensation they may have received related to those views and recommendations.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 8, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–668 Filed 1–8–03; 4:00 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47123; File No. SR–Amex–00–48]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the American Stock Exchange LLC, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 To Amend Amex Rule 590, Minor Rule Violation Fine Systems

January 3, 2003.

On August 17, 2000, the American Stock Exchange LLC (''Amex'' 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 to amend the Amex's Minor Rule Violation Fine Plan (''Plan''). On December 7, 2000, the Amex amended the proposal.[3] The Amex again amended the proposal on January 29, 2001.[4] On March 19, 2001, the proposed rule change, as modified by Amendment Nos. 1 and 2, was published for notice and comment in the **Federal Register**.[5] The Commission received no comments on the proposed rule change. On December 23, 2002, the Amex amended the proposed rule change.[6] This order approves the proposed rule change as modified by Amendment Nos. 1 and 2. Simultaneously, the Commission provides notice of filing of Amendment No. 3 and grants accelerated approval of Amendment No 3.

The Commission has reviewed carefully the proposed rule change and 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 [7] and, in particular, the requirements of section 6 of the Act [8] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(6) of the Act [9] in that it will provide a procedure whereby member organizations can be appropriately disciplined in those instances when a rule violation is minor in nature, but a sanction more serious than an admonition letter is appropriate. Additionally, the Commission finds the proposed rule change is consistent with the requirements of sections 6(b)(7) [10] and 6(d)(1) [11] of the Act. Section 6(b)(7) requires the rules of an exchange to be in accordance with the provisions of section 6(d) of the Act, and, in general, to provide a fair procedure for the disciplining of members and persons associated with members. Section 6(d)(1) requires an exchange to bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record, in any proceeding to determine whether a member or person associated with a member should be disciplined. Finally, the Commission finds the proposal is consistent with

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* December 1, 2000 letter from William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, and attachments (''Amendment No. 1''). In Amendment No. 1, the Amex made technical changes to the proposed rule language to clarify which language was added and which language was rearranged.

[4] *See* January 26, 2001 letter from William Floyd-Jones, Jr., Esq., to Nancy J. Sanow, Assistant Director, Division, Commission, and attachments (''Amendment No. 2''). While the cover letter indicates that Amendment No. 2 replaces and supersedes the original filing, Amendment No. 2 only replaces and supersedes the proposed rule language provided in the original proposal and Amendment No. 1. Telephone conversation March 12, 2001 between William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, and Joseph P. Morra, Special Counsel, Division, Commission.

[5] *See* Securities Exchange Act Release No. 44066 (March 12, 2001), 66 FR 15511.

[6] *See* December 20, 2002 letter from William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, and attachments (''Amendment No. 3''). In Amendment No. 3, the Amex removed the following rules from the list of rules that the Amex originally proposed to add to the Plan: (1) Violations of the Amex's short sale borrowing policies; (2) failure to liquidate positions as directed by the Amex that are over applicable position limits; and (3) failure to comply with the Amex's restrictions on transactions and exercises in specified options. As a result of Amendment No. 3, the only rules that the Amex proposes to administer pursuant to the Plan are violation of SEC Rule 11Ac1–4 (commonly referred to as the ''Limit Order Display Rule,'' and violation of the Amex's rules regarding the deactivation of Quote Assist (Amex Rule 170, Commentary .10).

[7] 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).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(6).

[10] 15 U.S.C. 78f(b)(7).

[11] 15 U.S.C. 78f(d)(1).

Rule 19d–1(c)(2) under the Act[12] that governs minor rule violation plans.

In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Amex will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Plan, on a case by case basis, or if a violation requires formal disciplinary action.

The Commission finds good cause for approving proposed Amendment No. 3 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Amex filed Amendment No. 3 to remove certain rules from the proposal. Removal of these rules from the proposal presents no novel issues that would require further notice and comment before approving this modification. Therefore, the Commission finds good cause for accelerating approval of the proposed rule change, as amended.

In approving this proposed rule change, the Commission recognizes that certain aspects of the proposal will require additional time for implementation, while other aspects of the proposed rule change can be implemented upon Commission approval. The Commission expects that the Amex will implement as much of the proposed rule change's terms and conditions as is possible upon approval, and will implement the remaining provisions of the proposed rule change as soon as practicable thereafter.[13]

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 3 that are filed with the Commission, and all written communications relating to Amendment No. 3 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–00–48 and should be submitted by January 31, 2003.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–00–48), as amended by Amendment Nos. 1 and 2, be, and it hereby is, approved, and that Amendment No. 3 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–458 Filed 1–9–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 240.19d–1(c)(2).

[13] For example, the Amex will require additional time to implement the new Committee structure for the Minor Floor Violation Disciplinary Committee. The Amex anticipates it will be able to implement the new structure after the April 23, 2003 meeting of the Amex Board. *See* January 3, 2003 letter from William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, to Joseph P. Morra, Special Counsel, Division, Commission (via e-mail).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47119; File No. SR–Amex–2002–97]

Self Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Initial and Continued Listing Standards

January 3, 2003.

On November 20, 2002, the American Stock Exchange LLC (''Amex'') 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 to amend sections 101, 102, and 1003 of the Amex *Company Guide* to modify initial and continued listing standards.

The proposed rule change was published for comment in the **Federal Register** on December 4, 2002.[3] The Commission received no comments on the proposal.

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[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[6] because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange proposes to adopt a new initial listing standard (in addition to existing standards) which is designed to permit an assessment of an issuer's suitability for listing on the basis of compliance with total market capitalization or total assets and revenues in substitution of shareholders' equity. The Amex also proposes that corresponding revisions be adopted to the continued listing standards to provide that a listed company will not be subject to delisting (assuming compliance with other applicable standards) even if it has experienced net losses or losses from continuing operations, and does not satisfy existing equity requirements,[7] if it is in compliance with following requirements:

- Total value of market capitalization: $50 million, or
- Total assets and revenue: $50 million each (in most recent fiscal year or two of last three most recently completed fiscal years), and
- At least 1,100,000 shares publicly held, a market value of publicly held shares of at least $15,000,000 and 400 round lot shareholders.

The Commission believes that the proposed rule change will allow for the evaluation of an issuer's listing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 46887 (November 22, 2002), 67 FR 72239 (December 4, 2002).

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] Section 1003(a) of the Amex Company Guide provides that a listed company which has sustained losses in two of its three, three of its four, or five of its most recent fiscal years will be subject to delisting if its stockholders' equity is less than $2 million, $4 million or $6 million, respectively.

eligibility against additional comprehensive criteria. The Commission notes that the proposal is not materially different from standards in place at other marketplaces; both the New York Stock Exchange, Inc. and The Nasdaq Stock Market, Inc. listing standards contain a variety of alternative qualifications standards, including standards based on measures of market capitalization, revenue and assets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR-Amex-2002–97) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–459 Filed 1–9–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47115; File No. SR–NYSE–2002–62]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Initial Fees and Continuing Annual Fees for Domestic and Non-U.S. Issuers, Technical Original Listing Fees, and Supplemental Listing Applications Fees

December 31, 2002.

I. Introduction

On November 20, 2002, the New York Stock Exchange, Inc. (''NYSE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase and simplify the continuing annual listing fee pricing for all listed companies (excluding closed-end funds), and to increase the fee for technical original listings and supplemental listing applications. The NYSE also proposes to make permanent an overall $1 million per-issuer fee cap that has been in effect on a pilot basis and is scheduled to expire on December 31, 2002.[3] Notice of the proposed rule change was published for comment in the **Federal Register** on December 16, 2002.[4] On December 30, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.[5] This order approves the NYSE's proposed rule change on an accelerated basis, publishes notice of Amendment No. 1, and grants accelerated approval to Amendment No. 1.

II. Description

A. Background

As noted above, the proposed rule change would increase the fees the NYSE charges to issuers that are listed on the NYSE and simplify the fee schedule that provides for such fees. The NYSE proposes to make the fees effective as of January 1, 2003.

B. Changes to the Fee Schedule

The NYSE proposes to increase the ''technical original'' listing fee. Currently, Section 902.02B of the NYSE Listed Company Manual provides for a ''reduced initial fee'' of $5,300 when a company makes a technical change in the nature of the company without substantively affecting the equity position or rights of its common shareholders. This fee, often referred to as a ''technical original'' listing fee, applies when, for example, a company changes its state of incorporation or reincorporates, forms a holding company which replaces the listed company, or does a reverse split. The NYSE proposes to increase this fee from $5,300 to $15,000.

Section 902.02B of the NYSE Listed Company Manual also specifies that the minimum fee for the consideration of any listing application is $1,500. When shares are being issued concurrently with the application, the company is charged the greatest of the per-share rate, this minimum fee, or the ''technical original'' listing fee described in the immediately preceding paragraph. The NYSE is proposing to increase the minimum initial fee from $1,500 to $2,500.

The NYSE proposes to amend Section 902.02C of the NYSE Listed Company Manual, which relates to the continuing annual listing fee.[6] Continuing annual fees for each issuer are based on the number of its securities listed (including American Depositary Securities represented by American Depositary Receipts), and there is a schedule of per-share rates set forth in Section 902.02C (Section 902.04C for non-U.S. companies) of the NYSE Listed Company Manual. Currently, that schedule is tiered, with a per-share rate of $1,650 per million shares for the first and second million shares, and a per-share rate of $830 per million shares for additional shares beyond two million. Likewise, the minimum fee that an issuer pays to continue to be listed on the NYSE is subject to a tiered structure, whereby an issuer is subject to a variable annual fee minimum based upon the number of shares it lists. The NYSE is proposing to eliminate the tiers, so that the per-share rate will be $930 per million shares subject to a minimum continuing annual fee of $35,000, as provided for in Section 902.04C of the proposed rule change to the NYSE Listed Company Manual.

The impact of these proposed changes to the continuing annual fee as described below will be capped for each issuer at $75,000 for calendar 2003, and at $150,000 for calendar 2004.[7] For a company hitting both those caps, the full impact of these price changes would not be borne until calendar year 2005.

Continuing annual fees, which are set forth in Section 902.02C and Section 902.04C of the NYSE Listed Company

---

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43163 (August 16, 2000), 65 FR 51389 (August 23, 2000) (SR–NYSE–00–16).

[4] *See* Securities Exchange Act Release No. 46960 (December 6, 2002), 67 FR 77124 (December 16, 2002) (SR–NYSE–2002–62). The 15-day comment period expired on December 31, 2002.

[5] *See* Letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 27, 2002 (''Amendment No. 1''). In Amendment No. 1, the NYSE requested that the Commission either approve the proposed rule change after thirty days following publication in the **Federal Register** with retroactive effectiveness to January 1, 2003, or find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. In addition, the NYSE provided the Commission with copies of four letters from issuers responding to correspondence from the NYSE in early October that announced the NYSE's intention to implement the new fee schedule. (The Commission also received a copy of one of the letters following publication of the notice in the **Federal Register**.) Furthermore, the NYSE set forth its view as to why it believed the Commission had good cause to accelerate the effectiveness of the proposed rule change prior to the thirtieth day after publication of the notice in the **Federal Register**.

[6] At this time, the NYSE is not proposing to change the continuing annual fees as applied to closed-end funds listed on the NYSE, which continue to be subject to the fee schedule currently in effect. The Commission notes, however, that the NYSE is in the process of developing a revised fee schedule for closed-end fund issuers. Telephone conversation between Annmarie Tierny, Senior Counsel, Office of General Counsel, NYSE and Tim Fox, Law Clerk, Division of Market Regulation, December 5, 2002. In addition, no changes are being proposed to the several specific pricing provisions provided in Section 902.02C for ''fund families'' with a number of funds listed on the NYSE.

[7] The Commission notes that the NYSE communicated these fee caps to issuers in correspondence sent to the issuers dated in early October of 2002. *See* Amendment No. 1.

Manual, are assessed separately on each class of security issued. Because some companies have more than one class of common stock listed on the NYSE, the NYSE currently provides that if one class pays the $35,000 minimum fee, the other class(es) are subject to lower minima (ranging from $16,170 to $32,320) depending on the number of shares listed. To simplify this structure, the NYSE is proposing to amend Sections 902.02C and 902.04C of the NYSE Listed Company Manual so that when a company has multiple classes of common stock listed on the NYSE, the class with the greatest number of shares outstanding will be subject to the $35,000 minimum, and each additional class of common stock will be subject to a minimum fee of $20,000 per class.

Under Section 902.02C of the NYSE Listed Company Manual, classes of securities other than common stock are currently subject to the same continuing annual fee rate schedule as common stock, but with a lower minimum fee of $3,600, rather than $35,000. Accordingly, the NYSE proposes that the new rate schedule of $930 per million shares will apply to these securities, and the applicable minimum will be raised from $3,600 to $5,000. In the case of a company with listed preferred stock that does not have common stock listed at the NYSE, the original listed preferred issue will be subject to the $35,000 minimum annual fee, although other classes listed will be subject to the $5,000 minimum.

Section 902.03B of the NYSE Listed Company Manual currently provides for a special set of ''range minima'' applicable to short-term securities, that subjects such issues to *higher* minimum continuing annual fees than are otherwise applied to non-common stock securities as described in the preceding paragraph. To eliminate this anomaly, the NYSE proposes to amend Section 902.03B of the NYSE Listed Company Manual to apply to such ''short term securities'' the new rate schedule of $930 per million shares, and to also apply the same $5,000 annual minimum as is applicable to other non-common stock securities.

Section 902.02C of the NYSE Listed Company Manual currently removes from the calculation of continuing annual fees any shares that have been listed for a period of 15 years or more. This policy results in companies having disparate continuing annual fees despite having a similar number of stocks listed on the NYSE. The NYSE proposes to eliminate this policy for all listed companies with the exception of closed-end funds.

Finally, the NYSE proposes to make permanent a $1 million per-issuer fee cap that was implemented starting with the 2000 calendar year.[8] That cap, codified in Section 902.02 of the NYSE Listed Company Manual, by its terms was put into effect on a pilot basis through calendar 2002. The NYSE believes that the cap avoids overburdening any particular company in an unusual year. Accordingly, the NYSE proposes to make the pilot permanent.

C. Amendment No. 1

In Amendment No. 1, the NYSE provided the Commission with copies of four letters from issuers responding to correspondence from the NYSE sent in early October that announced the NYSE's intention to implement the new fee schedule.[9] A copy of one of those letters was submitted to the Commission as a comment letter responding to the proposed rule change.[10] In general, the four letters criticized the magnitude of the percentage increase to which they would be subject, citing the down economy as a poor time to impose additional fees.

In responding to the concerns that the letters addressed, the NYSE suggested that those issuers who would be most adversely affected by the proposed rule change, would be those issuers affected by the discontinuance of the ''15 year policy,'' which represents approximately 8% of the NYSE's list. The NYSE stated that it discontinued the 15-year policy because, in part, the policy resulted in disparate annual fees for companies with similar amounts of stock listed on the NYSE.

The NYSE also pointed out that it lengthened the phase-in period of the proposed fee schedule so that increases for any single issuer would be capped at $75,000 for calendar 2003, and at $150,000 for calendar 2004. For a company hitting both those caps, the full impact of these price changes would not be borne until calendar 2005. The NYSE represented that this phase-in of the proposed rule change was designed to impose the fee increases in as fair a manner as possible

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended is consistent with Section 6(b) of the Act [11] in general and furthers the objectives of Section 6(b)(4).[12] The Commission believes that the proposal is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its issuers.[13]

The Commission believes that the NYSE's proposed rule change should help to ensure that the NYSE will have adequate revenue to satisfy the increasing costs for operations, technology, regulation and infrastructure. The Commission notes that the NYSE will receive higher initial fees from equity issuers as a result of the proposed rule change, and that the NYSE believes that it will receive more revenue as a result of the modification to the continuing annual fee that it proposes. Moreover, the Commission believes that the proposed rule change should simplify the fee schedule for NYSE issuers. For example, the NYSE proposes to eliminate the tiered structure of Sections 902.02C,[14] 902.03B and 902.04C of the NYSE Listed Company Manual (Continuing Annual Fees), whereby an issuer pays certain rates and is subject to particular minima, based upon the number of shares it lists on the NYSE. In its place, the NYSE proposes to impose a single per-share rate ($930 per million shares), and a simplified minimum fee structure.

The Commission believes that the NYSE's proposal to make permanent the $1 million per-issuer cap on listing fees in any given calendar year should help to ensure that a particular issuer will not be overburdened by listing fees in an unusual year.

The Commission believes that discontinuance of the ''15-year policy,''

[8] *See* Securities Exchange Act Release No. 43163 (August 16, 2000), 65 FR 51389 (August 23, 2000) (SR–NYSE–00–16).

[9] *See* letter from M. Michele Burns, Executive Vice President and Chief Financial Officer, Delta Air Lines, Inc. to Catherine R. Kinney, President and Co-Chief Operating Officer, NYSE, dated October 29, 2002, letter from Dennis J. Broderick, Senior Vice President, General Counsel and Secretary, Federated Department Stores, Inc. to Catherine R. Kinney, President and Co-Chief Operating Officer, NYSE, dated November 7, 2002, letter from Edward E. Thiele, Senior Vice President, Rowan Companies, Inc to Catherine R. Kinney, President and Co-Chief Operating Officer, NYSE, dated November 14, 2002, and letter from Jeffrey C. Cambpell, Senior Vice President and Chief Financial Officer, AMR Corporation to Catherine R. Kinney, President and Co-Chief Operating Officer, NYSE, dated December 2, 2002.

[10] *See* letter from M. Michele Burns, Executive Vice President and Chief Financial Officer, Delta Air Lines, Inc. to Catherine R. Kinney, President and Co-Chief Operating Officer, NYSE, dated October 29, 2002, which the Commission received on December 26, 2002.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] In approving this rule, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] The Commission notes that the NYSE proposes to maintain the tiered structure in Section 902.02C of the NYSE Listed Company Manual so that closed-end fund issuers continue to pay a variable continuing listing fee, based upon the number of shares they list on the NYSE.

[15] pursuant to which shares listed for a continuous period of 15 years or more were eliminated from the calculation of continuing annual fees, should eliminate disparities in annual fees for companies with similar amounts of stock listed on the NYSE. Moreover, the Commission notes the NYSE's belief that only a limited percentage of listed companies —8%— will be affected by the discontinuance of the 15-year policy. Finally, the Commission believes that the phase-in of the proposed fee schedule over a three-year period should mitigate the impact of the proposed fee schedule on issuers

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**, and prior to the expiration of the public comment period, ending December 31, 2002.[16] The Commission believes that good cause exists to justify accelerated effectiveness of the proposed rule change, in part, because the pilot program of Section 902.02 of the NYSE Listed Company Manual, which currently institutes the $1 million per-issuer fee cap on a pilot basis is due to expire on December 31, 2002. In finding good cause to accelerate effectiveness on this basis, the Commission notes that the NYSE has represented to the Commission that the expiration of the pilot program at any time before the effective date of this proposed rule change could lead to significant operational and billing problems.[17]

Finally, the accelerated approval of the proposed rule change will enable the new fee schedule to be in effect on January 1, 2003, the date which the NYSE wishes to make the new fees applicable. Therefore, the Commission finds that granting accelerated approval to the proposed rule change, as amended, is appropriate and consistent with Section 19(b)(2) of the Act.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether the proposed amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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 NYSE. All submissions should refer to File No. SR–NYSE–2002–62 and should be submitted by January 31, 2003.

V. Order Granting Accelerated Approval

The original rule proposal was published for public comment on December 16, 2002.[19] The NYSE submitted Amendment No. 1 to the proposed rule on December 30, 2002 in order to respond to four letters, which it had received prior to the filing of the proposed rule change, in which four issuers expressed their views opposing the proposed increase in listing fees.[20] For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder. Moreover, the Commission finds that there is good cause to grant accelerated approval to the proposed rule change and Amendment No. 1, thereto.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change and Amendment No. 1 thereto (SR–NYSE–2002–62) are approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–497 Filed 1–9–03; 8:45 am]

BILLING CODE 8010–01–P

[15] The Commission notes that the NYSE proposes to maintain the 15 year policy in Section 902.02C of the NYSE Listed Company Manual for closed-end fund issuers.

[16] The Commission notes that it had received one letter regarding the proposed rule change as of the close of business, December 31, 2002. *See* note 10, *supra.*

[17] *See* Item 7, Amendment No. 1.

[18] 15 U.S.C. 78s(b)(2).

[19] *See* Securities Exchange Act Release No. 46960 (December 6, 2002), 67 FR 77124 (December 16, 2002) (SR–NYSE–2002–62).

[20] In Amendment No. 1, the NYSE also requested accelerated approval and articulated its view as to why the Commission should find good cause to accelerate the effectiveness of the proposed rule change.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47124; File No. SR–Phlx–2002–84]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Off-Floor Trader Fees

January 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 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 Exchange. 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 Exchange proposes to amend its schedule of dues, fees and charges to require: (1) Future off-floor traders to pay an initial registration fee of $100, an increase from $50; and (2) current and future off-floor traders registered as of April 1 of each year to pay an annual fee of $350, an increase from $250. An off-floor trader is a person who is compensated directly or indirectly by a member or participant organization for which the Exchange is the Designated Examination Authority (''DEA'') for the solicitation or handling of business in securities, including trading securities for the account of the member or participant organization, and who is not otherwise required to register with the Exchange.[3] The proposed increase in the initial registration fee is to become effective January 2, 2003, with the increased annual fee to be implemented April 1, 2003.[4] The text of the proposed rule change is available at the principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Off-floor traders are required to file the Uniform Application for Securities Industry Registration or Transfer form (''form U–4'') with the Exchange. *See* Phlx rule 604(e)(i).

[4] The Exchange has not designated the Off-Floor Trader Registration Fee as eligible for the monthly credit. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49). The monthly credit allows Exchange members to receive a monthly credit of up to $1,000 to be applied against certain fees, dues, charges and other such amounts.

offices of the Phlx 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 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 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 increase initial and annual off-floor trader fees to generate additional revenue to help off-set the Exchange's costs associated with conducting off-floor trader examinations, including administrative costs, such as cost incurred in conducting background checks on the individuals to whom the fees apply, processing of forms, fingerprint charges, and requests for disciplinary history from the Central Registration Depository.

2. Statutory Basis

The Exchange believes that 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 it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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

[6] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[7] and rule 19b–4(f)(2) thereunder,[8] as establishing or changing a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

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–2002–84 and should be submitted by January 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–456 Filed 1–9–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] *See* section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47120; File No. SR–Phlx–2002–83]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Extension of Its Pilot Program To Implement Its Existing Fee Schedule for Electronic Communication Networks

January 3, 2003.

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 December 18, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 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 extend its two-year pilot program for an additional one-year period, in order to continue to impose a $2,500 monthly fee for Electronic Communications Networks (''ECNs'') that are member organizations and send order flow to the Exchange's equity trading floor.[3] The pilot program is due to expire on January 31, 2003.[4]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As stated in the Phlx fee schedule, the term ECN shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter (''OTC'') market maker, and permits such orders to be executed against in whole or in part. The term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or any system operated by or on behalf of an OTC market maker or exchange market maker as principal, other than riskless principal.

[4] *See* Exchange Act Release No. 45456 (February 19, 2002), 67 FR 8831 (February 26, 2002) (SR–Phlx–2002–08) (extending the initial ECN fee pilot program).

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 Phlx 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 Phlx 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 extend the Exchange's current ECN pilot program that imposes a $2,500 monthly fee for ECNs that are member organizations and send order flow to the Exchange's equity trading floor for an additional one-year period, until January 31, 2004.[5] According to the Exchange, the continuation of the $2,500 fee is intended to attract equity order flow from ECNs to the Exchange by continuing to substitute a fixed monthly fee, in light of the potential for high volumes of order flow from ECNs.[6]

The monthly fee will continue to apply to ECN order flow to the Exchange's equity trading floor, including from ECNs that either became members or began sending order flow after the commencement of the program. The $2,500 fee would continue to apply to ECN that are not acting as a Phlx specialist or floor broker.[7]

Currently, no ECN operates from the Exchange's equity trading floor as a floor broker or specialist unit. If, however, an ECN did operate from the equity trading floor, it would be subject to various floor-related fees respecting its floor operations.[8] In addition, an ECN's transactions as a floor broker would be subject to the equity transaction value charge, and its specialist trades would be subject to other charges.[9] Even if the ECN were acting as a floor broker or specialist with respect to some trades, those trades for which it was not acting as a floor broker or specialist, but rather an ECN, would be subject only to the flat monthly fee and not other transaction charges.

An ECN that only operates as a specialist or floor broker would not have to pay the monthly fee, because it would, instead, be paying the normal transaction charges applicable to floor brokers and specialists.

An ECN would also continue to be subject to, if applicable, the following membership-related fees: Membership dues or Foreign Currency User Fees, Foreign Currency Option Participation Fee, Capital Funding Fee, Application Fee, Initiation Fee, Transfer Fee, Phlx CCH Guide Fee, Examinations Fee, Technology Fee, Review/Process Subordinated Loans Fee, Registered Representative Registration Fees, and Off-Floor Trader Initial Registration Fee, Annual Fee, and Remote Specialist fees

Because the $2,500 fee is a flat monthly fee as opposed to a per-transaction fee, it is intended to encourage ECN volume. Currently, the equity transaction value charge (that would otherwise apply to an ECN's equity trades) ranges from $.00 to $.0075 per share per transaction, with a $50 maximum fee per trade side, and various other applicable discounts. Thus, many variables determine whether the proposed monthly $2,500 fee is generally more favorable than the equity transaction value charge, depending upon the number of trades, size of the trade and type (*i.e.*, PACE). As a general matter, the Exchange believes that $2,500 would be more favorable to the ECN because it is a fixed amount.

The Exchange believes that the monthly ECN fee provides competitive fees with appropriate incentives, thus providing a reasonable method to attract large order flow providers, such as ECNs, to the Exchange. The Phlx believes that additional order flow enhances liquidity, and improves the Exchange's competitive position in equity trading. The Exchange believes that structuring this fee for ECNs is appropriate, as ECNs are unique in their role as order flow providers to the Exchange. Specifically, ECNs operate a unique electronic agency business, similar to a securities exchange, as opposed to directly executing orders for their own customers as principal or agent.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[10] in general, and section 6(b)(4) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange notes the unique character of ECNs, and believes that the fixed monthly fee is a reasonable method of attracting a new form of order flow to the Exchange.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and subparagraph (f)(2) of rule 19b–4[13] thereunder. 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.

[5] The $2,500 monthly fee applies regardless of the ECN's average daily Phlx equity volume.

[6] In order to recoup costs due pays pursuant to section 31(b) of the Act, the Exchange intends to continue to apply such fee to ECNs, as the current fee schedule reflects.

[7] An ECN would continue to incur specialist or equity floor brokerage transaction fees if it acts as a Phlx specialist or floor broker.

[8] These include the Trading Post/Booth Fee, Trading Post w/Kiosk Fee, Kiosk Construction Fee (when requested by specialist), Controller Space Fee, Floor Facility Fee, Shelf Space on Equity Option Trading Floor Fee, Computer Equipment Services, Repairs or Replacements Fee and Computer Relocation Requests Fee. Certain communications fees could also apply, such as the Direct Wire to the Floor Fee, Telephone System Line Extensions, Wireless Telephone System, Tether Initial Connectivity Fee, Tether Monthly Service Fee, Execution Services/Communication Charge, Stock Execution Machine Registration Fee (Equity Floor), Equity, Option, or FCO Transmission Charge, FCO Pricing Tape, Option Report Service Fee, Quotron Equipment Fee, Instinet, Reuters Equipment Pass-Through Fee and the Option Mailgram Service Fee.

[9] The PACE Specialist Charge is a fee imposed on specialist transactions only and the Equity Floor Brokerage Assessment and Equity Floor Brokerage Transaction Fee apply to floor brokerage activity.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

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 also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–83 and should be submitted by January 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–457 Filed 1–9–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47118; File No. SR–Phlx–2002–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 and No. 2 thereto by the Philadelphia Stock Exchange, Inc. to Adopt a Seat Transaction Policy and Add Supplementary Material to Phlx Rule 708

January 2, 2003.

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 21, 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 Exchange. On December 16, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On December 27, 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, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a Seat Transaction Policy for Governors, Committee Members and Associated Member Organizations (''Seat Transaction Policy'' or the ''Policy''), described in further detail below, which, if approved, will form a part of the Exchange's Code of Conduct for Governors and Committee Members (the ''Governance Members Code of Conduct''), which prohibits Exchange Governors, Committee Members and Member Firms associated with them from engaging in purchases or sales of Exchange ''Seats'' (as further defined below), except in accordance with the Policy. The Policy generally restricts such Seat Transactions if a Governance Member is in possession of Material Confidential Information[5] of the Exchange, except in accordance with the procedures set forth in the Policy. In addition, the Exchange proposes to amend Phlx Rule 708, *Acts Detrimental to the Interest and Welfare of the Exchange,* by adding commentary that provides notice to members and member organizations that any violation of the Exchange's Seat Transaction Policy constitutes a violation of Phlx Rule 708. Below is the text of the proposed rule change. Proposed new language is in italics.

* * * * *

Philadelphia Stock Exchange

Code of Conduct for Board Members and Committee Members

Articles I. thru IV. No change.

Article V. Seat Transaction Policy for Governors and Committee Members

Chinese Wall

A Chinese Wall, also known as an Information Barrier, is an internal written policy of an Exchange or PBOT member firm or member organization that is designed to prevent the disclosure by a Governor or Committee Member associated with such Exchange or PBOT member firm or member organization, or FCO Participant or FCO Participant Organization (collectively, ''Member Organizations''), of non-public, confidential or otherwise sensitive Exchange or PBOT information possessed by such Governor or Committee Member to any third party, including, without limitation, any employee, agent, associated person, representative or consultant of such Member Organization, as the case may be.

Material Confidential Information

Material Confidential Information includes any information that is proprietary to the Exchange, which a reasonable person would consider significant or important when purchasing or selling a Seat.

Seat Transaction

A transaction pursuant to which a Covered Person or a Member Organization purchases or sells a Seat.

Special Committee on Seat Transactions

The Special Committee on Governor and Committee Member Seat Transactions (''Special Committee'') is a Special Committee of the Board having jurisdiction over all Seat Transactions by Covered Persons or Member Organizations.

Window Period

A Window Period is a period of time, imposed by the Special Committee on Seat Transactions, during which a Covered Person or associated Member Organization may not engage in a Seat Transaction, such as a period of time prior to the announcement of new products to be traded on the Exchange, prior to the announcement of a corporate transaction involving the Exchange, prior to the announcement of certain regulatory actions affecting the Exchange, prior to the announcement of an increase or decrease in fees to be paid by the Exchange members, or prior to the announcement of any significant action by the Board of Governors or any Committee.

1. Responsibility for Compliance

(a) Each Covered Person[6] *bears personal responsibility for complying with this Seat Transaction Policy. Each Member Organization associated with a Covered Person must also comply with this Seat Transaction Policy. Where a*

---

[14] 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 John Dayton, Assistant Secretary and Counsel, Phlx, to Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated December 13, 2002 (''Amendment No.1''). Amendment No. 1 replaces Phlx's original proposal in its entirety.

[4] See letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated December 27, 2002 (''Amendment No. 2''). Amendment No. 2 makes certain technical changes to the proposed rule change.

[5] *See* definition of Material Confidential Information, below.

[6] As used in the Seat Transaction Policy, ''Covered Person'' shall mean any person who serves the Exchange as a Board Member or as a Committee Member.

Covered Person serves as a principal, director or officer of a Member Organization, any Seat Transaction by that Member Organization, without more, has the potential for violating the duties described in this Code of Conduct. Seat Transactions by such Member Organizations are subject to review by the Special Committee.

(b) If the Special Committee permits the Covered Person or Member Organization to proceed with a transaction, in accordance with the procedures provided herein, the Covered Person and/or Member Organization nonetheless retains ultimate responsibility for determining whether to proceed with the Seat Transaction and what their disclosure obligations are to the other party in the Seat Transaction. The decision of the Special Committee is for the sole benefit of the Exchange, and is not intended to insulate the Covered Person or Member Organization from responsibility for their conduct in connection with a Seat Transaction under any applicable law. This Seat Transaction Policy is limited to whether the Covered Person or Member Organization's conduct complies with this Code of Conduct and does not purport to affect the rights and obligations of Covered Persons, Member Organizations and others under applicable law and/or contract.

2. Authority to Review Seat Transactions for Compliance with Code of Conduct

The Board of Governors has established a Special Committee on Seat Transactions (''Special Committee''), which shall have full authority to review Seat Transactions by Covered Persons and associated Member Organizations. Every Covered Person and any associated Member Organization shall cooperate fully with any such review. The Special Committee may initiate a review of a Seat Transaction at the request of the Covered Person or associated Member Organization prior to the consummation of the Seat Transaction. The Special Committee may also initiate a review of a Seat Transaction at the direction of the Board of Governors, the Executive Committee, or on its own initiative.

3. Special Committee Procedures

(a) The Special Committee shall have three members, all of whom are Governors and at least one of whom is a Public Governor. The Special Committee's decisions are governed by Section 10–3(a) of the Phlx By-Laws. In addition, the Board of Governors directs that at least one of the members making any quorum be a Public Governor. At the time a Seat Transaction is contemplated, a Covered Person is obliged to notify the Board of Governors by contacting, in writing, the General Counsel, Deputy General Counsel, Corporate Secretary, or Assistant Secretary of any pending Seat Transaction. The Special Committee shall convene promptly after such notification to review the Seat Transaction. The Special Committee shall make all reasonable efforts to respond to the Covered Person rapidly and within a time frame requested by the Covered Person. It is understood that in some cases the Special Committee will be asked to review a Seat Transaction within 24 hours of notification by the Covered Person. In any case, the Special Committee must either render a decision, conduct an interview with the Covered Person, or request additional information from the Covered Person within 15 business days from the time of request. If the Special Committee conducts an interview with the Covered Person or requests additional information from the Covered Person, then the Special Committee must render a decision within 30 business days from the later to occur of (i) the interview, or (ii) if further information is requested by the Special Committee; all requested information is supplied to the Special Committee, provided that a Covered Person may waive compliance with these deadlines. The Special Committee shall render its decision, in writing, to the Covered Person or Member Organization, as well as to the Board of Governors, in regard to whether the proposed Seat Transaction complies with this Seat Transaction Policy and the Code of Conduct. All decisions of the Special Committee may be appealed to the Board of Governors by an aggrieved Covered Person or Member Organization by written notice filed with the Corporate Secretary within thirty (30) days of such Special Committee decision.

(b) The Special Committee is authorized to interview the Covered Person and others in the associated Member Organization involved in a Seat Transaction. The Special Committee shall determine whether the information in the possession of the Covered Person or Member Organization is Confidential Information as defined in the Code of Conduct. The Special Committee shall then determine whether such Confidential Information is Material Confidential Information. The Special Committee shall determine whether any Material Confidential Information must be disclosed in connection with the Seat Transaction and, if so, what Material Confidential Information should be disclosed. The Special Committee shall also determine whether an agreement protecting the confidentiality of such Material Confidential Information and which names the Exchange as an intended third-party beneficiary should be in place between the Covered Person or the Member Organization and the other party to the Seat Transaction prior to the disclosure. The Special Committee is authorized to develop general standards and procedures in connection with its evaluation of Seat Transactions by Covered Persons.

(c) *If the Special Committee determines that Material Confidential Information should not be disclosed, it may prohibit the Covered Person or Member Organization from proceeding with the transaction until such time as the Material Confidential Information is no longer confidential or material or until such time as the Material Confidential Information may be disclosed. The determination by the Special Committee (including, without limitation, the Special Committee's views concerning the sufficiency or insufficiency of a Member Organization's Chinese Wall arrangements for purposes of this policy, as described in section 4 below) is in no way a legal determination as to whether the Confidential Information is material from the point of view of federal or state law (e.g., under the federal securities laws or state common law concerning fraud or misrepresentation) or whether the Covered Person or Member Organization would have any liability to a party other than the Exchange for proceeding with a Seat Transaction. Covered Persons and Member Organizations should be reminded that they should consult with their own counsel about all matters arising from Seat Transactions when the Covered Person is in possession of Confidential Information.*

4. Scope of Special Committee's Jurisdiction

The Special Committee is authorized to render binding decisions regarding Seat Transactions where a Covered Person or an associated Member Organization is involved. The Special Committee's determination shall be limited to: (1) Whether a Seat Transaction may proceed without any disclosure of Material Confidential Information; (2) whether the Member Organization involved in the Seat Transaction has a ''Chinese Wall'' or information barrier in place to prevent disclosure of Material Confidential Information and, if so, whether such

''Chinese Wall'' or information barrier should be regarded as being sufficient to justify the Special Committee to permit a Member Organization or person affiliated therewith, who is not a Covered Person and who is not in possession of Material Confidential Information to proceed with the Seat Transaction; (3) whether the Seat Transaction may proceed only after approved disclosures of Material Confidential Information to the other party in the Seat Transaction and, in such event, whether a confidentiality agreement is needed to protect any Material Confidential Information from being disclosed; or (4) whether the Seat Transaction can not proceed at the current time or during certain Window Periods established by the Special Committee.

5. Consequences of Violations of Seat Transaction Policy

Violations of this Seat Transaction Policy will result in appropriate disciplinary action in accordance with Exchange Rules (which may include, without limitation, Phlx Rule 708). In addition, where it has been determined that applicable laws, rules or regulations may have been violated in connection with a violation of this Seat Transaction Policy, appropriate disciplinary action may include legal action by the Exchange or PBOT or the referral of the matter to an appropriate governmental agency.

6. Right of Appeal of Special Committee Decisions

Decisions of the Special Committee may be appealed by the Covered Person or associated Member Organization to the Board of Governors as if such decision were rendered by a Standing Committee of the Board of Governors, in accordance with Phlx By-Laws 11–1(a) and 11–2. The decision on review by the advisory committee on appeals of the Board of Governors pursuant to Phlx By-Law 11–2 shall constitute a final decision by the Exchange, upon the acceptance by the Board of Governors of the advisory opinion of such advisory committee on appeals.

* * * * *

Rule 708. Acts Detrimental to the Interest or Welfare of the Exchange

A member, member organization, or person associated with or employed by a member or member organization shall not engage in acts detrimental to the interest or welfare of the Exchange.

Commentary:

.01 Acts which could be deemed detrimental to the interest or welfare of the Exchange include, but are not limited to, the following:

(a) thru (e) No change.

(f) any action by a member of the Board of Governors or any Exchange Committee, or by any member organization associated with such member, which contravenes the Seat Transaction Policy contained in Article V of the Code of Conduct for Governors and Committee Members.

* * * * *

II. Self-Regulatory Organization's Statement Regarding 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 (i) To amend the Exchange's Code of Conduct for Governors and Committee Members, by adopting a Seat Transaction Policy, which generally prohibits members of the Phlx Board of Governors or of any Exchange Committee (a ''Governance Member'') [7] and any Phlx member firm or corporation associated with such Governance Member (a ''Member Organization'') from engaging in purchases or sales of Exchange memberships, except in compliance with the Policy, and (ii) to codify the Exchange's policy that a violation of the Exchange's Seat Transaction Policy by a Governance Member or any Member Organization constitutes a violation of Phlx Rule 708, *Acts Detrimental to the Interest and Welfare of the Exchange,* and such conduct is therefore subject to disciplinary action by the Exchange.[8]

The proposed rule change would establish procedures for the purchase or sale [9] of a Phlx membership, foreign currency option (''FCO'') participation, or Philadelphia Board of Trade (''PBOT'') membership (each an ''Exchange Seat'' or a ''Seat''), by a Governance Member or Member Organization. In general, the Policy prohibits such Seat Transactions while such Governance Member or Member Organization possesses ''Material Confidential Information'' of the Exchange except insofar as such transaction complies with the Policy. In addition, proposed commentary to Phlx Rule 708 would make clear that violations of the Policy may constitute an act detrimental to the interests and welfare of the Exchange and therefore that rule. Accordingly, both the Seat Transaction Policy and the proposed amendment of commentary to Phlx Rule 708 would, pursuant to Phlx By-Laws 18–1 and 18–3, expressly allow the Exchange to bring a disciplinary action, as appropriate, against Governance Members and Member Organizations for violations of the Seat Transaction Policy. Neither the Seat Transaction Policy nor the proposed amendment of Phlx Rule 708, Commentary .01 would apply to Exchange members other than Governors, Committee Members and their associated Member Organizations.

Background

The Exchange adopted the Seat Transaction Policy as an amendment to the Governance Members Code of Conduct. The Seat Transaction Policy recognizes that Governance Members may be subject to conflicting duties whenever they engage in a transaction to purchase or sell an Exchange Seat.

On the one hand, a Governance Member, or a Member Organization for which such Governor is an officer or director, must own or lease an Exchange

[7] The Exchange notes that the Policy uses the term ''Covered Person'' instead of the term ''Governance Member,'' which is used here. These terms are synonymous.

[8] The Exchange notes that Phlx Rule 708, as well as Phlx Rule 707 (pertaining to just and equitable principles of trade), could apply to a wide variety of situations. The specific scenarios listed in the commentary to Phlx Rules 707 and 708 are intended to illustrate some, but not all, of the situations that violate these Rules. As stated in the Commission's order approving Phlx Rule 708, the Exchange has determined, for various reasons, to list certain conduct that violates Phlx Rule 708, but not others. *See* Exchange Act Release No. 33850 (April 1, 1994), 59 FR 16874 (April 8, 1994) (File No. SR–Phlx–93–53). Similarly, the Exchange also notes that it has previously amended the commentary to Phlx Rule 707 in order to add certain violations of the Phlx Code of Conduct to the non-exclusive list of potential violations of Phlx Rule 707. *See, e.g.*, Exchange Release No. 43739 (December 19, 2000) 65 FR 82440 (December 28, 2000) (File No. SR–Phlx–00–94) (order approving proposal to prohibit members, member organizations, and persons associated with or employed by a member or member organization from engaging in harassment or other improper behavior in connection with listing or competitive practices).

[9] The Governance Members Code of Conduct provisions described herein would only address the purchase or sale of a Seat, not other transactions involving Seats, such as lease transactions.

Seat to conduct business on the Exchange. Governance Members and Member Organizations may also purchase an Exchange Seat in order to lease it to third persons with the expectation of lease income and appreciation in the value of the Exchange Seat itself. However, as a result of their governance positions on the Board or on an Exchange Committee, Governance Members may learn Material Confidential Information regarding the Exchange that may affect the value of all Exchange Seats, or the value of particular Exchange Seats. As defined in the Seat Transaction Policy, Material Confidential Information is confidential and proprietary to the Exchange and may not, under the Governance Members Code of Conduct, Exchange policy, and applicable law, be disclosed or used for personal gain.

On the other hand, the Exchange notes that failure to disclose Material Confidential Information to a potential purchaser or seller of an Exchange Seat could expose the Governance Member and/or Member Organization to liability to the potential purchaser or seller under state law. Any time a Governance Member purchases or sells an Exchange Seat while the Governance Member possesses such Material Confidential Information, the Exchange states that the Governance Member and (as a consequence of information sharing by such Governance Member with other persons at his/her associated Member Organization) Member Organization could be exposed to disciplinary action, liability, and disrepute. The Exchange states that such conduct by the Governance Member or Member Organization could also expose the Exchange to disrepute.

Therefore, the Exchange adopted the Seat Transaction Policy in order to resolve the tension between a Governance Member's and/or Member Organization's legitimate business needs to purchase or sell Exchange Seats from time to time and the Exchange's legitimate business interest in preventing disclosure of Material Confidential Information to anyone involved in a Seat Transaction.

The Exchange notes that in many cases, disclosure of Material Confidential Information to the other purchaser or seller in the Seat Transaction would put the Governance Member or Member Organization and the buyer or seller on equal footing in order to negotiate a fair price for the Seat—and could in some cases be legally required in order to avoid liability to the party with whom the Governance Member or Member Organization is dealing. However, Governance Members are required by the Governance Members Code of Conduct to keep Material Confidential Information confidential. The Exchange states that the Seat Transaction Policy is designed to accommodate both of these interests by allowing a Special Committee to review the facts surrounding a seat transaction and, if necessary, to impose conditions on the seat transaction in order to prevent or limit disclosure of Material Confidential Information of the Exchange to third parties.

Seat Transaction Policy

In Articles V.1 and V.2 of the proposed Seat Transaction Policy, the Exchange proposes to create a new Special Committee (the ''Special Committee'') of the Board of Governors that would oversee Seat Transactions by Governance Members and Member Organizations.[10] Article V.3 would provide that the Special Committee, which is to be composed of three members, all of whom are Governors and at least one of whom is a Public Governor, would be responsible for examining the facts of each proposed Seat Transaction by a Governance Member or Member Organization.[11] Article V.4 of the Seat Transaction Policy empowers the Special Committee to prohibit any Governance Member or Member Organization from entering into a Seat Transaction while they possess Material Confidential Information of the Exchange.

Article V.3 of the Seat Transaction Policy further provides that the Special Committee may impose certain specified restrictions upon a Seat Transaction to prevent potential misuse or disclosure of Material Confidential Information by the Governance Member or Member Organization,[12] or by the person or firm on the other side of the Seat Transaction. As proposed, the Special Committee would determine whether it is appropriate for such Material Confidential Information to be disclosed by the Governance Member or Member Organization in connection with a proposed Seat Transaction. The Special Committee would also require that a confidentiality agreement be established between the Governance Member or Member Organization and the person on the other side of the Seat Transaction. If such a confidentiality agreement is required, the Seat Transaction Policy would require that the Exchange be named as an intended third-party beneficiary of the agreement.

Proposed Article V.4 provides that, the Special Committee may prohibit any Governance Member or Member Organization from consummating a Seat Transaction under conditions contrary to the conditions set forth by the Special Committee, or during certain ''window periods''[13] specified by the Special Committee.

Governance Member Responsibilities

Proposed Article V.3(a) requires that at the time a Seat Transaction is contemplated, the Governance Member or Member Organization notify the Board of Governors by notifying certain Exchange officers.[14] Article V.3(a) further requires that the Special Committee convene promptly after such

[10] If the entire Special Committee cannot be convened, the Special Committee may proceed with a quorum of its members or may proceed with substituted members appointed by the Board of Governors or the Board's Executive Committee. By-law Article X, section 10–3(a) sets the quorum of the Special Committee as the majority of its members then in office. A quorum of the Special Committee, therefore, is two members. In addition to the quorum requirements in By-law Article X, section 10–3(a), the Board directs that at least one of the members making a quorum be a Public Governor. The Special Committee could take action, pursuant to By-law Article X, section 10–3(a), if a majority of those voting at a meeting at which a quorum is present vote in favor of the motion at hand, provided at least two vote. The Board of Governors or the Board's Executive Committee could appoint substituted members to the Special Committee, as needed. By-law Article IV, Section 4–4(b)(xix) empowers the Board to designate and appoint special committees, such as the one at hand. The Board may appoint additional Governors to the Special Committee to fill-in for absent Governors. In addition, the Board's Executive Committee, by resolution of the Board passed on December 11, 2002, may appoint Governors to the Special Committee to fill-in for absent Governors.

[11] The members of the Special Committee are subject to the conflict avoidance and recusal provisions that are in By-law Article IV, Section 4–8 and in the Governance Member Code of Conduct, Article III.6.

[12] The Exchange states that the Seat Transaction Policy recognizes that it may not in all instances be appropriate to attribute Material Confidential Information possessed by a Governance Member to the entire Member Organization for which he/she serves as an officer or director. Consistent with the policies of the federal securities laws (see, *e.g.*, Rule 14e–3 under the Act, 17 CFR 240.14e–3, and Phlx Rule 1020(f)), the Policy authorizes the Special Committee to review any information barriers that a Member Organization may have established to restrict the flow of Material Confidential Information within its organization and to take the existence of such information barriers into account when reviewing a proposed Seat Transaction.

[13] An example of a ''window period'' during which Seat Transactions may be prohibited is prior to the announcement of a significant transaction involving the Exchange.

[14] Except to the extent that the Special Committee excuses a Governance Member or Member Organization as provided in the next sentence, this is mandatory in respect of all Seat Transactions by Governance Members and their Member Organizations. However, the Special Committee could excuse the Governance Member or Member Organization from this disclosure requirement if the Special Committee determines that all or certain future disclosures are rendered unnecessary by the implementation and operation of the information barriers described in footnote 12, above.

notification to review the proposed Seat Transaction. Understanding that the Governance Member or Member Organization may need to act quickly in order to consummate a Seat Transaction, Article V.3(a) of the Seat Transaction Policy mandates the Special Committee to make all reasonable efforts to respond to the Governance Member or Member Organization rapidly and within a time frame requested by such person. The Seat Transaction Policy therefore anticipates that, in certain cases, the Special Committee will be asked to review a Seat Transaction within 24 hours of notification of the Board of Governors by the Governance Member or Member Organization. In any case, the Special Committee must either render a decision, conduct an interview with the Governance Member, or request additional information from the Governance Member within 15 business days from the time of request. If the Special Committee conducts an interview with the Governance Member or requests additional information from the Governance Member, than the Special Committee must render a decision within 30 business days from the later to occur of (i) the interview or, (ii) if further information is requested by the Special Committee, all requested information is supplied to the Special Committee; provided that a Governance Member may waive compliance with these deadlines.

Special Committee Procedures

Article V.4 of the Seat Transaction Policy requires the Special Committee to render a binding written decision to the Governance Member or Member Organization, as well as to the Board of Governors, regarding whether the proposed Seat Transaction complies with the Seat Transaction Policy. Articles V.3 and V.4 provide further procedures to be followed by the Special Committee in reviewing Seat Transactions. An aggrieved Governance Member or Member Organization may appeal decisions of the Special Committee to the Board of Governors consistent with Article XI of the Phlx By-Laws, by filing a written notice with the Secretary of the Exchange within thirty (30) days of the Special Committee's decision.

Proposed Articles V.3(d) and V.4 specify the remedies that the Special Committee may impose in the event it determines that a Governance Member or Member organization possess Material Confidential Information at the time of a Seat Transaction. These remedies include (i) prohibiting the Seat Transaction until such time as the Material Confidential Information is no longer confidential; (ii) requiring that Material Confidential Information be disclosed to the other party, but only after a non-disclosure agreement between the parties is in place; and (iii) disallowing the Seat Transaction to proceed, but only during certain ''window periods'' established by the Special Committee.

Disciplinary Consequences

Under amended Phlx Rule 708, the Exchange proposes to provide notice to Governance Members and Member Organizations that the failure by any Governance Member or Member Organization to comply with the Seat Transaction Policy constitutes a violation of Phlx Rule 708, *Acts Detrimental to the Interest and Welfare of the Exchange*, and would thereby subject such Governance Member or Member Organization to disciplinary action by the Exchange pursuant to Phlx By-Laws 18–1 and 18–3.[15] The Exchange states that Article V.3(b) of the Seat Transaction Policy makes clear that any determination by the Special Committee is for the sole benefit of the Exchange and is limited to the question whether a Governance Member or Member Organization's conduct complies with the Governance Member Code of Conduct. The Special Committee's decisions do not constitute legal advice and are not intended to affect the rights and obligations of Governance Members and Member Organizations under any applicable law or under any contract with third parties, including purchasers or sellers of Exchange Seats.

2. Statutory Basis

The Phlx believes that the proposed rule change, as amended, is consistent with the provisions of section 6 of the Act,[16] in general, and in particular, with sections 6(b)(3) and 6(b)(5) of the Act,[17] in that it is designed to regulate fairly and in the public interest the administration of the Exchange; with section 6(b)(5), in that it is designed to prevent fraudulent and manipulative acts and practices; and with section 6(b)(6), in that it is designed to appropriately discipline members for violation of the rules of the Exchange. Specifically, the Phlx believes that the Seat Transaction Policy, as specified in the Governance Members Code of Conduct, and Rule 708, as amended, should discourage fraudulent and manipulative acts and practices in connection with the purchase or sale of Exchange Seats by Governance Members, who owe a fiduciary duty to the Exchange and its members, and by Member Organizations, which are each prohibited from taking actions that are detrimental to the interests or welfare of the Exchange.

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

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 Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies

[15] The Exchange notes that conduct that violates the Seat Transaction Policy could also violate various laws and that no inference should be drawn that the Exchange's remedies for violative conduct are limited to disciplinary action under By-Laws 18–1 and 18–3. However, the Exchange notes that Seats have never been regarded as ''securities'' for purposes of the federal securities laws. Therefore, Seat Transactions would not be subject to the provisions of the federal securities laws prohibiting deceptive and manipulative practices ''in connection with the sale of securities.'' (*See, e.g.*, Section 10 of the Act, 15 U.S.C. 78j, and Rule 10b–5 under the Act, 17 CFR 240.10b–5.) *See Ferreri* v. *Goldberg Securities, Inc.*, 1989 WL 11073, 2–3 (E.D. Pa. 1989)(''it is the view of this Court that plaintiff's two [Seats] do not constitute 'securities'''); letter to Clifford Lefebvre, Esq., Baker, Nelson & Williams from John Heneghan, Deputy Chief Counsel, Office of the Chief Counsel, Commission dated March 12, 1973; letter to European Mercantile Exchange Limited from Brian Lynch, Attorney-Adviser, Division of Corporation Finance, Commission dated October 11, 1988; letter to American Stock Exchange—NASD from Michael Hyatte, Special Counsel, Division of Corporation Finance, Commission, dated July 10, 1998.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(3) and (b)(5).

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–2002–34 and should be submitted by January 31, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–460 Filed 1–9–03; 8:45 am]

BILLING CODE 8010–01–P

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3473]

State of Alaska (Amendment #2)

In accordance with information received from the Federal Emergency Management Agency dated December 20, 2002, the above-numbered declaration is hereby amended to establish the incident period as beginning on October 23, 2002 and continuing through December 20, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is February 3, 2003, and for economic injury the deadline is September 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 31, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–508 Filed 1–9–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3475]

Territory of Guam (Amendment #1)

In accordance with information received from the Federal Emergency Management Agency dated December 16, 2002, the above-numbered declaration is hereby amended to establish the incident period as beginning on December 8, 2002 and continuing through December 16, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is February 18, 2003, and for economic injury the deadline is September 19, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 31, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–513 Filed 1–9–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9T74]

State of New York

Westchester County and the contiguous counties of Bronx, Orange, Putnam and Rockland in the State of New York; Fairfield County in Connecticut; and Bergen County in New Jersey constitute an economic injury disaster loan area due to a fire that occurred on November 7, 2002, in the City of Mount Vernon in Westchester County. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on October 3, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South, 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.324 percent.

The numbers assigned for economic injury for this disaster are 9T7400 for New York; 9T7500 for Connecticut; and 9T7600 for New Jersey.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: January 3, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–511 Filed 1–9–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P002]

State of North Carolina (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency, dated December 20, 2002, the above numbered declaration is hereby amended to include Caldwell, Davie, Edgecombe, Johnston, Northampton, Polk, Warren, Wayne and Wilson Counties in the State of North Carolina as disaster areas due to damages caused by a severe ice storm occurring from December 4, 2002, and continuing through December 6, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is February 10, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: December 31, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–510 Filed 1–9–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3479]

Commonwealth of the Northern Mariana Islands (Amendment #1)

In accordance with information received from the Federal Emergency Management Agency dated December 16, 2002, the above-numbered declaration is hereby amended to establish the incident period as beginning on December 8, 2002 and continuing through December 16, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is February 24, 2003, and for economic injury the deadline is September 24, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 31, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–509 Filed 1–9–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3459]

State of Texas (Amendment #6)

In accordance with a notice received from the Federal Emergency Management Agency, dated December 24, 2002, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 16, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is August 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 2, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–512 Filed 1–9–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4247]

International Joint Commission To Hold Hearings on Water Uses in the Great Lakes Basin

The International Joint Commission (IJC) will hold a series of public hearings to obtain comment from the public on action taken by governments on the issue of water uses in the Great Lakes basin before reporting to the Governments of Canada and the United States. The hearings are scheduled to take place at the following dates and locations:

Toronto, January 20, 2003, City Hall, 100 Queen Street West, Toronto, Ontario, Council Chamber, 7 p.m.

Chicago, January 21, 2003, Drake Hotel, 140 East Walton Place, Chicago, Illinois, Michigan Room, 3 p.m. & 7 p.m.

Montréal, February 3, 2003, Queen Elizabeth Hotel, 900 René-Lévesque blvd., Montréal, Québec, Room St. Maurice, 7 p.m.

The IJC published a comprehensive report entitled *Protection of the Waters of the Great Lakes* in 2000. In that report the IJC recommended that it review the issue after three years to provide an update on how matters had changed over that period of time. In late 2000 the governments subsequently agreed.

In June of last year, the Commission appointed the International Water Uses Review Task Force to assist it in carrying out the three-year review. The Task Force reviewed the many technical, policy and legal developments that have taken place in the basin and reviewed actions taken by federal, state and provincial authorities to address the issues raised in the Commission's 2000 report.

The Task Force has now completed its work and submitted its report to the Commission. That report is available on the Commission's Web site: *http://www.ijc.org.* Hard copies of the report are also available from either one of the Commission's offices listed below. The report of the Task Force represents the views and analysis of the Task Force and not necessarily the views of the Commission. The Commission will prepare its report to governments based on its own analysis, the report of the Task Force, and comments received concerning the Task Force report and other related matters.

In addition to the public hearings listed above, the IJC invites all interested parties to submit written comment on this investigation to: Secretary, U.S. Section, 1250 23rd Street NW., Suite 100, Washington, DC 20440, Fax: 202.736.9015, *Commission@washington.ijc.org.*

Due to the security clearing of mail, communications with the IJC's Washington office should be by fax or email to ensure timely receipt. It would be most helpful if written comments were received by February 10, 2003.

The International Joint Commission is a binational Canada-U.S. organization established by the Boundary Waters Treaty of 1909. It assists the governments in managing waters along the border for the benefit of both countries in a variety of ways including examining issues referred to it by the two federal governments.

Dated: January 6, 2003.

Gerald Galloway,

Secretary, United States Section, International Joint Commission.

[FR Doc. 03–502 Filed 1–9–03; 8:45 am]

BILLING CODE 4710–14–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1543).

TIME AND DATE: 9 a.m. (EST), January 14, 2003, TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on November 20, 2002.

New Business

C—Energy

C1. Supplement to Contract No. 99999075 with Bechtel Power Corporation for installation of replacement steam generators for Sequoyah Nuclear Plant Unit 1 and Watts Bar Nuclear Plant Unit 1.

C2. Extension of Voith Siemens Hydro Power Generation Partnering Agreement—Contract No. 1752.

E—Real Property Transactions

E1. Sale or noncommercial, nonexclusive permanent easements for construction and maintenance of recreational water-use facilities, affecting approximately .18 acre of Tellico Reservoir shoreline in Monroe County, Tennessee, Tract Nos. XTELR–234RE and XTELR–235RE.

E2. Sale of a 19-year commercial recreation lease, affecting approximately 79 acres of land on Watts Bar Reservoir in Roane County, Tennessee, Tract No. XWBR–714L.

E3. Deed modification to remove the right to re-enter and take possession, affecting approximately 5 acres of land on Chickamauga Reservoir in Hamilton County, Tennessee, Tract No. XCR–444, S.7X.

E4. Deed modification to allow placement of fill and construction of a residence, affecting .3 acre of former TVA land on Wheeler Reservoir in Limestone County, Alabama, Tract No. XWR222, S.4X.

E5. Grant of a permanent easement for a existing pump station and sewer line expansion of Stevenson Utility Board, affecting approximately 2.8 acres of land on Guntersville Reservoir in Jackson County, Alabama, Tract No. XTGR–171S.

F—Other

F1. Approval to file condemnation cases to acquire transmission line easements and rights-of-way affecting Tract Nos. BBG–8, –9, –12, –13, and –22, Batesville-Blue Goose Transmission Line, Panola County, Mississippi; Tract No. SBFP–93, Sebastopol Switching Station-Five Points, Scott County, Mississippi; and Tract Nos. SWM–31, —32, –33, –35, and –75, Sweetwater-Madisonville Transmission Line, Monroe County, Tennessee; and right to enter affecting tract No. 2WCJR–1001TE, Waynesville–Clifton City Transmission Line, Wayne County, Tennessee.

Information Items

1. Approval of a supplement to the contract with Numanco, LLC, for professional staffing services related to the Browns Ferry Nuclear Plant Unit 1 recovery effort and the replacement of steam generators at the Watts Bar and Sequoyah Nuclear Plants.

2. Approval of a supplement to the contract with General Electric Company to cover nuclear steam supply and turbine-generator services and material for the Browns Ferry Nuclear Plant Unit 1 recovery effort.

3. Approval of the abandonment of a portion of the Great Falls-Sparta Transmission Line tap to West Sparta easement affecting approximately 5.1 acres (Tract No. SPAT–7) in exchange for transmission line easement rights affecting approximately 6 acres (Tract No. SPATR–1) in White County, Tennessee.

4. Approval of public auction sale of the former Eastern Area Radiological Laboratory site, affecting approximately 16.8 acres of Tellico Reservoir land in Monroe County, Tennessee, Tract No. XTELR–233.

5. Approval for interconnection arrangements with independent power producers (IPPs) and policy changes on credits IPPs may apply to TVA's transmission service charges.

6. Approval of Fiscal Year 2002 Winning Performance Incentive Plan Payout.

7. Approval of the Discount Energy Unit program and modification of the distributor loan program.

8. Approval of amendments to the Rules and Regulations of the TVA Retirement System and to the provisions of the TVA Savings and Deferral Retirement Plan (401(k) Plan) to comply with the IRS requirements concerning the definition of employee compensation upon which pension benefits and 401(k) Plan matching contribution can be calculated.

9. Approval of recommendations resulting from the 67th Annual Wage Conference concerning wage rates for annual employees represented by the International Brotherhood of Teamsters for 2003–2005.

10. Approval of recommendations resulting from the 67th Annual Wage Conference concerning Construction Project Agreement (Hourly) wage rates for 2003 for trades and labor work performed by contractors of TVA.

11. Approval of recommendations resulting from the 67th Annual Wage Conference concerning wage rates for annual employees represented by the Trades and Labor Council for 2003.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: January 7, 2003.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 03–644 Filed 1–8–03; 2:09 pm]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Carver and Scott Counties, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a tier I Environmental Impact Statement (EIS) will be prepared for a proposal to improve capacity on Trunk Highway (TH) 41 between TH 169 and proposed TH 212, including a crossing of the Minnesota River, in Scott and Carver Counties, Minnesota. The east-west boundaries of the study area are between County State Aid Highway (CSAH)/TH 101 at the Chanhassen/Shakopee border and County Road 45 just west of Carver. the tier I EIS will include the analysis needed for a location decision.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Brian Isaacson, Project Manager, Minnesota Department of Transportation—Metro Division, Water's Edge Building, 1500 West County Road B–2, Roseville, Minnesota 55113, Telephone (651) 582–1659.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation, will prepare tier I EIS on a proposal to improve capacity on TH 41 between proposed TH 212 and TH 169, the north-south limits of the study area. The east-west boundaries of the study area are between CSAH/TH 101 at the Chanhassen/Shakopee border and County Road 45 just west of the City of Carver in Scott and Carver Counties, Minnesota. The proposed action is being considered to preserve an alignment for the construction of future highway capacity improvements, including a crossing of the Minnesota River, to address the need for improved capacity.

The tier I EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including: (1) no-build, (2) improvements to the existing TH 41 corridor, and (3) one or more new alignment alternatives for TH 41.

The tier II EIS will be prepared in approximately 15 years. At that time, design alternatives for the preferred alignment will be considered and environmental impacts and mitigation will be studied in greater detail. The construction of the preferred alternative is planned for implementation after the year 2020.

It is anticipated that the ''TH41 Scoping Document/Draft Scoping Decision Document'' will be published in approximately June 2003. A press release will be published to inform the public of the document's availability. Copies of the scoping document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the tier I EIS. A 30 day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting. A tier I draft EIS will be prepared based on the outcome of the scoping process. Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited form all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Dated: Issued on: December 31, 2002.

(Catalog of Federal Domestic Assistance Program Number 20205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities apply to this program)

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 03–445 Filed 1–9–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–02–13546; Notice 2]

RIN 2127–AI72

Event Data Recorders

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Extension of comment period.

SUMMARY: NHTSA received a petition asking us to extend the comment period for our request for comments concerning what future role the agency should take related to the continued development and installation of Event Data Recorders (EDRs) in motor vehicles. To provide interested persons additional time to prepare comments, we are extending the comment period from January 9, 2003, to February 28, 2003.

DATES: Written comments must be received by February 28, 2003.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590:

For technical and policy issues: Dr. William Fan, Office of Crashworthiness Standards, NVS–112, telephone (202) 366–4922, facsimile (202) 366–4329.

For legal issues: J. Edward Glancy, Office of the Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION: On October 11, 2002, NHTSA published in the **Federal Register** (67 FR 63493) a request for comments concerning Event Data Recorders (EDRs) in motor vehicles. EDRs collect vehicle and occupant-based crash information.[1]

Over the past several years, NHTSA has been actively involved with EDRs. The agency's involvement has included sponsoring two working groups, using data from EDRs in crash investigations, and conducting research and development. Particularly since the two working groups have completed their work, we requested comments on what future role the agency should take related to the continued development and installation of EDRs in motor vehicles. We established a comment closing date of January 9, 2003.

The National Association of EMS Physicians (NAEMSP) requested an extension of the comment period, to March 31, 2003. It noted that it will hold its 2003 Annual Meeting on January 16 to 18. NAEMSP stated that if the extension were granted, it would solicit comments from its membership, and collate the comments for submission on March 31. That organization stated that it would like the opportunity to submit comments in order to benefit patient health and outcomes.

After considering NAEMSP's request, we have decided that it would be in the public interest to extend the comment period. However, we believe a somewhat shorter extension is appropriate. We are extending the comment period until February 28, 2003. This date is approximately six weeks after NAEMSP's Annual Meeting. We believe that will provide sufficient time for that organization to solicit comments from its membership and collate the comments for submission to the agency.

Privacy concerns: All comments (other than those containing confidential business information) submitted to any of our dockets are converted into electronic form. Anyone is able to search the electronic form of those comments by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: January 3, 2003.

Noble N. Bowie,

Director, Office of Planning and Consumer Standards.

[FR Doc. 03–501 Filed 1–7–03; 2:47 pm]

BILLING CODE 4910–59–P

[1] Since the term ''EDR'' can be used to cover many different types of devices, we included a definition of the term for purposes of our request for comments. We explained that when we used ''EDR'' in the request for comments, we were referring to a device that is installed in a motor vehicle to record technical vehicle and occupant-based information for a brief period of time (*i.e.*, seconds, not minutes) before, during and after a crash. For instance, EDRs may record (1) pre-crash vehicle dynamics and system status, (2) driver inputs, (3) vehicle crash signature, (4) restraint usage/deployment status, and (5) certain post-crash data such as the activation of an automatic collision notification (ACN) system. We stated we were not using the term to include any type of device that either makes an audio or video record or logs data such as hours of service for truck operators.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13708]

RIN 2127–AG93

Federal Motor Vehicle Standards; Child Restraints; Review: Evaluation of Child Safety Seat Registration

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a Technical Report reviewing and evaluating the seat registration-form requirements of its existing Safety Standard 213, Child Restraint Systems. The report's title is Evaluation of Child Safety Seat Registration.

DATES: Comments must be received no later than May 12, 2003.

ADDRESSES: Report: You may obtain a copy of the report free of charge by sending a self-addressed mailing label to Communications Services (NPO–503), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. A summary of the report is available on the Internet for viewing on line at *www.nhtsa.dot.gov/cars/rules/regrev/evaluate/809518.html.* The full report is available on the Internet in PDF format at *www.nhtsa.dot.gov/cars/rules/regrev/evaluate/pdf/809518.pdf.*

Comments: All comments should refer to the Docket number of this notice (NHTSA–2002–13708). You may submit your comments in writing to: U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. You may also submit your

comments electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

You may call Docket Management at 202–366–9324 and visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles J. Kahane, Chief, Evaluation Division, NPO–321, Planning, Evaluation, and Budget, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–2560. FAX: 202–366–2559. E-mail: *ckahane@nhtsa.dot.gov.*

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: Visit the NHTSA Web site at *http://www.nhtsa.dot.gov* and click ''Regulations & Standards'' underneath ''Vehicle & Equipment Information'' on the home page; then click ''Regulatory Evaluation'' on the ''Regulations & Standards'' page.

SUPPLEMENTARY INFORMATION: Beginning March 1993, Federal Motor Vehicle Safety Standard 213 required manufacturers to provide a postage-paid registration form with each new child safety seat sold, with the goal of increasing consumer response to child seat recalls. Before March 1993, registration was voluntary for manufacturers.

It is estimated that registration increased from 3 percent prior to 1993, to an average 27 percent over the years 1996 through 2000. Based on data from 1990 through 2000, the repair rate for recalled child seats also increased, from 13.8 percent before the registration requirement to 21.5 percent once the requirement was in effect. The cost to consumers for child seat registration and notification is approximately 43 cents per seat sold in the United States.

How Can I Influence NHTSA's Thinking on This Evaluation?

NHTSA welcomes public review of this preliminary report and invites reviewers to submit comments about the data, the statistical methods used in the analyses, and/or additional information. NHTSA will submit to the Docket a response to the comments and, if appropriate, additional analyses that supplement the report. If the comments warrant a significant revision, then NHTSA will either add an appendix to the report or publish a revised report; otherwise, this preliminary report will serve as the final report.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2002–13708) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System Website at *http://dms.dot.gov* and click on ''Help'' to obtain instructions.

We also request, but do not require you to send a copy to Marie Walz, Evaluation Division, NPO–321, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590 (alternatively, FAX to 202–366–2559 or e-mail to *Marie.Walz@nhtsa.dot.gov*). She can check if your comments have been received at the Docket and she can expedite their review by NHTSA.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–110, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit them electronically.

Will the Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read the Comments Submitted by Other People?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

2. On that page, click on ''Simple Search.''

3. On the next page (*http://dms.dot.gov/search/searchFormSimple.cfm/*) type in the five-digit Docket number shown at the beginning of this notice (13708). Click on ''Search.''

4. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Rose A. McMurray,

Associate Administrator for Planning, Evaluation, and Budget.

[FR Doc. 03–463 Filed 1–9–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20996]

East West Resorts Transportation LLC; East West Resorts Transportation II, LLC; Colorado Mountain Express, LLC; and Resort Express LLC—Merger—East West Resorts Transportation, LLC

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: East West Resorts Transportation, LLC (EWRT I), East West Resorts Transportation II, LLC (EWRT II), both noncarriers, Colorado Mountain Express, LLC (CME) and Resort Express, LLC (RE), both motor carriers of passengers, jointly filed an application under 49 U.S.C. 14303 to merge EWRT I and EWRT II with EWRT I as the surviving entity. Additionally, incident to the merger, the parties seek the transfer of the operating rights of CME to RE followed by the lease of all the operating rights of RE by CME. Finally, the parties seek the following name changes: (1) EWRT I to East West Resort Transportation Holdings, LLC; (2) CME to East West Resort Transportation, LLC; and (3) RE to TMS, LLC. Persons wishing to oppose the application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by February 24, 2003. Applicant may file a reply by March 11, 2003. If no comments are filed by February 24, 2003, the tentative approval becomes final on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20996 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representative: Thomas J. Burke, Jr., 1625 Broadway, Suite 1600, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 565–1600. (Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: EWRT I and EWRT II are holding companies controlled by Charles I. Madison, Harry H. Frampton III, and John C. Goff. CME, a wholly owned subsidiary of EWRT I, is authorized to provide special and charter operations pursuant to federally issued authority in Docket Nos. MC–169174 and MC–174332. RE, a wholly owned subsidiary of EWRT II, is authorized to provide regular route interstate operations pursuant to Federally issued authority in Docket No. MC–181367.

Applicants state that ultimate control over the properties will remain the same and that the purpose of the merger and related transfer and lease is ''entity simplification.'' Applicants contend that approval of the transaction will enable CME, under a unified management structure, to achieve such operating efficiencies as fuel conservation and reduced vehicle congestion and exhaust emissions.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction that we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicants have submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Specifically, applicants have shown that the proposed transaction will have a positive effect on the adequacy of transportation to the public and will result in no increase in fixed charges and no changes in employment. *See* 49 CFR 1182.2(a)(7). Additional information may be obtained from applicants' representative.

On the basis of the application, we find that the proposed transaction is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at: *www.stb.dot.gov.*

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on February 24, 2003, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street, SW., Room 8214, Washington, DC 20590; (2) U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: January 3, 2003.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–398 Filed 1–9–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 190X)]

Union Pacific Railroad Company—Abandonment Exemption—in Dunn County, WI

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 subpart F–*Exempt Abandonments* to abandon a 2.00-mile line of railroad, known as the Menomonie Industrial Lead, extending from milepost 0.90 near Stout Oak Street to milepost 2.90 near 12th Avenue West, in Dunn County, WI. The line traverses United States Postal Service Zip Code 54751.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under

Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 9, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 21, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 30, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 17, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by January 10, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 3, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–397 Filed 1–8–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Federal Retirement Thrift Investment Board

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (EST) January 21, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the December 16, 2002, Board member meeting.
2. Executive Director's report, including the following items:
   - Legislative report,
   - Investment report, and
   - Participation information.
3. Status of new record keeping system.
4. Discussion with Ann Combs, Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

Parts Closed to the Public

5. Discussion of litigation matters (closed portion of meeting).
6. Discussion of personnel matters (closed portion of meeting).

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: January 7, 2003.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–601 Filed 1–8–03; 11:54 am]

BILLING CODE 6760–01–M

Corrections

Federal Register

Vol. 68, No. 7

Friday, January 10, 2003

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 36, and 91

[Docket No. FAA–2000–7587 Amdt No. 21–81, 36–24 & 91–275]

RIN 2120–AH03

Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes

Correction

In the issue of Thursday, October 10, 2002, appearing on pages 63194–63196, in the correction of rule document 02-15835, there were multiple errors. The corrections appear as follows:

1. On page 63194, in the first column, under the heading, **Correction**, in the first line, ''15385'' should read, ''15835''.

2. On the same page, in the second column, in correction 17., in the fourth line, ''the reference for'' should read, ''reference for''.

Appendix A to Part 36 — [Corrected]

3. On page 63195, in the third column, in correction 74., in the second line, ''A36.3.6.7 Analysis systems'' should read, ''A36.3.7 *Analysis systems*''.

4. On page 63196, in the third column, in correction 83., in the fifth line, ''frequency'' should read, ''frequency range''.

5. On the same page, in the table, in correction 84., under the column titled, ''Meaning'', in the first line, ''percieved'' should read, ''perceived''.

6. On the same page, in the first column, in correction 85., in the fifth line, after ''PNL(k)'', remove the remaining text of the correction paragraph.

[FR Doc. C2–15835 Filed 1–9–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 36

[Docket No. FAA–2000–7587 Amdt No. 21–81, 36–24 &91–275]

RIN 2120–AH03

Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes

Correction

In rule document 02–15835 beginning on page 45194 in the issue of Monday, July 8, 2002, make the following corrections:

1. On the same page, in the same column, in the same section, in paragraph (c)(1)(ix), in the third line, ''Nose'' should read, ''Noise''.

2. On the same page, in the same column, in the same section, in the same paragaph, in the fourth and fifth lines, ''Requirements for systems measure one—Third'' should read, ''Requirements for Systems to Measure One-Third''.

Appendix A to Part 36 — [Corrected]

3. On page 45215, in the second column, at paragraph A36.3.6.3, in the third line from the bottom, ''Frequency'' should read, ''frequency''.

Appendix B to Part 36 — [Corrected]

4. On page 45235, in the second column, in section B36.3(a)(2), in the fifth and sixth lines, ''[the effective date of this final rule]'' should read, ''August 7, 2002''.

5. On page 45236, in the first column, in section B36.7(b)(3), in the sixth line, ''[the effective date of this final rule]'' should read, ''August 7, 2002''.

[FR Doc. C2–15835 Filed 1–9–03; 8:45 am]

BILLING CODE 1505–01–D

Reader Aids

Federal Register

Vol. 68, No. 7

Friday, January 10, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://hydra.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JANUARY

1–254 2
255–458 3
459–662 6
663–994 7
995–1142 8
1143–1358 9
1359–1512 10

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7636 995
Executive orders:
12543 (See Notice of January 2, 2003) 661
12544 (See Notice of January 2, 2003) 661
13249 (Superseded by 13282) 1133
13282 1133
Administrative orders:
Notices:
Notice of January 2, 2003 661

5 CFR

532 .....459, 460

7 CFR

97 1359
301 1360
906 1362
989 1143
996 1145
997 1145
998 1145
999 1145
1208 1364
Proposed Rules:
56 1169
300 69
1951 1170
1962 1170
1965 1170

8 CFR

Proposed Rules:
217 292
231 292
251 292

9 CFR

317 460
381 460

10 CFR

72 463

11 CFR

100 .....404, 421
102 421
104 .....404, 611
105 404
108 404
109 .....404, 421
110 421
114 421

12 CFR

211 1158
563 1218
Proposed Rules:
19 1116
24 1394
263 1116
308 1116
513 1116

14 CFR

21 1512
23 .....1, 3
25 255
36 1512
39 .....5, 10, 14, 16, 18, 23, 25, 27, 28, 31, 35, 257, 471, 473, 476, 479, 481, 483, 485, 486, 488, 997, 999, 1001
61 39
71 ...43, 44, 259, 260, 261, 262, 263, 490
91 1512
97 .....264, 491
Proposed Rules:
39 .....71, 302, 305, 308, 311, 315, 317, 320, 322, 324, 516, 518, 1016, 1017
71 328
255 1172
399 1172

15 CFR

902 204

17 CFR

230 188
240 188
420 402
Proposed Rules:
210 160
239 160
249 160
270 160
274 160

18 CFR

Ch. 1 45
260 266
357 266
385 266

19 CFR

Proposed Rules:
101 1172
103 1173

21 CFR

510 1161

23 CFR

Proposed Rules:
970 1080

971....1088
972....1096
973....1105

24 CFR

Proposed Rules:
92....648
570....648
572....648
574....648
576....648
582....648
583....648
585....648

25 CFR

170....1003

26 CFR

Proposed Rules:
1....1020

27 CFR

Proposed Rules:
9....1020

29 CFR

Proposed Rules:
1910....1023, 1399
1915....1023
1926....1023
2550....992

30 CFR

250....45

Proposed Rules:
938....721
944....521

31 CFR

103....493

33 CFR

117....1366
165....1005, 1162

Proposed Rules:
151....523

34 CFR

200....1008

38 CFR

17....1009

39 CFR

3001....46

Proposed Rules:
111....530

40 CFR

9....848
50....614
52....663, 1366, 1370
62....48, 50, 52, 53
81....1370
82....238
69....1162
112....1348
180....269, 274, 283
710....848
723....848

Proposed Rules:
52....723, 1414
62....76, 77
63....77, 78, 329, 1276
81....1414
261....531
69....1175
112....1352
281....329

41 CFR

Ch. 301....196
102-75....1167
301-10....493

42 CFR

403....1374
416....1374
418....1374
460....1374
482....1374
483....1374
485....1374

43 CFR

1860....494

47 CFR

73....503, 504, 670
76....670

Proposed Rules:
Ch. 1....723, 730
73....532, 533

48 CFR

904....55
952....55
970....55

Proposed Rules:
505....1358

49 CFR

107....1342
171....1013
192....56
195....56
219....57
571....504

50 CFR

17....1220
20....1388
300....1392
635....711
648....57, 60, 533
660....908
679....715, 1392

Proposed Rules:
17....331
18....1175
229....1414
635....1024, 1430
660....936

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 10, 2003

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Peanuts, domestic and imported, marketed in United States; minimum quality and handling standards; published 1-9-03

Raisins produced from grapes grown in—

California; published 1-9-03

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Ohio; published 1-10-03

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird hunting:

Tungsten-iron-nickel-tin shot approval as nontoxic for waterfowl and coots hunting; published 1-10-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Raytheon; published 11-20-02

RULES GOING INTO EFFECT JANUARY 11, 2003

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

U.S. rail operations; U.S. locational requirement for dispatching; published 12-10-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Perishable agricultural commodities:

Fresh and frozen fruits and vegetables, coated or battered; comments due by 1-15-03; published 12-16-02 [FR 02-31583]

AMERICAN BATTLE MONUMENTS COMMISSION

Freedom of Information Act; implementation; comments due by 1-14-03; published 11-15-02 [FR 02-28900]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Gulf of Alaska groundfish; comments due by 1-13-03; published 12-12-02 [FR 02-31368]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 1-16-03; published 12-17-02 [FR 02-31699]

COMMODITY FUTURES TRADING COMMISSION

Commodity pool operators and commodity trading advisors:

Commodity pool operators; otherwise regulated persons excluded from term definition; comments due by 1-13-03; published 12-18-02 [FR 02-31847]

Requirement to register for CPOs of certain pools and CTAs advising such pools; exemption; comments due by 1-13-03; published 11-13-02 [FR 02-28820]

DEFENSE DEPARTMENT

Debts resulting from erroneous payments of pay and allowances; waiver; comments due by 1-13-03; published 11-14-02 [FR 02-28728]

Procedures; comments due by 1-13-03; published 11-14-02 [FR 02-28735]

Personnel and general claims and advance decision requests; settling and processing; comments due by 1-13-03; published 11-14-02 [FR 02-28726]

Procedures; comments due by 1-13-03; published 11-14-02 [FR 02-28727]

ENERGY DEPARTMENT

Floodplain and wetland environmental review requirements; compliance; comments due by 1-17-03; published 11-18-02 [FR 02-29071]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

California; comments due by 1-16-03; published 12-17-02 [FR 02-31679]

Air quality implementation plans; approval and promulgation; various States:

Alabama; comments due by 1-13-03; published 12-12-02 [FR 02-31236]

Kentucky; comments due by 1-17-03; published 12-18-02 [FR 02-31667]

Virginia; comments due by 1-15-03; published 12-16-02 [FR 02-31469]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Virginia; comments due by 1-15-03; published 12-16-02 [FR 02-31470]

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:

New Jersey; comments due by 1-15-03; published 12-16-02 [FR 02-31014]

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:

New Jersey; comments due by 1-15-03; published 12-16-02 [FR 02-31015]

ENVIRONMENTAL PROTECTION AGENCY

Water supply:

National primary drinking water regulations—

Chemical and microbiological contaminants; analytical method approval; Colitag method; additional information; comments due by 1-17-03; published 12-31-02 [FR 02-32886]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

International Settlements Policy reform and international settlement rates; comments due by 1-14-03; published 12-17-02 [FR 02-31604]

Radio and television broadcasting:

Broadcast and cable EEO rules and policies—

Part-time employee classification; comments due by 1-16-03; published 12-24-02 [FR 02-32474]

FEDERAL RESERVE SYSTEM

Transactions between banks and their affiliates (Regulation W):

Credit extension; limitation of member bank's ability to buy from affiliate under exemption to 100% of capital stock and surplus; comments due by 1-13-03; published 12-12-02 [FR 02-30635]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:

Claims appeal procedures; changes; comments due by 1-14-03; published 11-15-02 [FR 02-28296]

HEALTH AND HUMAN SERVICES DEPARTMENT

Grants:

National Institutes of Health center grants; comments due by 1-13-03; published 11-12-02 [FR 02-28292]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—

Achyranthes mutica, etc. (47 plant species from Hawaii, HI); comments due by 1-17-03; published 12-18-02 [FR 02-31876]

Marine mammals:

Incidental take during specified activities—

Florida manatees; watercraft and watercraft access facilities; comments due by 1-13-03; published 11-14-02 [FR 02-28607]

LABOR DEPARTMENT

Mine Safety and Health Administration

Coal mine safety and health, and education and training:

Emergency evacuations; emergency temporary standard; comments due by 1-13-03; published 12-12-02 [FR 02-31358]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

Government property; heritage assets; comments due by 1-13-03; published 11-12-02 [FR 02-28084]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

Trade Agreements Act; exception for U.S.-made end products; comments due by 1-13-03; published 11-12-02 [FR 02-28542]

NUCLEAR REGULATORY COMMISSION

Production and utilization facilities; domestic licensing:

Light water reactor electric generating plants; voluntary fire protection requirements; comments due by 1-15-03; published 11-1-02 [FR 02-27701]

Rulemaking petitions:

Christian, Lawrence T., et al.; comments due by 1-15-03; published 11-1-02 [FR 02-27861]

Correction; comments due by 1-15-03; published 11-7-02 [FR 02-28360]

Leyse, Robert H.; comments due by 1-16-03; published 12-2-02 [FR 02-30417]

SECURITIES AND EXCHANGE COMMISSION

Investment companies:

Research and development companies; nonexclusive safe harbor from investment company definition; comments due by 1-15-03; published 12-3-02 [FR 02-30663]

Securities, etc.:

Sarbarnes-Oxley Act of 2002; implementation—

Auditor independence, requirements; comments due by 1-13-03; published 12-13-02 [FR 02-30884]

SOCIAL SECURITY ADMINISTRATION

Organization and procedures:

Federal claims collection; administrative wage garnishment; comments due by 1-14-03; published 11-15-02 [FR 02-28856]

Social security benefits and supplemental security income::

Claimant identification pilot projects; comments due by 1-14-03; published 11-15-02 [FR 02-28957]

STATE DEPARTMENT

Exchange Visitor Program:

Student and Exchange Visitor Information System; designated sponsors access to database; comments due by 1-13-03; published 12-12-02 [FR 02-31367]

TRANSPORTATION DEPARTMENT

Coast Guard

Anchorage regulations:

Louisiana; comments due by 1-13-03; published 11-12-02 [FR 02-28680]

Ports and waterways safety:

Calvert Cliffs Nuclear Power Plant, MD; security zone; comments due by 1-16-03; published 10-18-02 [FR 02-26462]

TRANSPORTATION DEPARTMENT

Computer reservation systems, carrier-owned; comments due by 1-14-03; published 11-15-02 [FR 02-28645]

Computer reservation systems, carrier-owned:

General policy statements; comments due by 1-13-03; published 1-9-03 [FR 03-00355]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airports:

Passenger facility charge rule; air carriers compensation; revisions; comments due by 1-13-03; published 11-27-02 [FR 02-30103]

Airworthiness directives:

de Havilland; comments due by 1-13-03; published 11-8-02 [FR 02-28409]

Aerospatiale; comments due by 1-13-03; published 12-13-02 [FR 02-31471]

Boeing; comments due by 1-13-03; published 11-27-02 [FR 02-30027]

British Aerospace; comments due by 1-17-03; published 12-10-02 [FR 02-31129]

de Havilland; comments due by 1-17-03; published 11-12-02 [FR 02-28617]

Eurocopter France; comments due by 1-17-03; published 12-18-02 [FR 02-31830]

Piaggio Aero Industries S.p.A.; comments due by 1-13-03; published 11-21-02 [FR 02-29677]

Pratt & Whitney; comments due by 1-14-03; published 11-15-02 [FR 02-29002]

Quality Aerospace, Inc.; comments due by 1-13-03; published 11-8-02 [FR 02-28407]

Raytheon; comments due by 1-16-03; published 12-2-02 [FR 02-30346]

Rolls-Royce plc; comments due by 1-14-03; published 11-15-02 [FR 02-28954]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Textron Lycoming; comments due by 1-13-03; published 11-14-02 [FR 02-29003]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness standards:

Special conditions—

Cessna Model 441 airplanes; comments due by 1-17-03; published 12-18-02 [FR 02-31882]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class E airspace; comments due by 1-13-03; published 11-29-02 [FR 02-29660]

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Motor carrier safety standards:

Intermodal container chassis and trailers; general inspection, repair, and maintenance requirements; negotiated rulemaking process; intent to consider; comments due by 1-13-03; published 11-29-02 [FR 02-30102]

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Pipeline safety:

Gas pipeline safety standards; regulatory review; comments due by 1-13-03; published 11-13-02 [FR 02-28240]

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Firearms:

Imported explosive materials and identification marking placement; comments due by 1-14-03; published 10-16-02 [FR 02-26253]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Redemptions taxable as dividends; comments due by 1-16-03; published 10-18-02 [FR 02-26449]

LIST OF PUBLIC LAWS

This is the first in 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 202–741–6043. 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.

S. 23/P.L. 108–1

To provide for a 5-month extension of the Temporary Extended Unemployment Compensation Act of 2002 and for a transition period for individuals receiving compensation when the program under such Act ends. (Jan. 8, 2003; 117 Stat. 3)

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://hydra.gsa.gov/archives/publaws-l.html* or send E-mail to **listserv@listserv.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new

laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.